Legislative Assembly of Alberta

The 31st Legislature
First Session

Select Special
Conflicts of Interest Act
Review Committee

Monday, June 17, 2024
1 p.m.

Transcript No. 31-1-4

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Select Special Conflicts of Interest Act Review Committee

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Long, Martin M., West Yellowhead (UC), Deputy Chair

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Ellingson, Court, Calgary-Foothills (NDP)
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Transcript produced by *Alberta Hansard*

Select Special Conflicts of Interest Act Review Committee

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Mark Ammann, Barrister and Solicitor, Justice and Public Safety and Emergency Services Legal Team

University of Alberta
Randall Morck, Professor, Alberta School of Business

York University
Ian Stedman, Assistant Professor, School of Public Policy and Administration

Canadian Society for the Study of Practical Ethics
Mark Young, President

Ministry of Forestry and Parks
Todd Loewen, Minister

1 p.m. Monday, June 17, 2024

[Mr. Getson in the chair]

The Chair: All right. Well, no time like the present, folks. Thanks to everybody for coming in. Fasten up your chinstraps. I'd like to call the meeting to order for the Select Special Conflicts of Interest Act Review Committee and welcome everyone in attendance.

My name is Shane Getson, the MLA for Lac Ste. Anne-Parkland, better known as God's country around these parts. I'd like to ask all the members to introduce themselves around the table, and then we'll go to the ones on the Internet there, joining us remotely. We'll start off to my right.

Mr. Wright: Hello. My name is Justin Wright, the MLA for the charming constituency of Cypress-Medicine Hat.

Mr. Rowswell: Garth Rowswell, MLA, Vermilion-Lloydminster-Wainwright.

Ms Lovely: Jackie Lovely, MLA for the Camrose constituency.

Mr. Long: Martin Long, the MLA for West Yellowhead.

Mr. Ellingson: Court Ellingson, the MLA for Calgary-Foothills, where I'm going to argue that 63,000 people think it's the best constituency in Alberta.

Mr. Ip: Nathan Ip. I'm the MLA for Edmonton-South West, and we have a whopping 88,000 constituents.

Dr. Williamson: Christina Williamson, research officer.

Mr. Koenig: Good afternoon. I'm Trafton Koenig with the Parliamentary Counsel office.

Ms Robert: Good afternoon. Nancy Robert, clerk of *Journals* and committees.

Mr. Roth: Good afternoon. Aaron Roth, committee clerk.

The Chair: We'll go to the folks online. I see MLA Hunter.

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

The Chair: Perfect. You're coming in five by five.

Mark Young.

Dr. Young: Hello, everyone. My name is Mark Young. I'm not an MLA, but I am from Fort McMurray, some would say the economic engine of our great province.

The Chair: Headwaters of the oil sands, a lovely place.

Dr. Young: There we go. Yeah. Okay. Thank you.

The Chair: And we see Ian Stedman there, too.

Dr. Stedman: Hi, everyone. I'm a bit of an outsider. I'm in Ontario, unfortunately, but I did my law degree at the U of A.

The Chair: I see that hanging, so that's good. Thanks for the conversion. You've got oil country behind you. Thank you, sir.

Are there any substitutions today? I don't believe there are. Okay. Perfect.

A few housekeeping items to address before we turn to the business at hand. We could have said this before, I guess. Microphones are controlled by *Hansard*, which is excellent. Committee proceedings are live streamed on the Internet and broadcast on Assembly TV. The audio- and videostream and transcripts of the meetings can be accessed through the Legislative Assembly website. Those participating by videoconference are encouraged to please turn on your camera when speaking and mute your microphone when not. Members participating virtually who wish to be placed on the speakers list are asked to e-mail a message to the clerk or put your little yellow hand up, I guess, as it were, on Teams, and those in the room just please get the chair's attention. Please set your cellphones to the least disturbing setting as possible during the course of the meeting.

With that, we're off and ready to go. The approval of the agenda. Are there any changes or additions to the draft agenda?

Seeing none, would somebody like to make a motion to accept the agenda? MLA Rowswell. All in favour? Opposed? Motion carried.

We just saw another gentleman join us. I feel like "Mirror, mirror on the wall." MLA Sabir.

Mr. Sabir: Irfan Sabir, MLA, Calgary-Bhullar-McCall.

The Chair: Excellent. Thanks for joining us, sir.

Approval of minutes. Next we have the draft minutes from April 25, 2024. Are there any errors or omissions to note? If not, would a member like to move to accept the minutes? Two for two. MLA Rowswell. All in favour? Any opposed? Oh, sorry; online. Any opposed online? All in favour online? Unanimous. I like to see that. Motion carried.

Now to the fun part and why you all got dressed up to be here today: review of the Conflicts of Interest Act. Oral presentations are the first item that we're going to go through. Hon. members, at our April 25, 2024, meeting the committee agreed to hear oral presentations in relation to the Conflicts of Interest Act. As committee members will recall, the government caucus and Official Opposition caucus each had the opportunity to select up to three individuals or organizations to be invited to the presentations at today's meeting.

Accordingly, joining the committee today are the Ethics Commissioner of Alberta officials; the Ministry of Justice; Dr. Ian Stedman, assistant professor of Canadian public law governance at York University, School of Public Policy and Administration; Dr. Randall Morck – he hasn't quite joined us yet – professor at the Alberta School of Business, University of Alberta; Dr. Mark Young, president of the Canadian Society for the Study of Practical Ethics, CSSPE going forward; and hon. Minister Todd Loewen, MLA for Central Peace-Notley and the Minister of Forestry and Parks.

Presenters have been organized into three panels. Each presenter will have an opportunity to present for 10 minutes, and at the end of each panel the presenters and committee members will have an opportunity to ask questions of presentations, concerns, et cetera, regarding that.

With that, in no particular order but the order as per the agenda, the office of the Ethics Commissioner and Justice. You're up first. I'd like to call Mr. Shawn McLeod, Ethics Commissioner of Alberta, and Mr. Malcolm Lavoie, Deputy Minister of Justice and Deputy Attorney General, to come to the table and make their presentations, please. Maybe what I'll get you to do as well is just introduce your names into the record for posterity.

Mr. Ammann: I'm Mark Ammann, a barrister and solicitor with the Department of Justice. Thank you.

Mr. Lavoie: Malcolm Lavoie, Deputy Minister of Justice.

Mr. de Groot: I'm Josh de Groot, general counsel in the office of the Ethics Commissioner.

Mr. McLeod: Shawn McLeod, Ethics Commissioner

Mr. Ziegler: Kent Ziegler, chief administrative officer, office of the Ethics Commissioner.

The Chair: Perfect. I appreciate that.
Whoever wants the bat, you're up.

Mr. McLeod: I think I'll take it away if that's all right.

The Chair: Yes, sir.

Mr. McLeod: Thank you, Chair Getson and to all committee members for affording my office the opportunity to appear before you today. By way of introduction – you've already met them, but I'm going to introduce them one more time. My name is Shawn McLeod. I have with me today Kent Ziegler, who is our chief administrative officer, and Josh de Groot, who is our general counsel. Both Kent and Josh are well versed in the subject matter of the Conflicts of Interest Act and the operations of the office itself. Given my relatively short tenure in this position I may be relying on and, in fact, anticipate relying on Josh and Kent to assist with answering any questions and supplementing any responses I may have.

At the outset, I would like to state that I look forward to the opportunity to present and discuss the submissions before you. I am hopeful that these submissions will be of assistance to the committee in undertaking its review of the Conflicts of Interest Act. Before turning to the specifics of the submissions themselves, I would like to provide some general comments on the submissions and the scope of our participation today. First, I believe you are aware that the submissions you have before you were prepared and submitted during the tenure of the former commissioner, Commissioner Trussler. As I believe you are also aware, Commissioner Trussler possesses significant experience and expertise in the role of Ethics Commissioner, which is reflected in the comprehensive submissions that represent what she viewed to be the necessary changes to the legislation.

I note that I have not conducted my own independent assessment of the scope of the recommendations the former commissioner has put forward, including what has been included but, not only that, what perhaps may have been excluded. I have not undertaken such assessment for two reasons. The first simple, practical matter is that I've only been on the job for a matter of a couple of weeks, so to undertake a task of that significance was simply not possible. But, second, and perhaps more importantly, I am of the view that to make submissions on a statutory change like this, it does take some time in the seat, so to speak. Before a commissioner is sufficiently well versed with the act, including performing the various roles and responsibilities under the act to make informed assessments as to what challenges or shortcomings may exist in the act and what solutions to those shortcomings may be, as I see it, you need some time in the seat actually doing the job. Fortunately, and as I have already mentioned, you have the benefit of the comprehensive and detailed submissions of the former commissioner.

I would also like to briefly comment on the scope of my participation before this committee more specifically. I start by emphasizing that when addressing any specific recommendations, we will do our best to assist you in your understanding of the recommendations before you. This may include explaining the recommendation, answering questions on technical or operational considerations, commenting on the history of the legislation, or advising how Alberta's legislation compares with other legislation across the country. Having said that, for those submissions that include a substantive policy recommendation, our submission will generally be limited to explaining the recommendation while avoiding commenting specifically either for or against the recommendation. This is in part because of my short tenure in the role, but it is also because I am concerned that advocating specific policy positions may – I emphasize "may" – undermine the statutory mandate of impartiality that is required of the role of the Ethics Commissioner.

Finally, on the topic of supporting or rejecting specific policy outcomes, I wish to be clear that I am not in any way signalling my disagreement with the recommendations that have been put forward. I am simply not taking a position for or against these submissions for the reasons I have stated.

While the submissions are comprehensive and in many ways speak for themselves, I do wish to provide some general comments as well as some clarifying comments that I believe will be of assistance. In terms of general comments there are several places in the submission which reference how other jurisdictions have or, as the case may be, have not addressed the specific issue being discussed. For example, recommendation C2, which can be found at page 9 of the submissions, recommends including apparent conflicts of interest in Alberta's legislative scheme. The submission includes reference to the fact that British Columbia includes apparent conflicts of interest within its legislative scheme but is silent on how other jurisdictions have addressed that issue.

1:10

For clarity, when reading these references, you may assume that those specific jurisdictions mentioned are the only ones in Canada that have adopted those specific rules. In other words, in this case B.C. is the only jurisdiction that prohibits acting in situations involving an apparent conflict of interest. This general convention applies throughout the submissions.

Turning to the specific recommendations, or recommendation C1 at page 6 of the submissions, the submission points to the broader scope of the term "relatives" in federal legislation. For clarity, most other jurisdictions have a provision very similar to Alberta's current act except for B.C., which has a narrower scope than any other jurisdiction.

Next, regarding recommendation C6 on page 19 of the submissions, I feel it is appropriate to point out that while the recommendation is phrased as simply seeking clarity, the proposed legislative provisions provided would expand the scope of the postemployment provisions. For example, the recommendation would essentially prohibit former public office holders from having any professional dealings with government as a whole rather than just those parts of government they dealt with in their former role. It would also prohibit former public office holders from accepting employment with organizations they had any dealings with while within the government, not just those that they had direct and significant dealings with.

