

Legislative Assembly of Alberta

The 27th Legislature Second Session

Standing Committee on Legislative Offices

Wednesday, February 18, 2009 6:19 p.m.

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Standing Committee on Legislative Offices

Mitzel, Len, Cypress-Medicine Hat (PC), Chair Lund, Ty, Rocky Mountain House (PC), Deputy Chair

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Neil R. Wilkinson

Ombudsman

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6:19 p.m. Wednesday, February 18, 2009

[Mr. Mitzel in the chair]

The Chair: Good evening, ladies and gentlemen. I'd like to call the meeting to order. Welcome to the Standing Committee on Legislative Offices. I'd ask that the members and those joining the committee at the table introduce themselves for the record. My name is Len Mitzel. I'm the MLA for Cypress-Medicine Hat, and I chair this committee.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

Mr. Webber: Len Webber, Calgary-Foothills.

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

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

Mr. Reynolds: Rob Reynolds, Senior Parliamentary Counsel.

Dr. McNeil: David McNeil, Clerk of the Assembly.

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

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

Mr. Campbell: Robin Campbell, MLA, West Yellowhead.

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

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

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

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

The Chair: Thank you. The meeting agenda was posted on the internal committee website yesterday and, as members are aware, addresses an issue carried forth from our meeting last Friday, February 13, 2009. Are there any items for discussion under other business? If not, could I have a motion to approve the agenda.

I'm sorry. Ms Blakeman.

Ms Blakeman: I had two items there. I wondered about the posting of the LAO research documents on the public site, and the second one was about the divulging of the in camera proceedings.

The Chair: Okay. Any other items? A motion to approve the agenda? Moved by Mr. Campbell. All in favour? Carried.

The next item on our agenda this evening is the term of office for the Chief Electoral Officer. Before I open the floor to discussion in this respect, the Legislative Offices Committee has traditionally moved in camera when discussing issues related to salaries, contracts, et cetera of the officers of the Legislature. I'd now ask for a motion to move in camera.

Mr. Lund: I so move.

The Chair: Moved by Mr. Lund. All in favour?

Ms Notley: Excuse me. Is that a debatable motion?

The Chair: Go ahead.

Ms Notley: As you can imagine, I'm asking my fellow committee members to vote against this motion to move in camera. As you know, there has been a lot of public debate already and public discussion around this particular decision that we are about to discuss. It draws on and has implications for issues which have, in my view, paramount public importance and relevance for the citizens of the province and the way in which we're conducting our sort of democratic processes. I don't believe that it is in people's best interests to have this decision discussed in camera. Everyone should have an opportunity to view the deliberations that we're about to commence.

The Chair: Just a point on that, that any decision that's made will be on the record in a motion in the end, and that is debatable. As I mentioned earlier, any issues regarding contracts or salaries are usually held in camera.

Ms Notley: But I don't think this is about contract or salaries. This is about just the question of reappointment. Just because it's debatable after the fact, I think that the deliberations, to the extent that they haven't already occurred between members, you know, since the last meeting, which, of course, would make some sense, ought to be on the record.

The Chair: Mr. MacDonald.

Mr. MacDonald: Yes. Thank you, Mr. Chairman. I would like to point out, first off, that schedule 2 of the annual report of the Chief Electoral Officer for 2007, on page 41, discloses completely the salary and benefits of the Chief Electoral Officer as well as the deputy, so it doesn't seem to be a matter of disclosure here. We're not – at least, I don't think we are – changing the base salary or any other benefits or bonuses of this individual or this position, so I don't see the merit of requesting an in camera discussion on this.

I was surprised at the conclusion of our meeting on Friday to learn that a member of this committee, after we had our in camera session, had a public statement out here in the aisle or in the foyer or whatever you want to call it.

For those two reasons I do not believe it is necessary at this time for an in camera discussion.

The Chair: Are there any other comments?

6:25

Mr. Lukaszuk: Somehow I anticipated that we may be having this discussion. There are just a few words of caution because one can argue very effectively in both cases why this should or should not be done in a public forum.

