



Legislative Assembly of Alberta

The 28th Legislature
First Session

Select Special
Conflicts of Interest Act
Review Committee

Ministry of Justice and Solicitor General

Monday, January 28, 2013
10 a.m.

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Select Special Conflicts of Interest Act Review Committee

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Glen Resler	Chief Administrative Officer

Ministry of Justice and Solicitor General Participant

Joan Neatby	Solicitor, Legislative Reform
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[Mr. Allen in the chair]

The Chair: Okay. Good morning. We're going to get started as we do have a quorum. First of all, welcome to today's meeting of the Select Special Conflicts of Interest Act Review Committee. You'll see a new face up here. For those of you who don't already know her – this is her first meeting – our committee clerk, Jody Rempel, has just returned from maternity leave. Welcome to the committee, Jody.

Ms Rempel: Thank you.

The Chair: I'm going to ask the members and those joining the committee at the table to introduce themselves for the record, and then we'll hear from those that are joining us by teleconference. If we could start over here.

Mr. Wilson: Jeff Wilson, Calgary-Shaw.

Ms Blakeman: Laurie Blakeman. I would like to welcome each and every one of you, including those just wandering in, to my fabulous constituency of Edmonton-Centre. Oh, I thought we were going to have sports fans. Oh, dear. No sports fans yet. Maybe they'll turn up in the audience. Thanks very much.

Mr. Reynolds: I'm Rob Reynolds. I'm the Law Clerk at the Legislative Assembly.

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

Ms Neatby: Joan Neatby, Alberta Justice and Solicitor General.

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

Dr. Massolin: Good morning. Philip Massolin, manager of research services.

Ms Sorensen: Rhonda Sorensen, manager of corporate communications and broadcast services.

Ms Fenske: Good morning. Jacquie Fenske, Fort Saskatchewan-Vegreville.

Ms Kubinec: Maureen Kubinec, Barrhead-Morinville-Westlock but sitting in for Everett McDonald.

The Chair: Of course, myself, Mike Allen. I'm representing Fort McMurray-Wood Buffalo.

We'll go into those that are teleconferencing.

Ms L. Johnson: Good morning. Linda Johnson, Calgary-Glenmore.

The Chair: Mr. Saskiw, from – oh, I'll mess it up if I say it – Lac La Biche-St. Paul-Two Hills.

Mr. Saskiw: Two Hills, yes. Sorry. I was on mute.

The Chair: Okay. Thank you.

And Mr. Dorward has just walked in.

Mr. Dorward: Yeah. David Dorward, Edmonton-Gold Bar. Thank you.

The Chair: Before we turn to the business at hand, we've got a couple of operational items. I'd like to note for the record that

pursuant to Standing Order 56(2.1) to (2.3) Ms Kubinec is here as an official substitute for Mr. McDonald.

The microphone consoles are operated by the *Hansard* staff. Please keep your cellphones and BlackBerrys off the table as they can interfere with the audio feed. Audio of committee proceedings is streamed live on the Internet and recorded by *Alberta Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website. That's my spiel for the day. We can move on.

You have your agendas in front of you. Could I get a motion that the agenda be approved, or is there any discussion?

Ms Fenske: So moved.

The Chair: Ms Fenske. All in favour? That is carried unanimously.

Then we've got the minutes from the last meeting, which was Tuesday, December 11, 2012. Could we get a motion to approve the minutes as circulated?

Ms Blakeman: I'll move that.

The Chair: Moved by Ms Blakeman from the wonderful constituency of Edmonton-Centre.

Ms Blakeman: Fabulous.

The Chair: Fabulous constituency. My apologies.

All in favour? Thank you. That has been carried. Great.

The next item on our agenda is a presentation on the Conflicts of Interest Act from Alberta Justice and Solicitor General. We have about an hour or so set aside for this, and I anticipate that the formal presentation will last 30 to 40 minutes with time for questions to follow. We'll take questions immediately following the presentation. To keep things flowing, I'd like to ask that the committee members hold their questions until that time, but certainly you can raise your hands. I'll keep my eyes open, and I'll start a speakers list as we go. We'll recognize members to ask questions following the presentation. If there is nothing further at this point, I'd like to turn the floor over to Ms Neatby to begin her presentation.

Ms Neatby: Thank you, Mr. Chair. Good morning, everyone. Thank you for providing me with the opportunity to speak with you this morning. I know that some of the members here have extensive experience with this act. Some members were involved in a previous review and also with the policy field committee review of what I think was called Bill 2, the Conflicts of Interest Amendment Act. My goal this morning, as many members do not have that background, is to provide a very general overview of some of the key principles and provisions of the act that may be relevant to your review of the act.

The office of the Ethics Commissioner will be making a presentation at the next meeting, and my understanding is that they will delve into greater detail on topics of particular interest.

As the chair has indicated, I welcome your questions, and if you can hold them to the end, I would appreciate that. Some questions I may be able to answer today, some I may have to do some research and review on, and some I may just pass over to my colleagues from the office of the Ethics Commissioner.

It is my hope that this general overview will be of assistance to you, and I hope that you can bear with me as I try to operate the slides.

The preamble sets out the fundamental principles of the act. Members are expected to conduct themselves ethically, perform their duties of office, and arrange their private affairs in a manner

that promotes public confidence and trust in the integrity of each member and in the dignity of the Assembly. Members are expected to act with integrity and impartiality when reconciling their duties of office and their private interests.

The Conflicts of Interest Act applies to Members of the Legislative Assembly, and it also applies to members, including ministers, whether or not the minister is a member. Generally speaking, the act governs circumstances where there may be a conflict between a member's public responsibilities and their private interests.