I would also like to highlight the general recommendations on pages 4 and 5. These are practical recommendations that I encourage the committee to consider.

Similarly, I would highlight the administrative changes on pages 52 to 59. For the most part, these are also practical recommendations that I encourage the committee to consider as they would assist our office in its functioning. I will note that recommendation D3 on page 56 regarding flights on noncommercial aircraft may require a policy change but would essentially be codifying the practice that has been in place for a number of years within the office. I will ask Mr. de Groot to provide

some additional commentary at the end with respect to the specific provision.

Finally, there are several recommendations in the policy changes section of the document which I would like to comment on because they are not pure policy questions. Regarding C4 on page 13, this recommendation deals with a practical issue related to investigations being suspended during an election period. As currently drafted, investigations could be terminated simply because the complainant does not know to revive the investigation after an election. Changing the legislation to allow the Ethics Commissioner to restart investigations a certain number of days after the election would alleviate this concern.

Regarding recommendation C6 on page 19, while the recommended provisions in the submission address policy matters, the postemployment restrictions do contain complex wording, and it would be of assistance to our office and regulated individuals to have as much clarity as possible in these sections since postemployment is obviously a very important matter for individuals leaving office.

Regarding recommendation C9, starting on page 30, which deals with what can and cannot be disclosed by the commissioner and others around investigations and advice provided by the Ethics Commissioner, there is a practical consideration here that the Ethics Commissioner is often left not being able to make any comment in public even when all parties are acknowledging the fact a complaint has been filed and an investigation is taking place. Similarly, it is possible that a member may indicate that he or she is following the advice of the Ethics Commissioner and that statement is either incorrect or incomplete. Similarly, the Ethics Commissioner cannot comment on that situation or correct the record. In both cases the recommendation is that the Ethics Commissioner be provided some scope to comment, as outlined in the recommendation.

Finally, in terms of questions that are outside the scope of submissions before you, my preference would be to take these questions away to ensure we provide you with an accurate and well-thought-out response, in particular given my limited time in this role. We would be happy to then address any follow-up questions either in writing or by an additional appearance before your committee.

With that, I'm just going to turn it over to Mr. de Groot for a few moments to talk about one specific recommendation.

Mr. de Groot: Thank you, Commissioner. I just want to speak for a moment to recommendation D3 on page 56 of the recommendations. This is regarding flights on noncommercial aircraft. The intent of the recommendation here was to ensure that members seek the Ethics Commissioner's advice prior to taking any flights on noncommercial aircraft. However, on further review before today, the recommendation that we've put forward may not actually accomplish the goal that we were setting out to accomplish here. So to fulfill the recommendation here, instead of changing simply that word "or" to "and," we would say that section 7.1 could be amended to state that the Ethics Commissioner's approval is always required and with that approval being based either on whether the travel is required for the performance of the member's office or there are exceptional circumstances warranting that acceptance. As the commissioner said, that's generally how this provision has been treated by the members in the past.

But I know our time is up, so I'll leave it at that.

The Chair: It goes by fast, faster than people anticipate, that's for sure. Thank you.

Oh, and we had another member just join us as well. If you could introduce yourself, Member Arcand-Paul.

Member Arcand-Paul: Hi. Thank you. Brooks Arcand-Paul, MLA for Edmonton-West Henday. Apologies, Mr. Chair. I took the time – I didn't realize this was the time it started, so I'm currently on the road. I might lose you briefly, but I'll be in a stationary spot very momentarily.

The Chair: No worries. And might I compliment? You have the most relaxed attire I've seen of any member joining us. You've set the threshold. Thank you.

With that, Mr. Lavoie, would you like to carry on with your presentation? After that, then we'll have questions from our members. Over to you, sir.

Mr. Lavoie: Certainly. Good afternoon. Thank you for inviting me to make a presentation to this committee on behalf of Alberta Justice. My name is Malcolm Lavoie. I'm the Deputy Minister of Justice. I'm joined by Mark Ammann, legal counsel in our department.

Before beginning my presentation, I wanted to outline Justice's role in relation to this legislation. Pursuant to the designation and transfer of responsibility regulation the Minister of Justice is responsible for the Conflicts of Interest Act. As a result, Justice staff are involved with any amendments to the act. The act is administered by the Ethics Commissioner, who is an independent officer of the Legislature. Accordingly, the Ethics Commissioner is in the best position to provide submissions respecting the operation of the act.

When it comes to complying with the legislation, the Ethics Commissioner manages investigations and, in the event that a breach is found, makes recommendations for sanctions to the Speaker of the Legislative Assembly. Those subject to the act are permitted to request advice from the Ethics Commissioner. Where the individual subject to the act has complied with the Ethics Commissioner's advice, no proceeding or prosecution may be taken against them under the act.

My comments will therefore be limited to the legislation itself. At present Alberta's conflict of interest rules are set out in a few different pieces of legislation. Rules applicable to members, ministers, political staff, and certain officials at some public agencies are set out in this act. Rules applicable to deputy ministers and certain members of the Alberta public service appointed by order in council such as the Provincial Controller are set out in the Public Service Act. There are some areas in which there is alignment. For example, both deputy ministers and ministers have similar postemployment restrictions and limits on holding securities.

I understand that there have previously been recommendations to move the conflict of interest rules for deputy ministers into the Conflicts of Interest Act to simplify the legislation and allow both sets of rules to be reviewed at the same time. Though the desire to simplify legislation is certainly reasonable, I recommend against this approach. The Public Service Act governs staff in the Alberta public service, including deputy ministers, while the Conflicts of Interest Act governs those outside of the public service such as elected officials, political staff, and, more recently, certain officials at some public agencies such as, for example, the chief executive officer of the Alberta Utilities Commission. The Alberta public service serves the Crown and Albertans in an impartial and nonpartisan fashion. This expectation is specifically codified in the code of conduct and ethics for the public service of Alberta.

Consolidating conflict of interest rules in a single act would not be consistent with this expectation and this distinction. In other words, this approach would not reflect the important separation that

currently exists between the public service and elected officials, political staff, and others outside the public service.

1:20

When it comes to establishing what level of restriction is appropriate for deputy ministers and other members of the public service, this analysis should be based on comparable restrictions in other provinces. At present ministers and deputy ministers have similar postemployment restrictions and limitations on their ability to hold securities. Most provinces do not have this degree of alignment between these restrictions on ministers and deputy ministers. I would suggest that the recommendations of this committee, if any, made in respect of postemployment restrictions or restrictions on holdings be limited to individuals covered by the Conflicts of Interest Act. Rules respecting deputy ministers should be considered separately and in the context of restrictions in other provinces and other public service legislation.

I would next like to discuss gifts and other benefits. As the committee is aware, these rules were amended last fall. The members' gifts and benefits regulation was enacted to prescribe a maximum limit for tangible gifts and outline procedures for members accepting and reporting on event attendance. I wish to draw the committee's attention to what is currently a unique feature of Alberta's legislation. All Canadian jurisdictions have restrictions on gifts and benefits. Also, all allow members to accept gifts or benefits where it is an incident of protocol or the social obligations associated with that member's office.

However, Alberta is unique in distinguishing between tangible gifts such as a piece of ceremonial clothing and event gifts such as a ticket or a fee waiver for a conference. Attendance at community events, conferences, and major regional events, like the Calgary Stampede, are often an extension of a member's role. Members frequently serve an official function, deliver a speech, or meet and engage with Albertans or other stakeholders. As both types of benefits may be reasonable to accept where they are incidents of protocol or social obligations of the member's office, I would recommend that the committee consider whether this distinction between tangible and event gifts continues to serve a useful purpose.

Third, I would like to identify overlap in some investigative authority under the act. For context, section 23.41 of the act establishes that "the Lieutenant Governor in Council may establish a code of conduct for the Premier's and ministers' staff." This code of conduct was established in Order in Council 341/ 2020, with amendments in Order in Council 237/2023. Section 23.41(3) makes clear that a member of the Premier's or ministers' staff who contravenes this code of conduct breaches part 4.2 of the Conflicts of Interest Act. Pursuant to section 24 the Ethics Commissioner may "investigate any matter respecting an alleged breach or contravention" of the act. Based on a plain reading of this section, the Ethics Commissioner would appear to have responsibility for investigating breaches of the code of conduct.

On the other hand, sections 4 and 5 of the code of conduct itself establish that the Premier's chief of staff is responsible for administering the code of conduct with respect to members of the Premier's staff and ministers' chiefs of staff. The Premier's chief of staff is also responsible for issuing supplementary instructions. Each minister's chief of staff is responsible for administering the code of conduct for their respective minister's staff, including issuing supplemental directions.

The Ethics Commissioner is responsible for administering the code and issuing supplementary instructions only for the Premier's chief of staff. It is not clear whether the Premier's or ministers' chiefs of staff are intended to be primarily responsible for investigations of violations in their offices. Having the chiefs of staff in the Premier's office and in ministers' offices responsible for administering the code of conduct for their respective staff would likely be more consistent with section 23.41(3), which indicates that contraventions of the code of conduct "may be subject to disciplinary action." I recommend the committee consider the roles of the Premier's and ministers' chiefs of staff and how these provisions should be reconciled.

In conclusion, I would like to note that Justice will consider other technical amendments when it next proposes amendments to the legislation. This may include removing sections of the act that are no longer needed. For example, I understand that the former Ethics Commissioner has identified section 15(3) as a section of the act that is no longer necessary since it involves a final return for members who are no longer going to be subject to the act.

Although the terminology in the act such as the approach taken to defining private interests is largely consistent with analogous legislation in other jurisdictions, Justice will also, of course, consider any amendments needed to clarify the scope, application, and interpretation of the act.

The department will also remove any outdated names in schedule 3 of the act, which identifies offices that ministers cannot hold concurrently.

Thank you again for the opportunity to present. I'd be happy to take your questions.

The Chair: There are 38 seconds remaining. Just to note, that's how it's done, folks. Well done.

We'll open it up for questions. Just one thing here, too, folks. Cognizant of time, keep your questions tight, to the point, and we'll get through as many as possible.

With that, I'll open the floor up for questions. MLA Long.

Mr. Long: Thank you, Chair, and thanks, folks, for taking the time to be here today. As the chair said, we'll try to keep things tight, so I'll just get right into it. In her submission to the committee the previous Ethics Commissioner recommended that section 2 of the act should be amended to apply to both real and apparent conflicts of interest. The section currently does not mention apparent conflicts of interest. My initial concern is that we've had a number of submissions, including the one from the previous Ethics Commissioner, that have spoken to the need for increased clarity and more explicit wording within the act. I would be worried that adding apparent conflicts to the act would further lead to confusion and a lack of clarity, and ultimately it might add to more subjectivity and inconsistency in the interpretation of the act. So I was wondering if you could please share with this committee what might constitute an apparent conflict of interest and how it would be defined.

Mr. Lavoie: I'd like to defer to the Ethics Commissioner on that.