The only thing that I would ask the members to consider is that if as a result of this meeting our current Chief Electoral Officer remains in his position, his contract is extended, then it is in the best interests of all Albertans and us as elected politicians that we have 100 per cent confidence in his ability to carry on with his tasks. If there are any comments made on the record that would in any way undermine our perception of his ability, that perhaps does not serve him and the Legislature and Albertans well into the future.

On the other hand, because we want Albertans to have full confidence in the process, you know, one could argue, then, that it should be in the open. My concern is that if there are any comments made about the Chief Electoral Officer which may not be favourable, then you are going to make his ongoing work somewhat more difficult.

The Chair: If there are no other questions, I will call for the question on the motion. All in favour that we go in camera? Opposed? That motion is carried.

Ms Blakeman: Could that be noted, please?

The Chair: So noted.

[The committee met in camera from 6:26 p.m. to 7:14 p.m.]

The Chair: We're now on the record, and I'd ask Mr. Marz to put forward a motion at this time.

Mr. Marz: Thank you, Mr. Chair. I would move that the Standing Committee on Legislative Offices recommend to the Government House Leader that a motion be introduced in the Assembly to establish a select special committee to search for a candidate for the position of Chief Electoral Officer.

The Chair: That motion is up for debate. Any comments? Mr. MacDonald.

Mr. MacDonald: Yes. Thank you. I will repeat for the record what I said last Friday. I certainly have confidence in Mr. Gibson to not only enforce the act but also to improve it. He worked very hard. He was sincere in his efforts. His 100-plus recommendations to improve our electoral system in this province are noteworthy.

In light of the fact that the last election was so poorly run, I don't think it is that gentleman's fault. Time, unfortunately, was so short in order to organize and get ready for the election. The results: well, unfortunately, they were evident as well. The man did not have time to do his job as is required by the act. I think that if you look at his annual report and you see how he wanted to improve enforcement, make an effort to at least enforce the act and ask Alberta Justice to lay charges and proceed through the courts with various matters – these charges were mysteriously ignored by Alberta Justice.

I think this is an unfortunate evening in the history of this province that we have to at this time look for a new Chief Electoral Officer. We need him now more than ever because, of course, we're going to redraw the boundary map in the next three years. To have someone who is familiar with our act and our office, that too is important.

Thank you.

The Chair: Anyone else wish to join the debate?

Ms Notley: As I'm sure it's no surprise, I also speak against this motion. I believe that we've had extensive information provided to this committee which shows that the majority of the problems that we experienced in the last election were due to the delay on the part of either members of this government or members of the governing party to forward an adequate number of names of returning officers who were qualified for the position. I don't think that the officer should be held to some type of blame for actually insisting upon those people being qualified. I think that it was the lack of returning

officers that delayed much of the organization that would have allowed for there to be a much better election.

I also believe that this Chief Electoral Officer, unlike past Chief Electoral Officers, did embark upon an attempt to more aggressively enforce the act, notwithstanding that he has been unsuccessful in that at this point, and that he has worked quite tirelessly to recommend in some detail ways in which this could be improved. I think that coming up with those recommendations in the form that he did, in a report, was absolutely the appropriate way to go. Frankly, given the way that this is unfolding, he could certainly be forgiven for not expecting this committee to jump to the pump when all of his other requests for assistance had already been ignored.

Ultimately, as I mentioned before, I'm also deeply concerned about the chilling effect that this decision will have on the ability of other officers of the Legislature to believe that they can act independently. Members of this committee have talked about the need for the public to have confidence in the person who fulfills the role as the Chief Electoral Officer. I think that they need to have that confidence. They also need to have confidence in the people who select that person and who oversee how that person's job is done and in some respect control how that person's job is done; for instance, those people who can control the appointment of the returning officers. However, even more importantly, people need to have confidence in the independence of the officers of the Legislature. I think that we are striking a serious blow against the confidence that Albertans can have with respect to the ability of officers of this Legislature to act independently.