The act sets out in great detail obligations of members, and I just plan to touch on these very briefly. Members are expected to comply with the act. Several provisions set out things that members are expected to do and things that members are expected not to do. Members failing to comply with these provisions are in breach of the act. Members are encouraged to talk to the Ethics Commissioner and his officials when they have any questions or concerns about their obligations under the act.

Members breach the act if they take part in decisions knowing that the decision might further a private interest of the member, a person directly associated with the member, or the member's minor or adult child. Members breach the act if they use their influence to further a private interest of the member, a person directly associated with the member, or the member's minor child. Members are also in breach of the act if they use their influence to improperly further another person's private interest. Members breach the act if they use or communicate insider information to further a private interest. Members breach the act if they are employed by or appointed to an office by the federal Crown, are employed by the provincial Crown, or are paid while holding a disqualifying office listed in the schedule to the act.

It doesn't stop there. Members must be careful when accepting fees, gifts, or benefits. Rules respecting gifts also apply in respect of the member's spouse, adult or independent partner, or minor child. A member breaches the act if the member accepts travel on noncommercial chartered or private aircraft. However, the member is not in breach if they're travelling in their capacity as a member, a member of Executive Council, or as the holder of an office to which they are elected or appointed by the Assembly and if the member informs the Ethics Commissioner within seven days after the travel is completed.

There are also detailed rules in the act in respect of contracts with the Crown and payments from the Crown.

The act sets out restrictions on holdings and restrictions on employment that apply to ministers and to the Leader of the Opposition. Members and the Leader of the Opposition require prior approval of the Ethics Commissioner to invest in or hold publicly traded securities outside of a blind trust. The Ethics Commissioner may attach conditions to his approval or his direction.

In addition, ministers and the Leader of the Opposition may not engage in employ or practice of a profession, carry on business, hold certain offices or directorship when doing so creates or appears to create a conflict between the private interest and their public duty. The Ethics Commissioner may grant approval when he is satisfied that the activity will not create or appear to create a conflict between a private interest and the public duty.

10:10

It's important for members to know that managing their personal finances or maintaining their professional qualifications do not offend the act.

In addition, there is a 60-day time period for compliance with these restrictions, which may be extended by the Ethics Commissioner.

Now, in some cases the reach of the act extends beyond members to former ministers and former political staff members in relation to their dealings with government. A former political staff member is a defined term in the act, and it includes persons who have ceased to hold the following positions: the Premier's chief of staff; the deputy chief of staff; a director, office of the Premier, southern Alberta; executive assistants to ministers who are appointed pursuant to Order in Council 192/98.

The act does not apply to public servants. There are a few things that do apply to public servants that are useful to know. Employees who are appointed pursuant to the Public Service Act are governed by that act, the Alberta public service postemployment restriction regulation, and the code of conduct and ethics for the public service of Alberta.

Another thing that's good to keep in mind is what is referred to as the Fowler memo. While in general the act does not apply to public servants, deputy ministers and senior officials are required to file financial information with the Ethics Commissioner. This requirement started in 1993 in accordance with the memo from the then Minister of Justice, which is why it's referred to as the Fowler memo. The requirement for deputy ministers and senior officials to file a disclosure statement is now incorporated into employment contracts and is therefore a condition of employment.

There are specific provisions in the act that apply to former ministers. The general rule is that for a period of 12 months after ceasing to be a minister, a former minister shall not have specific dealings with a department or provincial agency with which the former minister has had significant dealings during their last year of service.

The 12-month ban applies in respect of a number of activities. The first is soliciting or accepting contracts or benefits with a department or provincial agency with which the former minister has had significant official dealings during their last year of service as minister. Secondly, it also applies in respect of making representations on behalf of another person with respect to contracts or benefits with government. It also applies in respect of making representations in connection with ongoing matters that the former minister directly acted for or provided advice to a department or provincial agency on. The ban also applies in respect of accepting employment with a person or entity or an appointment to a board of directors of an entity with which the former minister had significant official dealings during their last year of service. There is an exception. Former ministers may accept employment in accordance with the Public Service Act.

The 12-month ban does not apply to any activity, contract, or benefit if the Ethics Commissioner is of any of the following opinions: the contract or benefit is awarded, approved, or given in a manner which is the same for all persons similarly entitled; or the award, approval, or grant results from an impartially administered process open to a significant class of persons; or the activity, contract, or benefit will not create a conflict between a private interest of the former minister and the public interest and the former minister complies with conditions that may be imposed by the Ethics Commissioner.

In 2007 the act was amended to extend the ban that applied to former ministers so that it would also apply to former political staff members, but it's a six-month ban instead of a 12-month ban. Otherwise, the provisions dealing with the ban on former political staff members mirror the provisions that apply to former ministers except for that difference in the time period. There's also an

exception where political staff members may accept employment with any provincial agency or government department.

Here's something that may be of interest to future ministers. There's a provision in the act that was added in 2007 that provides that it is a breach of the act if a minister knowingly awards or approves a contract or gives a benefit to a former political staff member in contravention of the ban that applies to former ministers and former political staff members.

The act, possibly most importantly, as I look at my colleagues from the office of the Ethics Commissioner, creates the office of the Ethics Commissioner. The Ethics Commissioner is an independent officer of the Legislature appointed on the recommendation of the Legislative Assembly, and the Ethics Commissioner reports to the Legislative Assembly. The act lists out the duties and functions of the Ethics Commissioner. He is responsible for oversight of the act. He is responsible for educating members as to their obligations under the act, and this includes, as you know, personal discussions with members, in particular their disclosure statements. Members, former members, or former political staff members may ask the Ethics Commissioner to give advice and recommendations respecting their obligations.