Mr. McLeod: An apparent conflict of interest – I had the very same question when I was preparing for this hearing, so I looked it up, and maybe the easiest way for me to do that is to give you an example. The example I found is: a manager acts in the best interest of the company by buying from a friend because he got the best deal he could get at market rates but still has the appearance of closing the deal with a friend, so there may be questions asked, in particular with people that are not fully informed of the facts, as to whether this apparent conflict of interest – because there may not be an actual conflict of interest because of the nature of the transaction itself.

I think another way to think of it or another way I think of it is, you know, sort of a bit of a smell test. What does it look like sort of

on the surface? Frequently those apparent conflict of interest types of scenarios are just that and frequently also have people who, for practical reasons, are not able to know all the facts behind those situations.

That would be the best I can do for you today.

Mr. Long: Thank you.

The Chair: Do you have a follow-up?

Mr. Long: I don't have a follow-up; I just have more concerns.

Thank you. I'll leave it at that for now.

The Chair: MLA Ip, you're up next.

Mr. Ip: Thank you, Mr. Chair. Mr. Lavoie had mentioned that Alberta is unique in the sense that there's a separation of events and tangible gifts and that certainly all jurisdictions do have restrictions through the amount of gifts that can be received. I'm just wondering – and this is either to Mr. Lavoie or to the entire team – how is the treatment of events and tangible gifts currently? What does that look like in other jurisdictions presently?

Mr. Lavoie: I'd defer to our legal counsel.

Mr. Ammann: I think that in terms of other legislation, I would fairly comfortably say that for every single one there is an allowance to accept gifts and benefits where it is an incident of protocol and social obligation of a member's office. That wording is more or less used everywhere. In terms of how it's interpreted, certainly, it may vary by the ethics specialist. I wouldn't want to imply how they might interpret it.

Mr. Ip: I guess as a follow-up, is it – oh, sorry. Mr. de Groot.

Mr. de Groot: Yeah. Sorry. Just from the office of the Ethics Commissioner's perspective, we have on our website, and most of the Ethics Commissioners across the country have, a document kind of giving guidance on how they interpret the gift provision. That's normally how it's administered. There is some supplementary guidance that is provided by the commissioners to the members.

1:30

Mr. Ip: As a follow-up to that, I guess what I was really interested in learning more about is: how are events typically treated in other jurisdictions currently?

Mr. Lavoie: My understanding is that they're lumped in with the broader category of gifts. There's not a distinction between, say, a tangible gift, something you would take away, and an invitation to attend an event or tickets to an event.

Mr. Ip: So the same dollar amounts would then apply, the same sort of restrictions, presumably?

Mr. Lavoie: That is my understanding. Yeah.

Mr. Ammann: One caution would be – I can't speak necessarily, but many jurisdictions do not have dollar limits referenced at all in respect of comparable provisions.

Mr. Ip: Thank you very much.

The Chair: Any other members? Any other questions?

Ms Lovely: As you may be aware, in 2018 the Standing Committee on Resource Stewardship recommended that the conflict of interest provisions in the PSA be consolidated into the Conflicts of Interest Act. This year the former Ethics Commissioner suggested in her submission to the committee to bring the provisions respecting conflicts of interest, financial disclosure, direct associate reporting, and postemployment for designated office holders such as deputy ministers out of the Public Service Act and into the Conflicts of Interest Act. Back in 2018 a representative from the Justice department spoke to the committee about the merits of separating the nonpartisan bureaucracy from political staff and elected officials by having that divide in the legislation. Is it still the view of Justice that this is an important distinction to make, and could you elaborate on your view of this matter? My second question is: are you aware whether this approach would be consistent or not with the other Canadian provinces?

Mr. Lavoie: Thank you very much for the question. Justice's view on this has not changed. As I mentioned, the distinction is an important one to maintain. The Public Service Act governs staff in the Alberta public service while the Conflicts of Interest Act governs those outside of the Alberta public service. Given the independent or nonpartisan nature, rather, of the Alberta public service this is an important distinction to maintain. The broader context of the rules are different when you're dealing with those subject to the Conflicts of Interest Act and those who are members of the Alberta public service. Alberta's approach in this regard is indeed consistent with the approach of most other Canadian jurisdictions. I believe, as far as I'm aware, only the federal legislation brings deputy ministers into the same legislation as ministers.

Is that correct, Mark?

Mr. Ammann: Mainly, the federal one, yes.

Mr. Lavoie: Yeah. With respect to other provinces most are aligned with Alberta.

The Chair: Was there a follow-up?

Ms Lovely: I have another series of questions. I don't know if they have more questions.

The Chair: Well, we'll go to the next one I have on the list, which is Wright. Anyone from your side that has any questions?

Okay. We'll go to MLA Wright, and then we'll return to Lovely if you have another one, then.

Mr. Wright: Thank you, Mr. Chair and through you to our guests at the end. When the previous Ethics Commissioner appeared before this committee earlier this year, she had mentioned that there was no mechanism in place for an individual to appeal the findings of an investigation. Now, given that the Ethics Commissioner often has the same capacity and capabilities of a King's Bench justice, do you think that there could be some benefits in allowing a mechanism for the subject of an investigation to appeal the findings or recommendations?

Mr. Lavoie: Sure. Just to clarify, if I might, section 25(5) of the act does not in fact confer all powers of a justice of the Court of King's Bench on the Ethics Commissioner. It states:

> For the purpose of conducting an investigation, the Ethics Commissioner may
>
> (a) in the same manner and to the same extent as a justice of the Court of King's Bench,
>
> (i) summon and enforce the attendance of individuals before the Ethics Commissioner and compel them to give oral or written evidence on oath, and

(ii) compel persons to produce any documents or other things that the Ethics Commissioner considers relevant to the investigation,

and

(b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

So while the Ethics Commissioner has the power to summon individuals to give evidence, compel them to produce documents or other items, and administer oaths and receive information, the act does not grant the Ethics Commissioner other powers of a King's Bench justice whether or not references were made to a justice of the Court of King's Bench as the baseline against which the powers are identified. The Ethics Commissioner would presumably still require these powers in order to conduct a proper investigation: powers to compel attendance, powers to compel the production of documents, et cetera.

So, you know, regardless of what powers the Ethics Commissioner possesses or does not possess, there is still an important place for due process considerations. Whether that includes the mechanism for an appeal is a question, I think, for the committee to consider, and we would consider those recommendations in due course.

I don't know if the Ethics Commissioner would like to add anything.

Mr. McLeod: Yeah. I think it's a question of due process. Obviously, not all sort of due process, natural justice type of rights attach to all decision-makers, so that's one thing I would say. The other thing I would say is that I'll just ask Josh to comment on this issue across the country but also with respect to the role of the Ethics Commissioner vis-à-vis the Legislature as well.

Mr. de Groot: Thank you, Commissioner. Across the country it's generally treated the same way as it is in Alberta with respect to investigations of members, where the Ethics Commissioner is not a decision-maker per se but is a finder of fact, and then the matter goes to the Legislature to either accept or reject the report. So if there was a mechanism for appeal that was put into the legislation just as a consideration, that might carve something out of the parliamentary privilege that you currently have for accepting or rejecting these reports.

Mr. Wright: Thank you.

I've just got one follow-up.

The Chair: A follow-up? Okay.

Mr. Wright: So I'm just kind of continuing in line with the knowledge in the whole investigation process. I think it's quite important for someone who is subject to an investigation to be informed and aware that an investigation is taking place should there be one. Is there a clause in the act that states that the Ethics Commissioner must provide notice to a subject of an investigation or any other involved parties prior to the beginning of the investigation as well as inform them of the allegations being made against them?

Mr. McLeod: I'll just make two comments. One is there's a bulletin that effectively explains the investigation process, so to the extent that it's helpful, we can either provide it to you or I'm sure you can find it online on our website. Secondly, I will ask Josh to provide some more details with respect to that, but also, Josh, maybe if you can just talk about sort of, as the process unfolds, who gets notice, so it's not just specifically this issue but more broadly.

Mr. de Groot: Okay. Yes. I assume your question is with respect to the members, the MLAs, then? Okay. So, under 25(1) of the act, when an investigation is started, there is a requirement that reasonable notice be given to the individual who is under investigation. Reasonable notice: a legal term. We do give notice to the individual being investigated, and they are given some particulars of what the investigation is. We also, at that stage, may inform the Speaker. I know the Speaker has a submission on that, but I won't speak to that. And then, of course, through the process anyone being interviewed, that sort of thing, is given some notice of what is being investigated, and then they would be interviewed about that.

Then before the report is finalized, it does need to be given – or not the report itself but the person being investigated. If there are any potential, I guess, negative consequences for them, we would provide them with notice of the findings in the report and provide them a chance to comment before the report is finalized, and then when it's finalized, it's provided to the person investigated as well as the Speaker.

The Chair: Just to be cognizant of time here, it's kind of a wag-type time online on these to make sure we get through the four presentations. I had MLA Lovely in the hopper. Are there any other questions after that, any other members? Oh, now the hands go up. Here we go. Okay.

Ms Lovely: As you know, the role of political staff and elected officials is significantly different from the role of staff on agencies, boards, and commissions. In the fall of 2017 the act was amended to apply the act to senior officials of public agencies, boards, and subsidiaries. Do you know how many people under this category are subject to the act? Given the clear distinction between the roles and needs of ABCs compared to political staff and elected officials, do you consider it appropriate and/or necessary for ABCs to remain in the same act? Are you aware whether this approach would be consistent or not with other Canadian provinces?

1:40

In the written submissions to the committee Travel Alberta shared some of the difficulties faced by the agencies in updating their codes of conduct. Specifically, the submissions noted that the act currently requires the Ethics Commissioner to review and approve all changes to the public agency's code of conduct even if the change is as small as a change to punctuation. This submission recommended that the act only requires substantive changes to be reviewed and approved by the commissioner going forward, which could save time and provide more flexibility to the agencies. I'm not sure how the act could define what a substantive or minor change is, but if the act was amended to require the ABCs to provide notification of changes instead and set a deadline for the commissioner to repeal the changes if they deemed it necessary, in your view, is this a reasonable proposal, and would there be any benefit to your office or concerns if such a change was implemented?

Mr. McLeod: Maybe I'll start with that one. I think it's potentially feasible, and in particular it would depend on how it's sort of structured and how it's worded. I think there is some value, perhaps limited value, in simply approving what amounts to, you know, clerical types of changes. The question would become as to where those start and stop and whether, if there was sort of a lack of clarity there, the substantive piece of work that is done by the office in reviewing codes of conduct would be sort of compromised.

The other point I would make is that although it is in some senses red tape, you might describe it as, I do think that the overall impact

of it is relatively small. The submissions are provided to our office. It's turned around in a very quick time. It takes relatively little resources to do so. I understand the submission, but I also think that there are some other considerations there.

The Chair: I have Ip, Wright, and then Ellingson, and I think we'll call it after that. We should trip the shot clock.