For those reasons I speak against it. Thank you.

The Chair: Mr. Lukaszuk.

Mr. Lukaszuk: Thank you. As I indicated earlier, in view of the fact that this is an important decision and the office of the Chief Electoral Officer arguably could be considered perhaps the most important of any of the legislative offices because it governs how Albertans get elected to elected positions and from there stem the activities of elected officials, if anybody questions the actions of that office or any officer of that office, that casts a shadow on any and all activities that are conducted by elected officials.

7:20

In my research, which actually was rather extensive, I found interesting information that speaks to confidence. Prior to ever considering renewing an appointment of this officer, there were many letters and articles written about him and his performance, which I wasn't particularly aware of. I find that the then leader of the Liberal opposition, Kevin Taft, has gone as far as requesting that the Auditor General audit the performance of the Chief Electoral Officer and his office because of a thick binder of evidence identifying many problems during the last election, many of which had nothing to do with returning officers. If that audit was to be conducted by the Auditor General, I believe it would be unprecedented for Alberta to have one officer audit another on performance in that respect.

I also found interesting articles from our local and Calgary media, the *Herald* and *Journal* in particular, where average Alberta voters were very dissatisfied with the process, where I believe a secretary of the Liberal Party of Alberta questioned his competence and referred to the process as a, quote, unquote, banana republic type of election. There was a great deal of lack of confidence in the performance of the office. Mr. Chairman, I don't think that this is a process of laying blame or giving an absolution to any one individual. It's a question of: are Albertans currently and have they

been, even prior to this public debate, confident in the office and how the election was conducted? Based on the volume of articles in the press and the public chastising of the office, perhaps such is not the case.

This Chief Electoral Officer did indeed bring forward some very good suggestions, which I think we should look at, which would make the next Chief Electoral Officer's work perhaps easier, but the fact is that there was a great deal of general dissatisfaction with the conduct of the last election. As such, Mr. Chairman, I will support the vote of starting fresh, developing some very clear guidelines on what it is that we expect not only from the Chief Electoral Officer but those who work with him, perhaps adopting some of his recommendations, because indeed we all agree around this table that many of them were good, and giving this office and Albertans a new chance to have an effective, transparent, beyond any reproach or doubt office so that they can rest assured that the next election is conducted not only effectively but in a very objective way.

The Chair: Mr. MacDonald.

Mr. MacDonald: Yes. Well, it certainly is true that each and every political party had issues with the last election. However, again, I would bring the committee's attention to the fact that this Chief Electoral Officer for the first time in my memory in this province was willing not only to investigate but follow through with recommendations that charges be laid whenever the acts that are under his care and attention were not abided by. Here it turns out that after he does this investigation and makes the recommendations that charges be laid, Alberta Justice for whatever reason ignores his request. That's only one matter.

We had Mr. Gibson before us on November 28, and I'm going to quote to you. We had quite a long discussion about how we are or are not auditing each and every political party in this province, and this is what our Chief Electoral Officer told us.

I just want to point out that Alberta has probably one of the weakest financial compliance regimes in the country: no spending limits; there are very few details that are required; and very little power for our office to request additional information.

Not only do we have problems, which he correctly pointed out, with our elections and the conduct of them but also with what goes on between elections with financial disclosures. For us to search for a new officer at this time and not allow him to continue the good work that he started in cleaning up our financial disclosure system is a blow for democracy. With this motion I just simply see the fact that government wants to move the chief electoral office from Kingsway Avenue to 106th Street and put it in PC headquarters.

Thank you.

The Chair: Any other comments? Mr. Lund.

Mr. Lund: Well, thank you, Mr. Chairman. I'm going to support this motion. I don't think and feel that the investigation that the Chief Electoral Officer did has anything to do with my supporting this motion. I think that there was an answer from the Attorney General in the House today to what happened with those recommendations.