The Ethics Commissioner is also responsible for conducting investigations and inquiries under the act. The act deals with investigations into breaches and reports made by the Ethics Commissioner. Requests for investigations may be made by any person in writing, a member in writing, by resolution of the Assembly, and by Executive Council. The Ethics Commissioner in some circumstances can conduct an investigation without a request. This is when the Ethics Commissioner has reason to believe that a member, former minister, or former political staff member has acted or is acting in contravention of advice, recommendations, directions, or any conditions of any approval or exemption provided by the Ethics Commissioner.

As I've mentioned, the act deals with inquiries. The Ethics Commissioner may conduct an inquiry. If he does, he has the powers, privileges, and immunities of a commissioner under the Public Inquiries Act. If an inquiry is held, it must be held in public unless the Ethics Commissioner decides that in the interest of justice the inquiry be held in private.

There are grounds on which the Ethics Commissioner may refuse to investigate or may cease to investigate. The grounds are when the request to investigate is frivolous or vexatious, when the request was not made in good faith, or when there are no grounds or insufficient grounds for an investigation. In addition, the Ethics Commissioner must suspend an investigation or inquiry if a law enforcement agency is investigating the same subject matter or if a charge has been laid. If there is a criminal investigation or a charge has been laid, those must be finally disposed of before the Ethics Commissioner may continue with the investigation or inquiry.

If the Ethics Commissioner has reported his findings, he may reinvestigate an alleged breach only if, in his opinion, there are new facts that on their face may change the original findings. When the Ethics Commissioner decides to refuse to investigate or he ceases to investigate or he suspends an investigation or refuses to reinvestigate, the Ethics Commissioner shall inform the member, the former minister, or the former political staff member against whom the allegation was made and the Speaker, the President of the Executive Council, or the person who made the initial request for the investigation.

The act contains strict confidentiality provisions. The Ethics Commissioner, a former Ethics Commissioner, persons who are or were employed or engaged by the office of the Ethics Commis-

sioner are required to maintain confidentiality of all information and allegations that come to their knowledge while administering the act. There are certain circumstances in which disclosure is permitted. Information and allegations may be disclosed to the person who is a subject. They may be disclosed to the extent necessary to conduct the investigation but only to the extent necessary to enable that person to obtain information from another person. Disclosure is permitted to adduce evidence in an inquiry under the act, and information and allegations may be disclosed in an investigation report. In addition, information and allegations may be disclosed in order to advise the minister or Solicitor General or law enforcement agency of an alleged offence under this act or any other act.

When the Ethics Commissioner has concluded the investigation, he reports his findings to the Speaker. There is one exception. If the request was made by Executive Council, the Ethics Commissioner reports his findings to the President of Executive Council. Before reporting his findings to the Speaker, the Ethics Commissioner may provide copies of the report to the member, former minister, or former political staff member against whom the allegation was made. If the allegation was made against a member or former minister, the Ethics Commissioner may also provide a copy of the report to the leader in the House of the party to which the member or former minister belongs. The Speaker then lays the report before the Legislative Assembly.

10:20

The act is very prescriptive as to what an investigation report must contain. The act provides that investigation reports must be concise and include facts relating to the alleged breach. If the investigation report involves an alleged breach by a member, the report may include the Ethics Commissioner's findings. Assuming that the Ethics Commissioner found a breach of the act, the report will include any recommended sanctions. If the investigation report involves a breach by a former minister or former political staff member, the report may not include the Ethics Commissioner's findings. If a breach was found, the report will include recommended sanctions if any.

There may be situations in which the Ethics Commissioner forms the opinion that a report may adversely affect a member, former minister, or former political staff member. The Ethics Commissioner shall provide information as to the particulars. The Ethics Commissioner will provide the member, former minister, or former political staff member with the opportunity to make representations. These representations may be made orally or in writing at the discretion of the Ethics Commissioner, and these representations are provided before the Ethics Commissioner completes his report.

There are a number of sanctions that the Ethics Commissioner may recommend. He may recommend that a member be reprimanded, required to pay a penalty, that the member be suspended for a stated time, suspended until a condition is fulfilled, or expelled. The Ethics Commissioner may also recommend an alternative of a lesser sanction or no sanction if a breach is rectified in accordance with recommendations made by the Ethics Commissioner. If the Ethics Commissioner is of the opinion the breach was trivial, inadvertent, or committed in good faith, the Ethics Commissioner may recommend that no sanction be imposed.

The Legislative Assembly may accept or reject the Ethics Commissioner's findings. The Legislative Assembly may substitute its own findings. If it determines that there is a breach, the Assembly may impose the sanction recommended by the Ethics Commissioner or may impose any other sanction authorized under the act. The Legislative Assembly may also choose to impose no sanction.

Where the Legislative Assembly determines that there is a breach and a person has realized financial gain in any transaction to which the breach relates, any person affected by the financial gain may apply to the Court of Queen's Bench for an order of restitution against the member or any other person who has realized the financial gain.

Then I've come to the end, so I thank you for your time and attention. I'm happy to answer your questions.

The Chair: Great. Thank you very much, Ms Neatby. You've given us a lot of information to take in, and certainly it's a great overview of the act.

Before we move on, I just wanted to acknowledge we had two additional members join us when the presentation had started. I'll start with Mr. Luan.

Mr. Luan: Good morning, everybody. Happy New Year. My apologies for stepping in late.

The Chair: And Ms Notley, who arrived shortly after 10 as well.

Ms Notley: Good morning.