Mr. Ip: I'd just like to drill in – and maybe there's a better term than that – get some clarity specific to the recommendation on page 19, and that's to "clarify the post-employment provisions in the Act." Specifically, it references the phrases "directly acted for" and "significant official dealing" as phrases that are problematic. In layman's terms and perhaps to better understand a real-world application of perhaps some of the confusion that this is creating, if you could offer what the real-world implications are currently and why that is being recommended as a high priority for change.

Mr. McLeod: I would say there are sort of two pieces to this. One is that I think we're looking for as much clarity and simplicity as we can with respect to the language in the act. It helps us, but more importantly it helps people who are looking at the act to try to figure out what the rules are. That's the first piece.

The other piece I think I would turn over to Josh to talk a little bit about the current rules and language and then compare them just in terms of the difference between the proposed rules. At the end of the day, I think there's certainly a piece of policy there that I'd be a bit reluctant to get into at this stage in terms of what is a substantive change. I'll let Josh talk about that.

Mr. de Groot: Thank you, Commissioner. I believe the commissioner touched on this a little in his remarks at the beginning, but there are the words "direct and significant official dealing" used kind of repeatedly through the postemployment provisions, which does cause some confusion, and it causes consternation sometimes that, you know, something that our office deems to be a significant dealing – someone wants to get a job. It's their livelihood, so they'll maybe disagree with us. That's, I think, where some of the confusion comes from. The recommendation in here essentially removes that "direct and significant official dealing." The change that's recommended in here would be any dealing which, as the commissioner touched on, may be a broadening of the scope of what the provisions are. I think it would be to the committee to determine how that clarity is done, but it is that direct and significant official dealing that causes a lot of the headaches.

The Chair: Follow-up there, MLA Ip?

Mr. Ip: Thank you, Mr. Chair. Would it be fair to say that currently it's up to perhaps the commissioner's discretion in terms of an interpretation of that particular phrasing and that changing it to any dealing would create a sort of a wider scope and wider blanket? Is that what I'm hearing?

Mr. McLeod: I think it would create a wider blanket. I think that's what Josh said. I guess it's the commissioner's job to interpret that phrase, but I wouldn't say it's just up to the commissioner's discretion. There's language there. It has meaning. There are a variety of tools that you sort of try to tease out that meaning. But in perhaps more common parlance it is the commissioner's job, and perhaps it's the commissioner's discretion to interpret it.

Mr. Ip: Thank you very much.

The Chair: Over to MLA Wright, followed by Ellingson. Ellingson, you get the last tranche of questions.

Mr. Wright: Thank you, Mr. Chair and through you to our guests at the end again. The previous Ethics Commissioner in an earlier meeting indicated that there's no current right to legal counsel that is provided within the act but that as the commissioner she generally allowed for legal counsel to be present during the investigation process. Considering this, do you think it might be advantageous to enshrine within the act the right to have legal counsel present and participate in the proceedings to remove some of the potential for uncertainty or inconsistency during that whole process?

Mr. McLeod: It is the current practice. As I said, the information bulletin describing this specifically speaks to that. As of right now we have no intention of changing that practice. I guess I couldn't say that that would never happen in the future. Putting it into legislation would create a rule as opposed to a practice, but the current practice is to provide legal counsel.

Mr. Wright: Thank you.

The Chair: Any follow-ups? No?

MLA Ellingson, over to you, sir.

Mr. Ellingson: Thank you. I hope that I can make this question coherent, Mr. Chair. My question is also about the postemployment provisions. I know that there's a section that talks about the "direct and significant official," and then we also have "for a period of 12 months." Obviously, those would both be applied. I'm wondering: does the direct and significant official take precedence over the 12 months, because they're both being applied. I know that some other submissions had suggested that 12 months wasn't enough. Maybe it should be 24 months, but perhaps 12 months is sufficient if we have a clear ruling on the direct and significant official, if that question makes sense.

Mr. McLeod: If I can impose upon Josh just sort of to describe the way the rule has been interpreted to date, maybe that'll help.

Mr. de Groot: Yeah. I would say that in all cases we're dealing with both, whether there's been – well, at least the provisions that mention direct and significant official dealings, we look at both, whether there were direct and significant official dealings and at the 12-month period. After that 12-month period is over, there's no, I guess, jurisdiction for the Ethics Commissioner to really say anything at all, whether there were direct and significant official dealings if the 12 months have passed and there are no more restrictions. So we're always using both the direct and significant official dealings and the 12-month period to figure out whether the provision applies in a certain case. I hope that makes sense.

Mr. Ellingson: Yeah. That is helpful and, certainly, helpful for further discussions later on whether or not 12 months is sufficient.

Thank you.

The Chair: Well, with that, I appreciate your time, gentlemen. Although the chair can't ask questions, the chair would request that the commissioner contemplate members actually owning and operating their own aircraft when you're making decisions on that, or one particular chair will be peppering your office lots with questions and permissions, and that gets a little bit dicey for both of us.

Mr. McLeod: I was ready for that question.

The Chair: With that, I really appreciate your time, gentlemen and your teams, obviously. You're welcome to join us in the gallery if you would like to listen to the next tranche of questions or take your leave. It's at your discretion. Thank you.

The next presenters that we have up are Dr. Ian Stedman, Dr. Mark Young, and Dr. Randall Morck. If I said that incorrectly, I apologize, sir. What we'll do is since Dr. Morck has a presentation, we'll get him to go up first with the PowerPoint, and then we'll follow with the other two gentlemen after that.

Dr. Morck, the chair is yours, sir.

1:50

Dr. Morck: Thank you. Is my microphone working?

The Chair: You're coming in five by five, sir.

Dr. Morck: Excellent. Good. Can I control the slides, or will somebody do it for me here?

The Chair: Yeah. We have our clerk on this end. He's phenomenal. He's going to help drive for you, and that will ease you up to be able to speak to him, sir.

Dr. Morck: Okay. Excellent. The next slide, please.

This is evidence from the United States about the importance of what you're doing. This is a study that looks at the days when regulators report to Congress about regulated industries, and the black bar is a measure of strategic trading in the stocks of the regulated industries. What you can see is that there's just a burst, an explosive burst, of trading right after those industry reports are given to Congress.

Next slide, please. The response of those governments is to do what you've done and set up blind trusts, but blind trusts are costly and complicated, and it's not clear they work anyway, because there have been reports in the United States. One person who made a lot of news was Bill Frist, who was a Senate majority leader. He just instructed his blind trust to buy and sell a bunch of stocks that he was regulating and made a big pot of money. So there are kind of issues there. The graph that I showed you earlier, the strategic trading that was evident in those regulated industries and firms in those regulated industries was happening despite blind trusts being in place at least for some of these U.S. government officials.

Next slide, please. The way that they measure unfair trading is to look at it relative to a broad market index like the Standard & Poor's 500. This kind of gets us to a deep, dark secret in money management. Burt Malkiel, who's a finance professor at Princeton, is kind of outspoken on this. "A blindfolded monkey throwing darts at a [newspaper page] could select a portfolio that would do just as well as one carefully selected by experts." That's hyperbole. The next slide please. It actually does turn out that if you look at the returns of average Americans – unfortunately, I don't have data for Canadians. Nobody's ever done this for Canada that I know of, but average American households actually do less well than if they had just bought the Standard & Poor's 500 or another broad index. The graph, the vertical axis is the return that these people make minus what they would have made if they just invested in an index fund tracking the S&P 500.

Now, you can see there are exceptions. Corporate insiders, CEOs, boards, and directors do rather better than the index, but oddly, so do members of the Senate and members of the House of Representatives. In fact, they do even better than corporate insiders. This is brought forward as evidence that there's a problem in the U.S. Canada is, of course, a much more honest country than the U.S., and so I don't know that this problem would be the same in Canada, but it is at least a concern.

Next slide, please. One suggestion that has come up and that has been acted on by the U.S. Federal Reserve and by some other government bodies is to say: instead of blind trusts, what you can do is just invest your money in a broad index fund like the Standard & Poor's index. There are index funds, index ETFs, where you can do this quite easily, and the fees are much, much lower than the fees for a blind trust. If the government pays the blind trust fees for a politician or a government official, that saves the government money; if the government official or politician pays the blind trust fees, himself or herself, that saves them money.

There are a number of these indexes, and basically the idea is that these indexes represent the entire stock market. So a politician or a government official can't be pulling favours, passing legislation to advantage banks and then buying stocks in the banks. That's what that first graph was sort of showing, that sort of thing. That doesn't work if it's a broad index of 500 stocks or 60 stocks or 100 stocks scattered across the entire economy.

Next slide, please. The mechanics of how this is done, there are two basic ways: one is index mutual fund; the other is index exchange-traded funds, or ETFs. Exchange-traded funds have far and away taken over the market. That's because their management fees are remarkably low. With a mutual fund or a managed account run by a professional manager, you might pay 2 per cent or even 3 per cent of your wealth every year as a fee for the fund managers; with an ETF you pay .04 per cent of your wealth every year. So it's really remarkably less expensive, and 2 per cent off the top of your wealth every year does reduce your return a lot.

Next slide, please. Some indexes are more passive than others, and if you do decide to okay government officials and politicians just putting their money into an index fund rather than a blind trust, you would want to make sure those index funds are very broad. For example, an index fund of major Canadian energy producers might be something that government officials or politicians in Alberta would have inside information about, and that might create problems even if the there's no wrongdoing. If it looks like Alberta officials made money because of an Alberta policy change, that could cause problems, and to protect oneself against that, one might want to prescribe more detailed indexes or more nuanced indexes. That might be something that could be affected by the Alberta government. Certainly, foreign indexes like the Dow Jones industrial average or the S&P 500 are unlikely to be much affected by the Alberta government, broad Canadian indexes like the TSX composite index, same thing.

Next slide, please. But there are perhaps some slippery slopes, and those would involve index funds that are not really passive and not really broad. For example, as I said, a Canadian energy leader stocks firms, that would probably be just firms based in Calgary, and that might create inadvertent traps. Canadian ESG leader indexes would be just the opposite; firms that are invested in green technology might be affected in exactly the opposite way as energy firms. There are specific industry indexes for transportation firms, utility firms, and so on. Those might be a bit more vulnerable to criticism. There are what are called style funds, where the index invests in funds, where those firms do certain things like have rapidly growing dividends or have low price-to-earnings ratios or whatever. Again, the broader those indexes are, the safer they are, and the less likely they are to create any apparent conflict of interest.

Next slide, please. I risk introducing undue levity into a very serious topic by putting this up, but a picture is worth a thousand words, some people say, at least. There is a kind of an advantage in doing what everybody else does. If you're investing in the S&P 500 index, you're doing what millions and millions of other people are doing at the same time, and it's hard to say that you are buying and

selling stocks in that index in a way that would be self-serving because you're serving all the other people in that index, too. Same thing with any broad index; same thing with any passive index. I'll just sign off there.

This is something that is not yet done by most governments. It is being done by the Federal Reserve in the U.S. It's being looked at by various people that are thinking about how to reform this for the U.S. Congress and the U.S. Senate, but it's not yet in practice.