As far as I'm concerned, he made a number of good recommendations, but I'm still concerned. If what he told us on Friday was all accurate, why didn't he come to this committee back quite a while ago and say, "Lookit, here are the problems" that he saw as to why he couldn't do his job properly? Why didn't he come to this committee so that we could get legislation in place to correct those problems? If it's all accurate, yes, there was a problem, but the fact is that under the act he is the responsible person.

So far I haven't heard of one constituency that was totally satisfied with what went on during the election. I know, certainly, that in Rocky Mountain House we have never had so much trouble with the voters list. Never. I guess that raises a question. Why do we all of a sudden have all these problems in this particular election when former Chief Electoral Officers seemed to be able to operate quite fine?

I think that we need to look at all of his recommendations. We need to of course go ahead with the search and see if we can regain the confidence of Albertans in our whole electoral process.

The Chair: Ms Blakeman.

Ms Blakeman: Thank you very much, Mr. Chairman. I think my bottom line is that I don't think the Chief Electoral Officer should lose his job because he criticized the government, and he's been pretty clear in criticizing the government. I know some people feel that making recommendations, as he has done, is equivalent to criticizing the government, but I don't think he should lose his job for doing that.

To me, the fact that the Liberals had significant concerns with what happened in the election but that the members that are representing the Official Opposition on this committee are still willing to support him I think goes a long way to saying that we believe that the work he did, the recommendations that he did, and the responses that he's given to our answers are sufficient to warrant our supporting that his contract be extended. Truly, if members are not happy with the work the DROs did, well, I think you have to look to the source of the list, and it was the list supplied by your people. So if you're not happy with them, then go talk to your people.

I appreciate that the Member for Rocky Mountain House was referencing questions that were asked in the House today. Frankly, the Deputy Premier could not and would not answer the questions, so I'm not sure what answer it was that you gleaned because he very clearly said that he could not and would not answer the questions. In fact, questions to the Justice minister were also met with a negative response there. So I'm willing to support a reappointment, but looking at the numbers on the committee, I think the decision has been made.

7:30

Mr. Lund: Well, Ms Blakeman, when I referred to the answers in the House, it had to do with the recommendations that the Chief Electoral Officer had made to the Justice department about laying charges. Those are the ones that I say were answered in the House today. There were two questions.

Ms Blakeman: Well, I think your definition of answer and mine are different, but there we go.

The Chair: If there is nothing else, are you ready for the question?

Ms Blakeman: Could you repeat the motion and read it into the record, please?

The Chair: Moved by Mr. Marz that

the Standing Committee on Legislative Offices recommend to the Government House Leader that a motion be introduced in the Assembly to establish a select special committee to search for a candidate for the position of Chief Electoral Officer.

I'll call the question. All in favour of that motion? Opposed? That motion is carried.

We have two other items on the floor under other business. Ms Blakeman, you put them both on there?

Ms Blakeman: I did. In reviewing the *Hansard*, there are a couple of references that members made to the documents that were provided by the LAO staff, including the questions they provided. I know that with the policy field committees there is a public website where they can look at the material the committee was looking at to make decisions. I don't know if we have that for the Legislative Offices Committee, but if we did, could I ask that those documents be posted on that site because otherwise you're trying to track the references that people are making to a given page number or a graph. It's not in the officers' reports; it's in a special series of documents that were prepared for us. If we have that kind of a public website, could we get that stuff posted to it, please?

The Chair: Do we have that?

Mrs. Sawchuk: Mr. Chair, I think there might be a separate issue here. The research documents that Ms Blakeman is referring to were work product documents requested by the committee for their research purposes. They weren't documents that were actually tabled during the course of a meeting, so they were posted to the internal committee website for access by committee members and their designated staff and researchers. There is an external site for all of the legislative committees. It's accessible through the Assembly website. There's a direct link through there. You know, documents that are, I guess, adopted by the committee and are attached to the minutes then become public. This was a work product document.

Ms Blakeman: Okay. People referenced it and said: on page 9 your graph. It's not the officer's graph who was before us at the time. It was this internal document. So it's hard for the public to follow what we're talking about. I at all times prefer to make it as public as possible, and I encourage the public to go on those websites and follow along. I don't know what to do now. I think that stuff should be posted on that site. We used it. We referenced it. We talked about it a number of times at the meeting on Friday, so I think it should be posted. I didn't use it. I used other stuff.