The Chair: I do have a speakers list, which is very short. We have one person on it so far. I'm still taking additions. Okay. Now there are two. We'll just go on with that.

I'd also let you know that you may wish to follow up with Ms Neatby following the meeting if you have subsequent questions.

We'll go on to Ms Blakeman.

Ms Blakeman: Thanks very much. I have three sections that I'm looking for clarification on. May I proceed with all three, or would you like me to do one and go back on the bottom of the list?

The Chair: Well, it's a very short list, so I think that we can take all three in this case.

Ms Blakeman: Okay. The first question appears under the page that you listed as Scope, and it talks about special rules applying to former ministers and former political staff members. I note that the scope is widening for that, but I didn't hear you include our newest inductees into that special club when you talked about whom it covered, and I think you said that it actually was written out. I know that the EAs were considered political staffers back to 1998, but we now also have a new grouping called political staffers that do communications. What was admitted were people that do communications for ministers who are specifically doing it with a political outlook, and I don't hear them being included. Do they get it? Do they have to be named, or are they included under this automatically? What's the deal?

Ms Neatby: Well, I'm not sure whether or not they're appointed in accordance with OC 192/98, so that would be one question we'd like to look into. I'd also note that the phrase "former political staff member" is a defined term in the act. In mine it's on page 4, and it's section 1(1)(b.1). That may be an area that the committee may wish to look at in terms of a potential recommendation for amendment to the act.

Ms Blakeman: Thank you very much.

My second question is around the job description. It appears on your page Ethics Commissioner Approval, where the Ethics Commissioner may allow an exception to the ban if the "contract or benefit is awarded in a manner that is the same for all entitled persons." I have a concern that that is not a helpful phrase at this point, and I'm wondering if you can comment on that.

Without referring specifically to members that are no longer with us, there has been one example of an individual, and it doesn't appear as though there was a job. It was a job created specifically for them. I'm questioning how there can be any more entitled persons and what we do if that sort of situation arises again. You may not be able to answer that question at this time.

Ms Neatby: Yeah. Mr. Odsen will tackle that one.

Mr. Odsen: If I may. Thank you. That's a very good question, Ms Blakeman. In that particular section "all entitled persons" refers to a public type of competition for something, whether it's employment or an award or a grant or any of those kinds of things. That was not the section that was applied in the instance that you're referring to. The section that was applied in the instance that you're referring to is section 31(3), which has to do with the fact of other circumstances wherein the private interest of the former member or political staff member or whatever is not being furthered at the expense of the public interest. It's a different section that applied in the case that you're referring to although certainly, obviously, the whole section needs to be revisited from start to finish. I would certainly take no objection to that.

Ms Blakeman: Oh, yes. I certainly agree with that.

In the slide she gave us, there were three opportunities: the "entitled persons," the "award is impartially administered," and at the bottom, "There is no conflict between a private interest and public duty." That's the one you're saying was brought into play in that particular example, but this section could do with being looked at. Okay. I'm sorry; the reference you gave me was 31(b)?

Mr. Odsen: Section 31(3)(b).

Ms Blakeman: Section 31(3)(b). Thank you very much.

Final question. It appears under your pages just after Confidentiality, I think, under Investigation Reports. Again, you mention in the middle of that that "findings may be included only with respect to [a] breach by a Member," but the definition of member does not include those senior officials, the political staff, or the new, not-yet-captured political staff. Could you comment on that?

Ms Neatby: Yeah. The provisions aren't equivalent when you're talking about members and when you're talking about former political staff members, so the provisions as to what's included in the report are slightly different.

Ms Blakeman: You may not be able to answer this, but it strikes me that under Investigation Reports, where there is clearly an expectation that the report will find wider reading, if the problem is with a staffperson, the findings don't have to be included with respect to them. Is this a gap that we can address in this process?

10:30

Ms Neatby: I don't know whether you would characterize it as a gap. We'd have to look and see why. Was there a distinction made for a reason? What was the reason? I would say that it would be open to this committee to review that.

Ms Blakeman: Great. If you could let me know in the future what you are able to find about that, that would be very helpful.

Ms Neatby: Sure. I will take a look.

Ms Blakeman: Thank you very much.

Thank you.

The Chair: Thank you, Ms Blakeman.

Perhaps that's something we could have circulated through the whole committee. It would be of interest. Thank you.

We'll move on to Ms Notley.

Ms Notley: Thank you. My questions are somewhat of a follow-up on that, I guess, because there was a bit of replication there. On the issue of confidentiality, just to be clear, then, when an investigation is completed, whether there was a breach or not, is that investigation report always tabled in the Legislature or only if there's a finding of a breach?

Ms Neatby: The investigation report is always provided to the Speaker.

Ms Notley: And tabled?

Ms Neatby: Yes. That's my understanding. We can confirm that.

Ms Notley: Okay. Thank you.

Then with respect to the distinction between an investigation and an inquiry, can you elaborate on that a little bit? What would be the reasons for one versus the other? What are the criteria for selecting one process versus another?

Ms Neatby: The provisions of the act don't provide a lot of edification for that. I'm searching for the provision. There are no reasons provided for in the act itself, and I don't have any knowledge as to when the Ethics Commissioner would choose one or the other.

It's interesting to look at this act and compare it to some other pieces of legislation that deal with offices of the Legislature. Some pieces contain more detail in terms of what the powers of investigation are and how that occurs. Other pieces are very similar to this. That may be an area for the committee to consider in this review.

Ms Notley: Okay. Then I may find a similar sort of answer here. Under the provision that gives the commissioner the discretion to hold the inquiry in private versus in public, is there any understanding, case law, or anything that underlies that distinction, that sort of outlines some of the considerations that would come into play for having an inquiry in private?