Thank you.

2:00

The Chair: Excellent. Thank you, Dr. Morck.

What we'll do, members, is that we'll just get through the three presentations, and then we'll save our questions to the end. There might be a few that bounce back and forth between the two.

With that, Dr. Stedman, you're up in the batter's box, and the last gentleman, Dr. Young, you're in the cage. Take it away, Dr. Stedman.

Dr. Stedman: Thank you.

The Chair: And, by the way, I really appreciate the jersey. A good choice.

Dr. Stedman: Let's hope another win comes our way.

First, I'd like to say thank you for this opportunity to make a contribution to the committee's study of the Conflicts of Interest Act. Just briefly about myself: I'm, of course, a professor at York University, but before I went back to get my PhD and take my career in this direction, I spent five years working with the commissioner to administer the Members' Integrity Act mandate at the office of the Integrity Commissioner of Ontario. So that experience informs my academic work and my submission today.

With respect to my submission, you may have noticed that the formal submission made to the committee in April was prepared with some of my current and former students, so I'd like to take a quick second to acknowledge that this is a joint submission made with Ms Despina Tsamis, Mr. Paul Lyn, Ms Sepinoud Siavoshi, and Ms Minahil Wasif, a group of ambitious young scholars who no doubt have promising careers ahead of them.

We all agree, and I hope you do, too, that there are important questions that parliamentary ethics regimes across this country need to be grappling with, and for many of us on the outside looking in, those questions are becoming increasingly urgent. With that said, I want to be clear up front that I don't regularly engage with the Alberta legislation in my academic writing nor when I'm teaching, but as this committee obviously knows, these regimes tend to be remarkably similar across the provinces and territories, which makes it possible to compare them and to help figure out opportunities for improvement.

I'll spend my time with you today emphasizing a few of the key topics that are covered in our submission but also making some general points about these regimes for the committee to, hopefully, keep in mind as it proceeds with its study. In summary, just to kind of give a quick notice of where I'm headed: first, I'd like to say something about the importance of public disclosure and striving for greater transparency with the office's activities. Second, I will discuss the importance of striving for greater clarity in some of the language used in the act, a theme that we've seen earlier. Third, I'll talk about the importance of ethics commissioners having a public education mandate. This is something more than public disclosure, that we can discuss. And, finally, I want to encourage the committee to grant the commissioner own-initiative investigation rights.

We're turning now to the importance of public disclosure. We noted in our submission that section 2 requires the Clerk or the secretary of a meeting to file information about conflict declarations and recusals with the Ethics Commissioner, but then the Ethics Commissioner is told to put that information under lock and key, with no downstream disclosure permitted whatsoever. With respect, this restriction on subsequent disclosure is too broad. It may have been the case 15 years ago that telling the commissioner to keep something quiet meant that it would never get out, but those days are long gone. The risk in too much secrecy is that when the secrecy is about innocuous or completely uncontroversial matters and it comes out that those inconsequential things are being kept secret, the public will wonder what else is being, quote, covered up. We don't live in the land of nuanced public engagement lately, and there's really nothing to lose here by making disclosure the default while perhaps carving out some exceptions to what can be disclosed. So I would suggest that you consider requiring disclosure, unless to do so would be against the public interest.

Notice that I said "against" instead of "not in" the public interest. I think there is a difference between the two, and I think it is an important one that allows commissioners to ensure that they lean towards greater and not lesser transparency, right? We want commissioners to disclose everything, you know, reasonably, unless to do so would be against the public interest and not simply indifferent to public interest. I say this because, as the preamble to the act states, we want to promote "public confidence and trust in the integrity of each Member." It's important to push the envelope a bit in order to inspire public trust, and this committee has the luxury of being able to put a rule in place while also being very clear about what they hope the rule to accomplish and then to undertake a follow-up study in three, four, or five years to determine if that new rule actually worked as intended. So err on the side of more transparency and not less.

Although it isn't in our submission, the idea of erring on the side of transparency should include the commissioner explaining when and how they use their discretion under the act to either permit or restrict something. I'm thinking here about section 14(5), which permits the commissioner to establish other categories of matters that they can exclude from public disclosures but then doesn't require any sort of public reporting about whether and how that discretion has been exercised. The commissioner needs to say something, anything, to help us understand how they're doing their job and how they're exercising their discretion if it's in ways that are not apparent from the language in the act. I say this because there's considerable variation across the country regarding what information must be made public, and commissioners are also given a great deal of discretion that they can exercise but never need to explain. Some commissioners are more transparent than others about how they've exercised their discretion, but most will cite confidentiality as a reason not to post about whether they've exercised discretion. Every parliamentary ethics committee, including this one, should regularly consider whether the public is being provided with sufficient information to be able to adequately understand whether and how discretionary decisions are being made.

The next thing I want to talk about is the importance of making sure there's clarity in the language used in the act. We noted in our submission to the public consultation that there were several sections in the act that could be more broad or clear or specific in the language used. We should want to leave as little to the public's imagination as we can. That being said, every regime has these sticky little imprecise provisions. I think that's because many ethics regimes rely on broad principles to guide behaviour, with the idea being that the commissioner will have an opportunity to interpret those principles and that those interpretations can evolve over time. That's fair, I think. We do want that flexibility, but I also think that

part of the evolution of these regimes needs to be us reflecting on when and whether a clear rule has or can be established about something that was previously captured by a principle. And when a code or an act can be updated to improve clarity and precision, we should want to do just that.

Sometimes what we see is a section of the act simply being poorly worded, but we may not realize this until after it's implemented. Maybe it reads as though it's a bit restrictive, even though no one would object if the commissioner interpreted it broadly or permissively. I think sections 2(1) and 3 are good examples of this, and the former commissioner asked in submissions for the committee to expand those sections in the past, and I think all that is needed here is probably a bit more clarity and consistency in the wording.

Speaking of clarity, I want to admit that I made a mistake in my submission on page 2, and what I listed as section 7.1(b) should have been section 7.1(2)(b). There is an "or" in that provision that absolutely should become an "and" to ensure that the commissioner is required to provide advance approval of any travel, again, "on a non-commercial chartered or private aircraft."

I also heard Mr. de Groot's submission earlier and would encourage the committee to consider the further amendments he has proposed. This is, of course, the sponsored travel problem that has reared its ugly head at the federal level for years now. This committee should look at the criticisms launched at the federal legislators and craft this section so that it is above reproach.

Next, I'd like to talk about the commissioner having a public education mandate. Every parliamentary body across this country needs to be asking itself whether its ethics regime should be expanded to include greater public engagement by the commissioner. Members of the general public have very little opportunity to learn how these regimes work, but they are confronted almost daily with examples of bad behaviour from all levels of government. I personally have a Google alert for government ethics news stories and, honestly, it rarely gives me a day off. So for most people who don't spend their days in the halls of the Legislature or thinking about politics and policy, government is government. Distrust in one level breeds distrust in every level, so greater public engagement may be something that helps us to push back against this growing cynicism. And this committee should consider consulting with other commissioners to better understand whether and in what ways increasing public engagement has had an impact on their work and on the public's perception of their work. The committee should also try to understand what kinds of resources or what kind of resourcing might be needed to adequately and meaningfully enable this kind of engagement work by the Alberta office.

Finally, I want to encourage the committee to grant the commissioner what we call own-initiative investigation rights. I realize that there's a general sense of trepidation about this because it means that the person you're expected to go to and to be open with, as you seek advice, could also then turn around and use the information you provide them to justify opening an investigation against you, but I don't think that's a real concern. If we're being completely honest, we all know that MLAs are supposed to go to the commissioner for advice before they do something and not after, and in my experience the commissioner isn't going to hold you responsible for things you can't reasonably control. If we want to encourage a culture of integrity, honesty, and accountability, then we need to put the right incentives and disincentives in place. Go and talk to the commissioner first; seek permission, not forgiveness; and know that if you do it the other way around and end up on the front page of the paper, then the commissioner can investigate whether or not someone has submitted a formal complaint.

As a quick aside, the way the regime works in Ontario, by not even allowing a member of the public to file a complaint, is completely nutty, and any other province and territory paying attention should want to err on the side of openness and inclusion so that it looks like they actually care about accountability.

2:10

I'll wrap up now by commending this committee for engaging in an open and broad review of the act. It's important that you have included Albertans in your study, especially because we're living in a sociopolitical climate that demands our attention if we want parliamentary institutions to continue to be trusted and to thrive.

Once again, thank you for allowing me and my colleagues – Despina, Paul, Sepi, and Minahil – to offer these remarks to the committee today.

The Chair: I appreciate it. Thanks, Dr. Stedman.

Dr. Young, you're up next. You're showing muted on our side.

Dr. Young: Can you hear now?

The Chair: Yeah. There we go.

Dr. Young: Sorry. Were other people talking?

The Chair: No. We're good to go now. Over to you, sir.

Dr. Young: You can hear? Oh, okay.

I want to begin by thanking the Select Special Conflicts of Interest Act Review Committee for first inviting me to provide a written submission reflecting on the Alberta Conflicts of Interest Act and then further inviting me to offer an oral presentation on that written submission. In my presentation I will not cover all of the recommendations in my written submission but simply highlight some of the more notable contributions. I then look forward to discussing any part of my submission and presentation with the committee members.

The first part of my submission I'll go over is my remarks on part 2, obligations of members. In section 4, part 2, it is proposed that if a minister expects a conflict of interest in a decision they are making, that minister may select another minister to act in their place. My recommendation here is that the decision of which minister should replace the original minister should not be the decision of that original minister. Rather, there should be some other office that makes decisions over how to swap out ministers in cases of possible conflicts of interest. This is because if the minister that anticipates a conflict of interest is able to select their own replacement, it is still possible that this minister can have an indirect impact on the decision taken. This indirect impact would occur through the minister selecting a replacement that will decide as the original minister wants them to decide. So a neutral office should step in and, if possible, rely on a blind process of selection. If such a process is already in place, then it should be alluded to in section 4 in some manner.

Besides the above recommendation, I made two other recommendations in part 2 of the act that are worth while grouping together. This is because both focus on private organizations covering the costs for employees of the Alberta Legislature when they participate in activities provided by the private organization. Consequently, both involve concerns over reciprocity; that is, a benefit provided that obliges a benefit in kind.

The first example occurs in part 2 of section 7 and focuses on the waiving of fees and travelling costs to attend a conference or a meeting. I propose that the waiving of such fees does seem like a reciprocal act. If a meeting or conference can serve the public

interest, then it should be a government expense and not paid for by the host. If the meeting or conference would not serve the specific range of public interest that the minister serves, then the minister has no need to attend in their official capacity. If attending the conference or meeting creates a possible conflict of interest and attendance has been facilitated financially by the host in any manner, then this should be disclosed as a possible conflict of interest.