Mrs. Kamuchik: I was going to say that the committee could certainly make a motion to make those documents available on the committee's websites.

Ms Blakeman: Well, I'll make that motion, then.

Mr. Reynolds: It's a decision of the committee as to what you want to make public. I'm not entirely sure the intention was for those to be public as I think they were for the assistance of members, as Mrs. Sawchuk just indicated.

The Chair: I guess that if you go back to the November meeting, it was a decision of the committee to ask the researchers to prepare, to look at the reports, and to look at potential discussion points.

Ms Blakeman: Did the committee request that it be an internal-only document?

The Chair: No.

Ms Blakeman: In any of the policy field committees that I've been on, I mean, whatever we requested got put on the public website and was easily accessed. I guess I don't know where we requested that this be private.

Dr. McNeil: All research that's requested by the committee of our research component is put on the internal website. It's only at the direction of the committee and the decision of the committee that that material is put on the public website. The research that we develop for the committee is for the committee's purposes until the committee decides that it should be made public, at which point we can have it accessible on our Internet site.

Ms Blakeman: Okay. So we've just been asking as a committee to have it put on the public.

Dr. McNeil: On the internal.

Ms Blakeman: The individual policy field committees have been asking for it to be put on the public site, then, so when I'm seeing it on the public site, the committee has requested that.

Dr. McNeil: Yes. Or the initial agreement of the committee is, for example for public submissions, to place those on the public website.

Ms Blakeman: Yes. That's what I'm thinking of.

Dr. McNeil: There's a differentiation between those materials that the committee has determined should be on the public website and those materials that the committee has requested for their own internal purposes, which at some subsequent point a decision could be made by the committee to put it on the public website.

Ms Blakeman: Righty-ho. Thank you for the clarification. I'll be more careful how I request information in the future.

The Chair: Okay.

Mr. Horne on this point.

Mr. Horne: I think Dr. McNeil has just made the point that I would make. In the case, for example, of the Standing Committee on Health the committee adopted the practice of posting submissions from external stakeholders, both those that presented to the committee and those that submitted by mail, on the public website for the express purpose of allowing the public to follow along with that information. It has not been the practice of that particular committee to post internal research documents that are prepared to assist members in their own edification on the issue. So I would not be in favour of such a motion, Mr. Chair.

Ms Blakeman: Let's move on.

The Chair: Okay. We'll move on, then. Ms Blakeman, you had a second point?

Ms Blakeman: I do. That is my concern on what action either has been taken or will be taken around I think it's the Member for Edmonton-McClung, if I have that right, who divulged information to the public that was being discussed in an in camera meeting and erroneously transferred information about what the committee had in fact decided. It is accepted by Speakers of Assemblies that divulging information that's from an in camera meeting is a prima facie case of privilege. I think this was a serious breach, and it was a public breach. I think that, one, there should be action, and two, it should be public because the disclosure was public and had a public effect on the individual, in this case the Chief Electoral Officer, whose contract was discussed.

The Chair: I'm going to defer to Mr. Reynolds, please. We're talking about action against the disclosure to the public of information or comments that were made or his own interpretation of things that were done in camera.

Mr. Reynolds: Well, I wouldn't want to presume to replace what might happen in the House or the committee about that. It would have to be determined whether, in fact, it was a breach of privilege. Of course, as Ms Blakeman said, to release a report from an in camera hearing has in the House of Commons been held to be a prima facie breach of privilege, but of course it all depends on the facts, and I certainly wouldn't want to comment on that at this time.

The Chair: Mr. Lukaszuk.

Mr. Lukaszuk: Thank you. It's an interesting point you're bringing up. Whether, indeed, it could be a point of privilege or not, I guess that's something that you can proceed with in the House and have the Speaker decide on. I think that would be the proper protocol. But us discussing it around this table right now puts us in a very peculiar situation, and I'll be very careful what I say so that you don't file one against me.