Ms Neatby: That is something we can look into.

Ms Notley: Okay.

Can I ask some more questions? I have more, but if you've got more people on the list, I can . . .

The Chair: Do you have a lot of questions?

Ms Notley: A few, yeah.

The Chair: I do have a couple more. If I could drop you down . . .

Ms Notley: Sure.

The Chair: Actually, I would like as well to ask those that are teleconferencing in, Ms Johnson and Mr. Saskiw: do you have any questions?

Mr. Saskiw: Yes, I do have a question.

The Chair: Okay. We'll ask that Shayne go on the list.

We'll just go to the next one, and we'll drop you down there.
Ms Fenske.

Ms Fenske: Thank you. Has there been anything in the past that would be the basis to decide? One of the provisions in the act is in forwarding someone's private interest. Frankly, we live in a province of not very many people. If you look at some of the sectors – we can take agriculture, for example. I've heard it said throughout that sector that if you're not in a perceived conflict of interest, you're not involved in the business. I'm sure that's the case in several other sectors. Is there anything that's being used as a guideline to identify that?

Ms Neatby: That's a question that I think would have to be answered by representatives of the office of the Ethics Commissioner.

Ms Fenske: Okay. So that can come in the next presentation.

Mr. Odsen: The act actually defines private interest. I'm just looking for the definition. It's section 1(1)(g).

"Private interest" does not include the following:

- (i) an interest in a matter
 - (A) that is of general application,
 - (B) that affects a person as one of a broad class of the public, or
 - (C) that concerns the remuneration and benefits of a Member;
- (ii) an interest that is trivial;
- (iii) an interest of a Member relating to publicly-traded securities in the Member's blind trust.

For instance, if you're talking about the agricultural sector, you're probably talking about a general application or a broad class. If you're talking about teachers, if you're talking about particular sectors, that's going to apply in pretty well every instance. Does that satisfy you?

Ms Fenske: Well, that certainly defines that, but some of our sectors are so limited. If you go to teaching, I mean, let's take drama. There are a certain number of people involved in each of those. It's not the sector; it's when you dig down a little further into that sector. I would hate to have perception affect what is real, what the reality is, and I think that that's the grey area. I just wondered if there was anything in the past that sort of has been used to even identify that further, but that's perhaps for the Ethics Commissioner's presentation.

Mr. Odsen: It comes up fairly frequently, to be honest, and in every single instance one has to look at the complete picture and all of the facts that are applied. There are instances where the Ethics Commissioner has ruled no, that the body or the group is too small; therefore, private interest is affected, and the member may not participate. That's the advice that's given. In other instances the Ethics Commissioner has ruled that, yes, it is a broad class or it's of general application, and therefore the member may participate. It's going to be in each individual instance all of the facts being looked at and then making a determination.

Ms Fenske: Okay. Thank you.

The Chair: Thank you very much, Ms Fenske.

We'll move on to Mr. Luan.

Mr. Luan: Thank you, Mr. Chair. This is a question regarding the investigation reports. On your slide it talks about the Ethics Commissioner's reports and his findings to the Speaker of the Legislative Assembly. It says that the "Commissioner may provide a copy of his report." I'm just curious. If the investigation occurred and the report was completed, under what circumstances

would you not want to share the report with the Assembly? Can you give me some examples?

Ms Neatby: Are you asking about the Speaker, or are you asking about “may provide a copy. . . [to] the person against whom the allegation was made”?

Mr. Luan: To the person.

Mr. Resler: A report is provided to the Speaker always.

Mr. Luan: It’s the person alleged that you may or may not provide a report to.

Mr. Resler: Correct.

Mr. Luan: Can you help me with the rationale? Why wouldn’t you provide a report to the person that’s being investigated?

Mr. Odsen: I don’t know what the rationale for that might be, but I think I can tell you that the practice of the office has always been that before a report is finally completed, the party against whom the allegations have been made is provided with a draft of the report and given the opportunity to respond to that. Then the final report is completed after that response has been received and considered by the Ethics Commissioner. So, yes, of course, they would get a copy of the report. For example, if they aren’t a member, like a former minister or something like that, they would still get a copy of the report. Absolutely.

Mr. Luan: Just reading this, it’s a bit confusing to understand.

Mr. Odsen: Well, the act says “may,” but the practice in the office is that they will. That’s the difference.

Mr. Luan: In any event, if you can find the rationale, I’d really appreciate that. There must be some reasons why you worded it that way. “May” does not sound to me like we will always try to be fair and provide to both parties the findings or the result. That’s just my curiosity. If somebody is being investigated and a report is done, if I’m following you correctly, you’re saying that in practice you always share the draft and you always share the final report, but the legislation states: “may” share. I’m just curious why.

10:40

The Chair: Okay. That’s perhaps something we can try and get an answer for later.

Mr. Saskiw.

Mr. Saskiw: Thank you. Just going to that one section, which is essentially about a minister using his or her office to improperly further the interest of another individual, is there any definition of what the term “improper” means, or would it be simply the general meaning, which is if there’s a reasonable perception that someone who’s reasonably informed would see it as improperly furthering the interest of another individual? What is the definition there?

Ms Neatby: There’s no definition of the word “improperly” in the act.

Mr. Saskiw: I guess the question is: what words have been used? Is there any discussion of any point from the previous committee to determine what improper was?

Ms Neatby: I’m sorry; I didn’t quite catch the question.

Mr. Saskiw: Has there been any indication in that section of what parameters were used when determining what the meaning of improper was?