The second example is from section 7.1 of part 2, where the focus is on travel on "'non-commercial chartered or private aircraft' [that] does not include a non-commercial aircraft chartered by the Crown or a private aircraft owned or leased by the Crown." The way this section is phrased it suggests that there can be chartered flights that are not chartered by the Crown. I interpret this as meaning that the flight is, then, chartered or paid for by a private organization. If my interpretation is incorrect, I apologize. If my interpretation is correct, then there is again a concern over reciprocity, more specifically that a private organization has incurred a cost for chartering the flight and therefore may be perceived as expecting a benefit in kind. In conflict-of-interest cases – and this kind of came up in discussions earlier – perception can trump reality. My recommendation, then, is that the government should rely on its own resources when chartering flights.

In regard to part 3 of the act, a focus on public disclosure statements in section 14(1), I recommended that it would be worthwhile to have disclosures only made publicly by the office of the Ethics Commissioner and not by elected members. One reason why I made this recommendation is that a disclosure by an elected member could involve some amount of political spin, even if unintended. Having disclosures only from the Ethics Commissioner removes this possibility and better facilitates a possibility of neutrality. Section 14(2) enables the Ethics Commissioner to provide supplementary disclosure, but if there's some discrepancy in the disclosures between a member or an MLA and the Ethics Commissioner, this could easily be spun into a conflict between elected politicians and unelected bureaucrats. Such a public dispute could diminish public confidence in the neutrality of unelected bureaucrats and the honesty of elected politicians, both of which are undesirable outcomes.

Likely my most controversial recommendation – I think it's been referred to a bit already – focuses on the ability of former employees of the Alberta Legislature to become lobbyists after their employment at the Legislature has ended. The act contains legitimate restrictions on the ability of individuals who are employed by the Alberta Legislature to be employed as a lobbyist after employment. Section 23.7 applies to former employees of the Premier or ministers, section 23.1 applies to former ministers, section 23.937 is designated senior officials, and so on. The prescription is the same for all positions. The former employees are prohibited for a 12-month period after the last day of employment of taking on a position as a lobbyist defined by the Lobbyists Act. In my eyes, any restriction on lobbyist activity after employment seems a bit arbitrary. Why 12 months instead of six months, 24 months, or even one month? What reasons can one cite here to indicate that the right choice was made?

To discern whether a restriction is appropriate or arbitrary, one must consider, I believe, the purpose of the restriction. The purpose is the same as the act overall, to ensure that the public interest is served instead of private interests. Lobbying by former employees of the Legislature can function to serve public interests. Lobbying is a legitimate mechanism for coalitions to participate in the process of democracy. There's always a danger, though, that personal interests could be served through lobbying rather than public interests. The danger of personal interests being served is especially salient when a former employee has a personal connection with those currently employed in whatever capacity with the Alberta Legislature.

It is to avoid personal connections facilitating personal interests over public interests that motivates the 12-month prohibition on employment as a lobbyist, but this 12-month prohibition seems too short to achieve this end. After 12 months the personal connections are still too strong and, hence, the possibility of serving personal over public interests is a valid concern. Personal connections may not serve personal interests but instead public interests, but this is imperceptible from the outside. From the outside, personal connections rather than knowledge of governmental processes may seem to be doing most of the work, and as I've already alluded to, conflicts of interest could be more about perception than reality, so it's best to be cautious.

To mitigate the perception of personal interests being served, the prohibition period should be extended. A very effective prohibition would be a prohibition of two election cycles. This would ensure personal connections would be mitigated significantly. The former employee would have been removed from the public sphere for a sufficient amount of time to lessen the personal connections, and current employees of the Legislature could be sufficiently different to also mitigate political connections.

Again, the goal of such legislation is to balance the value of lobbying as a mode of democratic participation where public interests can be well served and the danger of personal interests being served via personal connections. If the prohibition of two election cycles is deemed excessive, then 24 months might be better than a 12-month restriction on lobbyist activity but, in my eye, still seems a bit arbitrary. Again, to remove arbitrariness, one must consider the point of such restrictions and what would best serve that point.

It should also be noted that these remarks apply not merely to lobbying but to all similar activity: commercial endeavours, government contracts, employment, board membership, and so on as covered in, for example, section 23.7(1) through (6).

2:20

Not much time left, but I have a good joke at the end, so I'm hoping I get through to the end there.

Another recommendation I offered was in regard to part 5, investigations into breaches, and specifically the content of section 25(3), where it's proposed that "an investigation under this section shall not be commenced more than 2 years after the date on which the alleged breach or contravention occurred." I'm curious as to what justifies this two-year limitation. Some time limit on investigations seems warranted as we don't want the current Ethics Commissioner to be investigating the Ralph Klein government, as an example, but two years seems too short. Any time limit, again, could be interpreted as arbitrary, but things that happen within three years, for example, could still be impacting current government practices and policies, so I believe this window of investigation should be extended to a three- to five-year window. Also, extending the opportunity for investigation would act as a deterrent against decisions or behaviours that place private interests ahead of public interests.

Well, I ran out of time. Yeah. I'll just go to my conclusion, where the joke is.

The Chair: At the chair's discretion.

Dr. Young: In conclusion, I again want to thank the Select Special Conflicts of Interest Act Review Committee for inviting me to offer a written submission as part of the review process and to follow up with this presentation. I'm honoured to be part of this process. The

main goal of all my recommendations reflects the main goal of the act itself, to ensure that public rather than private interests are served by members of government.

One problem that informed my recommendations is that conflicts of interest are often imperceptible. They sometimes can occur only in the mind. In this regard a story about Francis Bacon . . .

The Chair: Oh, I think we're getting to the joke part now.

Dr. Young: . . . a famous philosopher and founder of the scientific method, comes to mind. Besides being a philosopher, Bacon was also, at one point, Lord Chancellor of Great Britain. When acting in this capacity, Bacon was charged by Parliament for taking bribes. In his defence Bacon admitted to taking the bribes, but he proposed that they never impacted his decisions. Part of my goal, then, is to ensure that those employed by the Legislature of Alberta can avoid having to use this Baconian defence as much as possible.

Thank you.

The Chair: And that's, folks, what we call overtime.

Dr. Young: I'll just say that I can't hear the room anymore. I'm not sure what's going on, but I cannot hear anything.

The Chair: Well, that would explain it.

Thanks, Dr. Young and Dr. Stedman.

Oh, is the room muted here? Let's try again. Can you guys hear now?

Dr. Young: Sorry. We can't hear still, no.

The Chair: It's going to make the question-and-answer period very short. We should try that in the House. That's a good technique.

How about now? Testing 1, 2, 3. Oh, there we go. We got audio back. I appreciate that, doctors. I was just making a subtle joke there given that we're in the playoffs: that's what you call overtime.

With that, we'll open up the floor to questions. I had Ellingson and then Ip and Rowswell. I'll stick – if it's okay, I'll just go back and forth, so I'll throw Rowswell in between Ellingson and Ip. Over to you, sir.

Mr. Ellingson: Thank you, Mr. Chair. I'm glad that we didn't have to resort to American sign language for the question and answer because while I do know a few other languages, ASL is not one of them.

This is for Dr. Morck. While I probably should be heeding your advice on ETFs versus mutual funds, just to, you know, help me out in my own retirement. It sounds like the presentation is kind of geared towards if members own individual stocks. My question is: you know, a lot of members own companies, have shares in companies, and I don't think that you're necessarily suggesting that we liquidate our companies and put those assets into ETFs. Am I right on that? What are your recommendations for the ownership that we have in companies and blind trusts?

Dr. Morck: My understanding is that the current rules are that you're supposed to put a company that you own into a blind trust. I may be misinterpreting that. That's what I got from reading the website. I can't really think that you would be required to sell your family firm and put your money into a mutual fund, but perhaps putting it in the hands of somebody else while you're in government does make sense, probably not your wife or your child but somebody more distant from you. You know, Donald Trump's adventures come to mind.

No. I was thinking more about the issues that have come up in the United States, where there's a *60 Minutes* exposé on this about Senators buying and selling stocks and making vastly wonderful returns way above what any money manager would ever make. That's become quite a scandal, and there are various proposals now. There are a couple of pieces of legislation before the U.S. House of Representatives that would suggest that Senators not buy individual stocks or even nuanced mutual funds but invest in index funds as a safe haven. This is kind of a low-cost safe haven where if you invest in a broadly diversified index fund, nobody can criticize you, and you're just safe from criticism. But, of course, if your financial situation is more complicated, you need a more complicated solution.

The Chair: Do you have a follow-up?

Mr. Ellingson: Yeah, just a quick follow-up.

In your presentation it sounded like blind trusts are not necessarily safe, and so your recommendations are on the stock trading. But the companies that we may have ownership in, in a blind trust we could also, you know, still influence the decisions being made inside that blind trust.

Dr. Morck: Yes.

Mr. Ellingson: Do you have any recommendations? Because, I guess, I would venture to say that, you know, many of us perhaps do have interests in areas where we are legislating policy changes that are in industries that we all have investments in.

Dr. Morck: Right. Then, you know, the issue is: what do you do when your name is on the front page of the *Calgary Herald* the day after legislation was put in place that benefited that sector of the economy or those companies? Again, you know, I think one needs to protect oneself from criticism even in the absence of wrongdoing. Perhaps what's needed is blinder blind trusts, more distance between the Member of Parliament and the company that his family or her family is invested in. I'm not an expert on blind trusts, so I'm straying a little bit away from what I actually know about. Perhaps other people testifying before or giving information to the committee might better answer it than I do, but I do worry that blind trusts often are not blind enough. I'm not quite sure what one can do about that because one does want the expertise of business leaders in government, and that often involves people who own companies. So how do you thread that needle? That's a difficult problem.

The Chair: Excellent.

Next question goes to MLA Rowswell, followed by Ip and then Long.

Mr. Rowswell: Yeah, thank you. I'd like to address this to Dr. Morck as well. You know, you're talking about index funds being unaffected by policy or more likely to be unaffected by policy, so I'm assuming that by what you're talking about here, that's the goal. You know, when I look at it, in Manitoba, for example, they're restricted to not owning stocks that aren't listed on a public exchange and in futures and commodity markets. That's what they're restricted on. But in your presentation you kind of said that even index funds that are more specific, you would like to restrict them, so the things that are in there aren't – I guess where I'm going is that what's owned in there, the member or minister would have very little influence over what's owned, so how could there be a perceived conflict if you can't control whether you're holding on to a stock at an appropriate time or not?

Dr. Morck: Well, that's right. An example of where a more narrow index fund – suppose that you buy units in an energy leaders index,

the 30 biggest energy companies in Canada or something like that, the day before the Alberta government announces new legislation that will make it much easier to build pipelines. The stocks of those companies go up, and you make a ton of money. That's the sort of thing that I would think a government official would just want to not be in that position. Keeping you from straying into that even by accident would be a worthy restriction to put on this. There are, I believe, in Alberta already rules that allow you to invest in mutual funds. I would urge those be expanded to include exchange-traded funds because those are much cheaper. Then, perhaps, if you're going to revisit it, you might want to make sure that they are broadly diversified exchange-traded funds rather than narrow ones, where the perception of a conflict of interest might arise and create trouble for you that you just would be better off living without.