7:40

His interpretation of what happened in camera may or, I suggest to you, may not have been inaccurate. I think we should be very cautious when speculating on whether it was an interpretation because, as you know, it so happens that certain members will have largely different opinions in camera than they do on the record. The statement that he made may or may not have been inaccurate based on what he has seen and heard in this room while being in camera. He has basically expressed what he has gathered based on what he has heard around the table and assumed, perhaps, that the vote would be reflected later on very much the same way as what he heard.

It's unfortunate that this has occurred, but I think we should be very cautious. That's why when you, Ms Blakeman, brought up the point of putting things back in *Hansard* that might have been said in camera, I think you have to be very judicious with that because you may get what you ask for.

The Chair: The other point I may add is that we don't know how that question was prefaced to him.

Ms Blakeman: Are you seriously telling me that this committee plans on taking no action?

The Chair: No, I didn't seriously say that.

Ms Blakeman: Well, that's the question I'm asking here. Is the committee going to take any action? Perhaps it has. Perhaps the chairperson has already done something.

The Chair: I have not done anything with it yet.

Ms Blakeman: This is an interesting precedent, as Mr. Lukaszuk points out, but I also think it's serious. I wonder if the committee takes it seriously because prior to my bringing it up, nobody mentioned it. So are we going to take action on this or not?

Mr. Lukaszuk: Do we do it, or do you bring it before the House and the Speaker deals with it?

Ms Blakeman: The committee is in control of its own affairs at all times. If the committee chooses to do something, to ask the member to do something, to make a statement, the committee can do so.

Mr. Lukaszuk: You may be right, but I wouldn't mind hearing from Mr. Reynolds on that.

Ms Blakeman: To put it on me that somehow I'm responsible for the integrity of this committee because I should be responsible for taking it forward as a point of privilege, yes, all right, that's a suggestion, but I don't think it reflects very well on the rest of the committee, frankly.

Mr. Reynolds: It's my understanding that the way that these are usually handled – and I can only think of one, maybe two instances that this has arisen in Alberta – is that they are raised as questions of privilege in the House. Because it occurs outside of the committee, it's usually dealt with in the House rather than in the committee.

Ms Blakeman: Do you have any observations to offer as to who brought the privilege? Is it the chairperson of the committee on behalf of the committee?

Mr. Reynolds: I would have to look at that. That's not necessarily my recollection as to when these have been raised. I haven't looked at this issue specifically, but I think it's just that any member could raise it in the House.

Ms Blakeman: I know any member could; I just thought that if this was a breach of the committee, it could have been raised by the chairperson. That's the person I would have looked to.

The Chair: To answer your first question, no, I haven't done anything with it yet. I was surprised when I read it as well.

Mr. Campbell: Well, I'm just sitting here wondering what we're talking about. I mean, I don't know of any breach. I didn't read anything, so if somebody could fill me in, I'd appreciate knowing what we're talking about.

The Chair: I think the point came up during question period yesterday about a certain individual who is a member of the committee who left early and stated to the media that the Chief Electoral Officer was not going to be reappointed.

Mr. Lund: It was today.

The Chair: Was it today? Today. That point was brought up during question period.

Mr. Campbell: Well, I mean, I think it's something for further discussion, but I look at all the articles I've read in the paper in the last little while about the process. You know, I'd have some real concerns about a number of people maybe speaking out of turn what was spoken in camera. Like I say, in camera is there for a reason. It's to stay there. I mean, hey, I've read the opposition reports in the paper over the last little while and, you know, you talk about politicizing the process. It's been done over the last few days. So where are we going with all of this?

Ms Blakeman: I think you've answered my question. Thank you.

The Chair: Any other items? Okay.

The date of the next meeting will be at the call of the chair. I'd call for a motion to adjourn. Moved by Mr. Lund that we adjourn. All in favour? The motion is carried.

[The committee adjourned at 7:46 p.m.]