The Chair: Sorry; Mr. Saskiw, you have a bad connection, and you’re breaking up, so we’re having difficulty understanding your question.

Ms Notley: I think he was asking if there was committee discussion about that language.

Ms Neatby: We can certainly look and see if there was committee discussion about the language.

Mr. Saskiw: Okay. Thanks. That’s fine.

The Chair: Okay. Good. Thank you.

We’re back to you, Ms Notley.

Ms Notley: Thank you. I have two or three questions. My first set is related to that issue. I’m wondering if we can be provided by either your office or the office of the commissioner with what we see in other jurisdictions in terms of getting at this notion of the improper exercise of influence to further a private interest. I think of it from the perspective of a lawyer, you know: have you or have you not lost your objectivity in the course of making a decision? That’s sort of the question I ask myself, but I know that that, of course, is probably worth nothing when it comes to actually interpreting this language.

What I’m wondering is whether there is case law out there in other jurisdictions or language in other jurisdictions that we could rely on as a committee to provide greater guidance in terms of this clause? This is a significant clause, section 3, and I think we should have some sense of how it applies. What I’m sensing, at least on a preliminary basis, is that we maybe don’t know yet as a committee. If we’re going to review this act, we should have a clear understanding of how that language is intended to be applied. I’m wondering if I could get that. Could you tell me which office it would be that would do that?

Ms Neatby: I think we would work together with Dr. Massolin to provide that. Is that correct? Yes.

Ms Notley: Okay. Thank you very much for that.

My second line of questioning relates back to the issue of confidentiality and investigation. I’d like to start just by reviewing the way that I think this works. If an allegation is made or a complaint is filed about, say, a member to the commissioner, the commissioner then makes a decision on whether to commence an investigation, and then in the course of conducting the investigation, he can either suspend or dismiss the investigation without completing the investigation. Once he reaches the point of having completed the investigation, that’s sort of where some obligation to disclose to the public is triggered, correct?

Mr. Odsen: Yes.

Ms Notley: I have two sets of questions, then. My first question: is there a practice or, if not, is there a prohibition in the act that would impact on the ability of the commissioner to provide numerical summaries of the complaints received every year? This is so we don’t get the details about the number of actual complaints that have been filed, but we get a sense of how many times the commissioner has been approached by someone as a result of there being concerns around a member being in conflict, and we have a better sense of what sort of the work process is, I

guess. That's my first question, and I'm hoping that you can provide that or that there's the ability under the act to provide that information to the public without it unnecessarily tarnishing someone whom the commissioner subsequently determines ought not to be subject to an investigation.

My second question. Because it seems like there are two or three places where the commissioner can exercise his discretion to end the investigation before the need to publicize it is triggered – and that is (a) in deciding whether or not to conduct an investigation and (b) in deciding whether to abandon or suspend the investigation – can you talk to me a little bit about the criteria that are used and what the public might be able to rely on as a measure of accountability or a tool for accountability?

Mr. Resler: On the first question: when you're looking at the complaints received against a member, that is reported annually in our annual report. We break down all complaints received, whether it's jurisdictional, nonjurisdictional, whether it applies to members and other entities. So that information is released annually.

On the second part, as far as ceasing investigations and the reporting aspect of it, one example of an investigation that may cease part way: if an investigation is against a member and the member resigns, we no longer have jurisdiction over former members, so that would be an instance where that investigation would cease.

Mr. Odsen: The act sets out, of course, if criminal charges arise, those kinds of things. Once an investigation is under way, it would only be for one of the reasons set out in the act to suspend it. But if a complaint comes in and it's determined in the initial process that, for example, there is no jurisdiction to conduct an investigation, then it's not going to start to begin with. Or if a complaint comes in and on the face there is jurisdiction, then the next step that's taken is whether or not there appears to be some sort of evidence on the face that justifies moving to a full-blown investigation. If at that point there does not appear to be any justification in moving to an investigation, then the matter will end.

Ms Notley: So if someone files a complaint with the Ethics Commissioner and then under I think it's section 25(4)(b) the commissioner decides that there are insufficient grounds to commence an investigation and chooses not to go forward, what remedy does the complainant have at that point?

Mr. Odsen: I would think – and the act is silent on that – that probably the complainant's only remedy is to come before this committee or the Legislature because the Legislature can order or request that an investigation be undertaken, and then the Ethics Commissioner must undertake the investigation. I'm not aware of there being any judicial remedy available on appeal.

Ms Notley: So come before this – well, this is an ad hoc committee.

Mr. Odsen: I'm sorry; the Standing Committee on Legislative Offices. My apologies.

Ms Notley: But then that committee would presumably have the jurisdiction to not even let them come before them.

Mr. Odsen: Presumably.

Ms Notley: Yeah.

Mr. Odsen: If new information comes to light – that's the other issue – the Ethics Commissioner certainly is obligated to reconsider.

10:50

Ms Notley: Right. And you don't have any sort of policy around what amounts to insufficient grounds or a prima facie case or anything like that in terms of determining what triggers the investigatory process.

Mr. Odsen: I don't think you can set something like that out in grounds or anything like that. One looks at each individual case as it arises and what's provided. Certainly, there are judicial sorts of standards and tests that one can apply to them. For example, would a reasonable Albertan, fully informed of the facts, come to the conclusion that this is a conflict of interest or not? That might be one kind of test that would be looked at, depending again on what the complaint is about and what facts are provided and what the circumstances are, those kinds of things.

Ms Notley: I guess my concern is, of course, that – actually, I think that standard would be too high for simply triggering an investigation. Regardless, if there's no judicial oversight, the application of judicial rules and case law is, as far as I can tell, under the act somewhat up in the air. It seems rather discretionary if there's no oversight of the decision in the first place.