2:30

The Chair: And do you have a follow-up?

Mr. Rowswell: No. It's good.

The Chair: Over to MLA Ip, followed by Long, followed by Arcand-Paul.

Mr. Ip: Thank you, Mr. Chair. Through you, I actually had similar questions to Dr. Morck, so I'll actually move on to Dr. Stedman. In your testimony you talk about erring on the side of public disclosure and that if the Ethics Commissioner uses discretion or their interpretation, then there should be some transparency around that decision or interpretation. Just thinking about a real-world example, the previous commissioner, Trussler, and her office would often redact information to protect the privacy of members. An example would be, you know, redacting residential addresses or the address of rental properties or even businesses. Based on your recommendation, there should be a footnote of some kind explaining that decision, right? Is that sort of how you're imagining this to look in a real-world case?

Dr. Stedman: I wouldn't put the footnote right on the disclosure. I would put it in the annual report – say, in disclosures this year the commissioner exercised their discretion with respect to category A, category B, and category C – just a signal that the commissioner has been doing some work. Then that gives you as a committee a clue that there are probably some things you want to look more closely at if you're thinking about amending the act because there are things that keep coming up for the commissioner to have to exercise discretion on. If you want to have certainty in what you're doing, then you want to eliminate the uncertainty of the discretion – right? – so something for you to consider, too, and it gives you that signal. Hopefully, the commissioner keeps track over time.

Mr. Ip: Okay. Perfect. I appreciate that.

My second question, if I may, Mr. Chair, is to Dr. Morck. I think it's very clear that there isn't a perfect instrument, whether it's sort of blind trusts or even in legislation, that will prevent a complete separation of influence if one is so inclined to be involved in the decision of a company, for example. I just want to clarify that you're not recommending moving away from blind trusts, but you're pointing out that it is flawed, right? So I guess my question to you is: is it somehow better to have something that works 80 per cent of the time than no safeguard at all in terms of the blind trust or other mechanisms?

Dr. Morck: Well, a blind trust is probably the only solution if you have a company that you or your family owns and you don't want to sell that. But there are probably many people in government and in politics who don't have their own companies but who do have savings, sometimes adding up to substantial amounts over their whole lifetimes. There you want to protect them from putting money into specific stocks that are then affected by government policy, where it looks like there was self-dealing. What I'm suggesting is that a very simple way to do that is to say that you've got a safe haven. If you are just buying and selling stocks as part of your retirement, your life savings, just put them in mutual funds while you're in government or while you're a government employee. Put them in broad, highly diversified index mutual funds or index ETFs, and that should count as a safe haven. If you've done that, then people shouldn't be able to go after you.

But, of course, if you have an active company that you're the CEO of or that your wife or your husband is the CEO of, then that's a different issue. Blind trusts, as imperfect as they are, are probably the best way to approach that. Then one can think about: how can one make blind trusts blinder? How can one separate? Maybe you have to find somebody not related to your family to be president of the company while you're in government or something like that. But I'm not sure exactly what the right way to do that is. I defer to people who know more about this in that specific realm.

Mr. Ip: Thank you.

The Chair: Over to MLA Long.

Mr. Long: Just a couple of questions. I'll actually direct them, I guess, both at Dr. Young if that's okay. The first one I'll do, basically, on the assumption of your knowledge of other conflicts-of-interest acts because my understanding as a member is that the act itself is to prevent actual conflicts of interest, and, you know, it's up to me as an individual member to protect myself from perceived conflicts of interest. With that context in mind, are other jurisdictions writing their legislation in such a way that it basically protects members from perceived conflicts of interest?

Dr. Young: Thanks for that question. Yeah. To be honest, I'm not too much aware of other legislation in other provinces and other conflicts-of-interest acts. I come at this, my assessment, primarily from an ethics point of view, teaching ethics, which intersects, obviously, with politics and legislation, but mostly: what are we guided to do from the point of view of ethical theory? The Conflicts of Interest Act is a document that tries to embed ethical theory and ethical practice in legislation.

Based on that, you know, there is this distinction between apparent, actual conflicts of interest and the appearance of conflicts of interest, but it's really hard to really kind of parse that distinction and say that a particular act – like, the example was given by your Ethics Commissioner just recently. A government official oversees, let's say, some contracts, and their brother's company gets a contract because they simply are the best, most efficient; they're going to deliver the best good or service for the government. On the outside that looks like a conflict of interest, but maybe the fact that this person, this minister, is related to the owner of the company had nothing to do with the decision that was made by the minister or anyone in their office, right? It was made solely on the basis of the bid and the reputation of the company.

From my point of view, what I was thinking when I was providing my feedback is that it's really hard because conflicts of interest can happen, really, only in the mind, where someone is acting in such a way that their interests will be served and not just the public interest. There is going to be overlap. There can be overlap that what works best for the public also works best for, you know, an elected official, right? That's why that was guiding my decisions or my reflections, my contributions. I know that, as was

alluded to earlier in the meeting, other legislation makes this distinction, recognizes this distinction, but a lot of the ethical literature I'm familiar with doesn't really kind of dwell on it because of the difficulties of making that determination, real or perceived, right?

Mr. Long: Thank you for that, Doctor. I appreciate that.

And my follow-up if that's okay, Mr. Chair?

The Chair: Please go ahead.

Mr. Long: I appreciated in your submission that you shared it would be good to clarify in the act what interests could be in conflict, to make it more explicit. I'll confess that I've often said that I believe even clarity in the name of the office itself would be a benefit. I think that the public can often be confused with the term "Ethics Commissioner" as meaning that it is to keep members ethical or to judge ethical behaviour, when it's not. It's really to make sure that members are not in conflict of interest.

With that said, similar thoughts were also echoed – similar to yours, I mean – in a number of other submissions. So I'm wondering if you would mind speaking to the importance of clarity and particularly how this is of significance considering the Conflicts of Interest Act is a binding act.

Dr. Young: I'm sorry. I'm not sure if I understand what you're asking for me to provide.

Mr. Long: Sorry. To speak to the importance of that clarity that you had mentioned, especially with the act in Alberta being a binding act.

Dr. Young: Yeah. Well, I don't know if I have much more to add than what I have added. It's just, you know, that often when we're engaged in ascribing behaviour to individuals – right? – there can be the overt behaviour that we perceive by politicians and other actors, and all the difference can be whether someone is going to be well served, but you cannot see what's going on in the mind.

2:40

I think if you have legislation in there that removes people from being involved in decisions or being perceived to influence decisions in any way – I'm thinking about the other case where I talk about when you swap out ministers as well. If you can remove the minister involved – you know, we suspect this minister may have a conflict of interest, so we want to select another minister to act in their place – instead of just letting that minister pick their own, you have a process. I think probably, as I mentioned, a kind of random process that selects who would make that decision: then you remove any type of possibility of there being even the perception of a conflict of interest occurring even though there would be no conflict. As Bacon said – maybe Bacon was being honest. Maybe the bribes never did influence his decisions, right?

You could put into place there something along the lines where maybe the Ethics Commissioner has a list of MLAs that can step in to make decisions, and they randomly choose from that list to step in and make decisions when a minister has to step out.

So, really, I guess my focus is all about the perception of conflicts of interest, that you don't want to even kind of dance close to that fire because there's a danger of getting burned in that situation. I'm not sure if that addresses your question or your concerns adequately, but if not, please let me know.

Mr. Long: That's great. Thank you, Doctor.

Thank you.

The Chair: We'll move on to MLA Arcand-Paul, then Lovely.

Member Arcand-Paul: Thank you, Mr. Chair, and thank you, all, for the wonderful presentations today. I'm particularly thankful for the submissions that you've submitted. Dr. Young, I don't have questions for you today, but I do appreciate a lot of the submissions that you've made, and I'm thankful for what you provided because it does inform a lot of what we need to do here as a committee but certainly as Members of the Legislative Assembly.

My questions are for Dr. Morck and Dr. Stedman. I have a brief follow-up question. Dr. Morck, I'll begin with you. You made some comments in your presentation with respect to Canada being a little bit more honest than our United States counterparts. I'm just curious, for the benefit of the committee members and for Albertans, on that piece why that is, that Canada might be considered as such. I think there's maybe some reference about a lack of available data, but I certainly believe that some of the issues that happened in the United States are pretty relevant to Canada, specifically Alberta. I think we're very conscious of maybe decisions made by the government caucus that might be of concern to Albertans. I'd like you to just maybe speak to that point, and then I have a follow-up question if the chair allows.

Dr. Morck: Okay. Well, that strain of thought . . .

The Chair: Just if I could intercede one moment. Given that a number of us are involved in intergovernmental affairs, the U.S. is our largest trading partner, I will take little jabs as being humourous, but if we're making allegations towards the superpower on our doorstep who is our largest trading partner, I absolutely will take exception.

Please carry on, sir.

Dr. Morck: Transparency International rates different countries in terms of how corrupt they are. What they do is that they survey people and say: how big a bribe do you need to pay to get this done? Do you need to pay a bribe to get this done? Countries in Latin America or Africa: you've got to pay a bribe to do most things. Canada usually scores a bit better than the U.S. on those scores, and those are numerical scores, so they just are what they are.

I'm a big fan of the United States in many ways. They do venture capital better than we do. They do lots of things better than we do. One of the things they don't perhaps do is that they don't have an independent civil service the same way we do. There's something in the U.S. called the Plum Book. The Plum Book is several tens of thousands of jobs that are replaced after each election. So governors in Massachusetts: when you get a new governor, they fire a whole bunch of public servants and put their own people in. The President gets to fire and replace people all across the public service, not just at the top levels but well into the intermediate levels in the public service. One of the reasons these things are called plum jobs is that there is actually a book with plum-coloured covers that lists all of these thousands of jobs that are replaced every time there's a new election and somebody new comes to power. We don't do that, so I think our public service is more reliably independent, and that, I would think, is probably the main reason for that. Latin American countries copied the U.S. in the way they run their public service, so they also have these massive replacements of public servants with each election.

That said, the U.S. is an admirable country, and we could imitate it in many ways. You know, venture capital, especially, I think they do much better than we do. The U.S.: I should add that there's a bill that's got second reading now in the House of Representatives called the Ban Stock Trading for Government Officials Act. What that does is it says that Members of the House of Representatives,

senior civil servants, et cetera are not allowed to buy and sell individual stocks, but if they hold index funds, that would be okay. There's a guideline for Members of the House of Representatives, candidates, officers, and certain employees of the legislative branch that also provides index funds as a safe haven.

You know, we can imitate them in many ways, maybe including this, even though probably overall integrity in government is rated better in Canada by independent observers.

The Chair: A follow-up, MLA Arcand-Paul?