Mr. Odsen: The issue of judicial oversight is one that's of . . .

Ms Notley: Or some type of oversight that would apply other judicial decisions in a more . . .

Mr. Odsen: Well, I mean, that's the issue. The Ethics Commissioner is an officer of the Legislature, and as you are well aware, the courts do not have jurisdiction over the Legislature. So it's a matter of parliamentary privilege, which is why the judicial oversight is not there. It follows, then, automatically, I would suspect, that any appeal of a decision of the Ethics Commissioner is to the Legislative Assembly either directly or through the standing committee.

Ms Notley: Right. This might be more appropriate for when you do your report. I'm sorry; I don't mean to be doing that. Will we at some point – and maybe it's already there on the record. How many investigations have there been thus far?

Mr. Odsen: It's in our annual report.

Ms Notley: Is it? Can you just remind me or tell me since I haven't looked it up yet?

Mr. Odsen: You want to know how many investigation reports have been done?

Ms Notley: Yes.

Mr. Odsen: By the office since we've been there or . . .

Ms Notley: Since its inception.

Mr. Odsen: Since its inception. They're all on the website. They're all posted on the website.

Ms Blakeman: Less than 20.

Mr. Resler: I'd say, yeah, under 20.

Ms Notley: Since 1990?

Mr. Odsen: Since '93.

The Chair: I believe the last annual report shows a history by year as well. Yeah.

Okay. Thank you, Ms Notley.

First, I'd like to just acknowledge that we had another member join us, Mr. Young, representing Edmonton-Riverview. Thank you. Welcome this morning.

The next question is from Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chair. Two quick questions for you. You had mentioned in your presentation that section 25 in the act doesn't go quite as far and isn't as descriptive as other pieces of legislation that guide independent offices. Can you just clarify for me which other acts you were referring to that we might refer back to?

Ms Neatby: I think one of the acts we might want to look at is the Ombudsman Act and possibly the Child and Youth Advocate Act.

Mr. Wilson: Thank you.

Ms Neatby: What I would suggest is that we just take a scan and see what provisions there are in Alberta that relate to officers of the Legislature and just see where we stand on this act. There's been sort of an evolution, I think, of the older pieces and then the newer pieces coming in, and the policy in drafting isn't always the same.

Mr. Wilson: Great. Thank you.

Another question on a different topic, and it is perhaps somewhat hypothetical. The Ethics Commissioner has just announced that there will be an investigation. That investigation may take up to a year to complete. His contract expires in November. Is there anything in the act that guides what must happen to an ongoing investigation in the event that this Ethics Commissioner's contract is not renewed? Or is there anything that we should be looking at in terms of that?

Ms Neatby: That's a good question. I don't think there is anything. I don't think that question has been addressed in the act.

Mr. Wilson: Okay. Thank you.

The Chair: So the act is silent on that. Then we'll have to discuss as a committee if we want to take a look at that.

Comments, Mr. Reynolds?

Mr. Reynolds: Just a note on terminology that Mr. Wilson was using. The Ethics Commissioner, like other officers of the Legislature, is, if you will, employed – he or she is appointed by the Lieutenant Governor in Council on the recommendation of the Assembly, so his or her appointment is set out by statute. Yes, there is a contract, but the term of their office and their duties are not set by the contract. They're set by the legislation and by the appointment process that's spelled out in that legislation. I just wanted to make that clear. The contract doesn't grant the officer any greater powers or immunities or anything like that. It's reflective of conditions and terms that are in the statute. Just in the event there was any misunderstanding.

The Chair: Thank you, Mr. Reynolds.

Ms Fenske, you had another question?

Ms Fenske: Yes. Thank you. I know that in the 2006 final report there was some discussion about the length of time the ban applies

for political staff members versus elected officials or members and also on blind trusts and management trusts. There are differences in there. Could we get the common practice from other provinces so that we could have that as part of our discussion again?

Ms Neatby: We can work with Dr. Massolin.

The Chair: That may be part of our crossjurisdictional survey that we're already doing.

Ms Fenske: Okay. Thank you.

The Chair: Okay. Great. Thank you.

Any other questions from the floor or from those tele-conferencing in, Mr. Saskiw or Ms Johnson?

Ms L. Johnson: I'm good. Thank you.

The Chair: We have one more from Ms Blakeman.

Ms Blakeman: Thanks very much. In similar past committees that were reviewing legislation, the department that was associated most closely brought forward recommendations that they would like to see incorporated into the act. Are we expecting from Justice or from the minister, either from the department or the minister, changes they would like to see?

Ms Neatby: At this point in time I can't speak on behalf of the Minister of Justice and Solicitor General. Even in the course of preparing this presentation, I've noticed some even just tiny things, wording and things like that, that should probably be looked at. I know that there's a report that's going to be prepared that has ideas as to what things the committee might want to look at. That's certainly not to limit the committee; it's to open the discussion.

Ms Blakeman: Good. Thanks very much. I look forward to it.

The Chair: Good. Thank you very much.

Well, that appears to conclude the questions that we had, and I'd like to first of all thank you for taking the time to put this presentation together and to present it to us today. We certainly are going to take a lot away for our review.

Our next item on the agenda here now is under committee research support. You'll recall that at our last meeting we requested that a discussion guide be prepared of the Conflicts of Interest Act by the Legislative Assembly research staff. My understanding is that this guide will be ready for distribution to the committee membership in the next day or so.

Dr. Massolin: Correct.

The Chair: At the last meeting it was also agreed that this guide would be made available to the public on our website once the committee reviewed it. Instead of waiting for our next meeting to formally review this as a committee, I'd like to just throw a suggestion out there that the guide be distributed to the committee members first, and then if anyone has any comments, concerns, or input, they could just contact myself and the committee staff within a few days of receiving that, after which time we could just put the guide on the website for public consumption. Any thoughts on that? The thought around that is that if we wait for the next meeting, it's going to be another month before that would go out for the public to view. As a committee do we need to meet formally to review it, or are you happy to review it individually?

Ms Blakeman: The problem is that there's no recording of the discussion, so there's no way for anyone to follow whether questions were raised about what was in the guide, that that was accepted and put in the guide or if something was asked to be taken out and it wasn't or whatever. We have no idea. For anyone that's trying to follow our proceedings, it would just turn up on the website. I think there's a bit of a problem there, but without having seen the document, I'm hard-pressed to give you an answer.

11:00

The Chair: Well, it's a discussion guide. It's not anything that's written in stone.

Ms Notley: I'm just trying to clarify. You're not suggesting that all discussion about the guide take place offline individually. You're just suggesting that it be publicly posted in advance.

The Chair: That's correct.

Ms Notley: But we still would have every opportunity to discuss it.

The Chair: We would still formally review it as a committee.

Ms Notley: Right. If that's the case, I certainly have no problem with it being disclosed as early as possible as long as we still have the opportunity to review it on the record at the next . . .

The Chair: The suggestion I'm bringing up right now is merely to get it out publicly sooner than later. We'll still meet as a committee and discuss it, and that will be on the record. If you'd be satisfied with that, okay.

Ms Notley: One more question.

The Chair: One more question. Ms Notley.

Ms Notley: Sorry. I know that in our next meeting the commissioner's office will be doing a full presentation. I was just scrolling through the annual report, and I did see information there on requests for information or requests for investigation, but I didn't see a summary around the actual investigations, either historically or annually. Maybe I missed it.

Mr. Resler: A summary historically isn't there.

Ms Notley: I didn't actually find anything about any formal investigation, for instance, last year. Would that be accurate? I see. Okay. If we could just be given a quick summary of the actual number of investigations that were processed since . . .

Mr. Resler: Inception?

Ms Notley: Yes. Thank you. That would be great.

The Chair: Okay. Great. Well, then, we'll proceed that way. As the committee chair and with the staff if we don't hear from anyone, we'll assume that the discussion paper is ready to go. We'll post it on the website for the public, and we'll have that for our next meeting.

Next item, number 6. We'll go to a communications update. I'd like to ask Ms Sorensen to give us an update on the implementation of the communications plan.

Ms Sorensen: Thank you, Mr. Chair. Certainly, I'm very pleased to hear the committee's decision that was just made because the bulk of the communication strategy will focus around the

discussion guide. We will be releasing a news release and some further social media posts, drawing people's attention to the discussion guide so that they can take a look at some of the items to provide scope to what they may or may not wish to submit by the March 1 deadline, I believe. That being said, we did do some initial tweets and Facebook postings with the stakeholder letters, and we've seen some modest results, but we expect that there will be much more activity following the news release and the media relations.

The Chair: Great. Thank you very much.

Written submissions. I'm happy to confirm that we have received our first written submission, that was sent shortly after we met last time. The stakeholder notification was sent out, and that was in the last week of December. As noted, it is on our website, and anyone is welcome to send in a submission regardless of whether or not they're specifically included on the stakeholder list. Once we move forward to the next stages with the discussion document, that will possibly prompt more written submissions from the general public.

As for the written submission that we received, it has been distributed to all committee members through the website. I recall at the last meeting that there were some comments made in support of having the submissions also available on the public website. To give the staff some clear direction on this matter, I'd suggest that we make all submissions received public following the March 1 submission deadline. We can gather them all first, and then we'll make them all public at the same time. Considering that the topic under discussion is here, I'd like to think that all the submissions could be made available in their entirety with the exception of the contact information for private individuals such as phone number, e-mail address, et cetera.

Anyone have any concerns or comments on this?

Mr. Dorward: Just for the record could we say what the website is, please?

The Chair: We're getting that from the committee clerk.

Ms Rempel: Sure. There is a link, first of all, just available through the general Assembly website, which is www.assembly.ab.ca. You can scroll down, and there's actually a large button that will take you there. As for the specific committee the address starts the same, and then it's committees/conflictsofinterestact.

The Chair: What's probably easiest for public consumption is just to say to visit assembly.ab.ca, and then at the bottom there's a big button that says committee websites. Great.

Any other business that any other committee members would like to raise?

Seeing none, then let's go on to item 9, the date of our next meeting. Originally we were scheduling our next meeting for the evening of February 21, 2013. However, following the release of the sessional calendar I asked that committee members be polled for their availability to attend a meeting on either the morning or afternoon of February 25, 2013, instead. Based on the responses received, the afternoon seems to work best for the majority of the committee members, so the next meeting is being scheduled for Monday, February 25, 2013, from 1 till 3 p.m. here in committee room A. A quick reminder to members, if you're unable to attend in person, you may do so by teleconference, or you may appoint another member as an official substitute to attend on your behalf. If you have any questions about this, please do not hesitate to contact the committee clerk.

I'd also like to remind you that if you have any specific questions in advance for the office of the Ethics Commissioner, if you could submit those through the committee clerk up to 10 business days prior to the next meeting, then we can see if we can accommodate those as well.

Great. Well, if I could call for a motion to adjourn. Mr. Wilson. All in favour? That has carried unanimously. Thank you very much, everybody.

[The committee adjourned at 11:07 a.m.]