Member Arcand-Paul: Thank you, Mr. Chair. Through you, just a follow-up question with respect to blind trusts. I appreciate that there's been some great discussion on this, and there's maybe potentially comments here about blind trusts being the safest tool specifically for members of the Legislature and certainly is for ministers and members of government caucus. I guess my question is: is this not a concern for the public interest? Should public servants, especially us as members, be disclosing the substance of our investments, whether business or individual, especially if our decisions as government might be made with our own investment interest benefiting from the same? So my question is: is the public interest better served if blind trusts were not fully utilized to disclose those details?

Dr. Morck: I think the other people present are better positioned to answer that than I am.

Member Arcand-Paul: Sure. The floor is open to either Dr. Young or Dr. Stedman.

The Chair: Dr. Stedman.

Dr. Stedman: Yeah. I'll take a kick at it. I think one of the important things that has come out of this discussion so far is that blind trusts are not a perfect tool. Trump is a great example of, you know, if your name is on the building, you'll know it's not been sold, so you'll know that you have an interest there in a physical asset. The answer to the question, "What do you do in those grey spaces where blind trusts aren't sufficient?" is that you have members who uphold their duty to disclose and recuse themselves from votes. Like, you take seriously your responsibility under the act to not put yourself in a conflict of interest.

Is the public's interest served by you disclosing? The public's interest is served by members not being able to put themselves in a position to benefit themselves while executing their public duties. Whether that means you disclose it or don't, that's a policy question that you have to decide. I think most people would rather not air all of their assets and liabilities if they don't have to because most people go into public office after a very fruitful career, where they've accumulated a lot of, you know, bounty of their work and their hard work, and they aren't particularly keen to let the whole world know every asset and every liability.

But if it's the case that you can't put it in a blind trust, there's no way to protect the public or to stop you from knowing what you own, then maybe there's an argument to be made that those things should be public. Like, putting Donald Trump's buildings in a blind trust serves no purpose and does nobody any good. It's just a facade. But we haven't really seen that level of wealth in government. I mean, we haven't known that wealth, that level of wealth, in government for a long time, so this is kind of one of the interesting conversations that has emerged as a result of that.

We also have a former Minister of Finance in Canada who had a major asset that it was impossible to hide no matter what you put it in. So those are interesting conversations that need to be had but haven't been had yet about the limits of a blind trust, and how do we find better solutions?

The Chair: MLA Wright, you're up next, followed by MLA Lovely. Anyone else while the chair's eyes are up off this paper?

Okay. Proceed, please.

Mr. Wright: Thank you, Mr. Chair and through you to Dr. Stedman. In your submission you suggested that the act should be amended to allow the commissioner to initiate an investigation of their own accord. In Alberta I see in the crossjurisdictional addendum that Alberta is the only jurisdiction of those included that allows for any person to request an investigation to any person subject to the act's section 25(1). It also notes that the Ethics Commissioner may initiate an investigation if the commissioner has reason to believe that the individual has acted or is acting in contravention of the advice, recommendations, or directions or any conditions of any approval given by the Ethics Commissioner. Would you consider Alberta's Ethics Commissioner to presently have a large degree of flexibility in initiating the necessary investigations as a result of these provisions?

2:50

Dr. Stedman: Yeah. No, those are excellent provisions that allow for a response to be taken if something isn't complied with. What I'm arguing for is what the federal regime has in place, which is an own initiative right, so if the Google alert comes in the morning and the Ethics Commissioner sees that there's something happening in the news that hasn't come through their office yet, they would have the right to then make inquiries, to reach out and say, "Hey, tell me more about this," to determine whether an investigation needs to be made. That's different than saying if someone didn't comply with a previous order. It's just a little bit broader.

Would I say that the ethics regime in Alberta is doing better than others in this respect? Absolutely. Yes. Ontario: you know, since it's my jurisdiction and I worked there for so long, I'll make fun of it all day. The fact that no one can make a complaint other than a member or the Executive Council or a motion by the Legislature is ridiculously archaic. What you want to do is put yourself in a position for the public to look at the office and say: they're taking seriously the responsibility of holding accountable MLAs who step out of line.

I don't think it's a big change that you'd have to make. I think it's just a small tweak to the act that says, "The right to initiate an investigation based on any information," not just that comes in a particular way.

Mr. Wright: Thank you, sir.

I don't have a follow-up.

Ms Lovely: My question is for Dr. Young. In your submission to the committee you mentioned that any time restrictions on lobbyist activities after employment can seem and possibly are arbitrary. Later in your submission you proposed a restriction period of two election cycles to replace the current 12-month restriction. In addition to being as seemingly arbitrary as the existing restriction, this also seems quite excessive. Certainly, I can't think of any other line of work that institutes such harsh restrictions on employment prospects of a former employee. What do you think is the purpose of the cooling-off period? Also, do you believe such an extensive postemployment restriction period would potentially dissuade competent and experienced individuals, who often have other enticing, less restrictive opportunities available to them, from contributing their talents towards public service?

Dr. Young: Yeah. Thank you for the question. I thought that my recommendations might seem a bit excessive. I'll tell you why I offered them. One reason why I said two election cycles rather than a time period is because, as I alluded to in my presentation today, that would allow some changeover in the personnel, some shifting in positions of authority and decision-making so that decisions made by government would not be really impacted, or you could mitigate the impact of those personal connections shaping government decisions, which would then possibly serve private interests over public interest. That's why I chose to focus on election cycles rather than on a random period of time. As I said, the 12-month period of time seems like you're just picking something, putting a blindfold on, and you're throwing a dart at a wall and it lands on 12 months rather than 18 months or 24 months.

Now, for the two-election cycle, the reason I did that was because I was concerned about situations where, let's say, an MLA or one of their staffers is aware that they are going to lose their position – right? – so they step down just before an election cycle occurs. One election cycle happens, and then it's less than a year and they're out there working as a lobbyist or within a lobbyist firm in some manner. There are still, then, some very strong personal connections there. That's why I suggested the two-election cycle, which I then perceive as being about four-year to five-year kind of time gaps, if we want to phrase it in that way.

I was also aware, when I was putting this forward, that that would possibly disincentivize some folks going into public office or working with the public. I'm not sure, you know – like, one thing I would say in response to this, and you can tell me what you think about this response, is that I don't think it's really the purpose of legislation to ensure that people have jobs in politics or as politicians, right? I don't think the Conflicts of Interest Act should ensure that folks can be employed after they're done as an MLA, that folks have an easy kind of path to further employment. If it did that, that would be serving private interests, the interests of people, rather than public interest.

On the other hand, I recognize that those who have put the time in and worked in government as staffers or as elected officials do have expertise that's relevant for lobbying and for voicing different coalitions and their kind of interest in government. I'm trying to balance these various concerns, the value of expertise, the capacity to participate in politics, kind of creating a gap between personal connections between people that can occur from working in government, to ensure that public interests are served rather than, "Oh, I worked with Sandy, and Sandy is a good person, so I'm going to do what I can to help Sandy's new business out or whatever lobbying group she's working for," okay?

I'm not too sympathetic to, like, keeping people employed in a certain job market, and I don't think legislation should do that, but I am sympathetic, you know, to not destroying people's careers either, I suppose. I can follow up if you have any more questions.

Ms Lovely: I do just want to mention – this isn't a question, but it's a statement that Alberta MLAs don't have a pension, so people do need to have employment. They do need to be able to pay their bills, and that goes on both sides of the House. That's it for me.

The Chair: Thanks, Member.

We have Ellingson up next.

Mr. Ellingson: Thank you, Mr. Chair. If I may take some liberty in asking a follow-up to MLA Wright's question to Dr. Stedman?

The Chair: Sure.

Mr. Ellingson: With the own-initiative investigation rights and kind of around, I guess, the word "investigation" and the way you framed it of, like, oh, if it hasn't crossed their desk but you see something in the paper and would want to be able to ask a few more questions about that, kind of the use of the word "investigation" and how official that is of just asking a couple of questions about something you saw in the paper versus an investigation, if there were own-investigative rights, do we need to, you know, think about or mitigate any abuse of power in that? Does that open up the Ethics Commissioner just being able to go out and kind of investigate any member anywhere for anything?

Dr. Stedman: Great question. You often see the language change between an inquiry and an investigation, so depending on which jurisdiction you're in, it's either called an inquiry or an investigation. It's just semantics.

No, you don't have to worry about the box opening and everything falling apart. There are already regimes where the commissioner can initiate an inquiry or an investigation. This isn't the kind of thing that makes a commissioner go rogue. They have no interest in playing gotcha with everyone.

There is a need for you to trust your commissioner so you go to your commissioner to seek advice when you have questions, and they know that. They do not want to take that balance and skew it in the other direction, where you're constantly afraid of everything. Any commissioner you talk to in this country will tell you that it's a delicate balance, and it only works if you trust them to be there as your adviser.

What we would rather have, what every one of these commissioners would rather have, is to provide constant advice and no investigations. They would rather it not be the case that members put themselves in positions where they have to investigate, so I don't think it's much of a concern. They're not going to open Pandora's box. They're not just going to start investigating willy-nilly in every direction. They won't. That's not the nature of the beast, and if they are going to do that, then you probably shouldn't have appointed them in the first place. You should have maybe vetted them a little more carefully.

The Chair: A follow-up, or does MLA Wright have a right to have a follow-up to your follow-up?

Mr. Ellingson: I had only the follow-up to the previous question. Thank you.

The Chair: I appreciate it, folks.

Any other questions for the gentlemen online, the doctors online?

3:00

Okay. Seeing none, hearing none, gentlemen, thank you so much for your engagement with us on this. You're welcome to listen in if you wish or abdicate, as it were, and get on with the rest of your life. I'm sure there are a lot of interesting things you could be doing as well.

Dr. Stedman: Thank you.

Dr. Young: Thank you very much.

Dr. Morck: Thank you very much. My great support that you're doing this.

The Chair: Thank you. I appreciate it, doctors.

With that, we're going on to our next person, our next testimony. But at the request of the chair, would you mind if we take a five-minute biobreak and come back? Would that work for all members?

Okay. Let's just take a quick five-minute pause, and we'll come back. Minister Loewen will be up next.

[The committee adjourned from 3 p.m. to 3:05 p.m.]

The Chair: With that, let's get back under way.

Hon. Minister Loewen, please proceed. You have the floor, sir.

Mr. Loewen: Okay. Thank you very much. Happy to be here to speak to this committee on this very important topic. The Alberta Conflicts of Interest Act sets the standards for ethical conduct for Members of the Legislative Assembly, including ministers, in the province of Alberta. It is designed to foster public confidence in the integrity of government officials by providing guidelines to prevent and resolve conflicts between their private interests and public responsibilities.

However, the act may inadvertently create disadvantages for the government and individual ministers by the limitations imposed by the act on government operations and the duties of ministers. The act imposes several restrictions and requirements on MLAs and ministers which can slow down governmental processes and decision-making. For instance, the stringent rules against conflicts of interest may deter highly qualified individuals from seeking office. Professionals with extensive business interests or those involved in various sectors may find it too restrictive or burdensome to disengage from their private interests to comply with the act. This could potentially lead to a reduced talent pool for governmental and ministerial positions.

The act's broad definition of conflict of interest may lead to an overly cautious approach to decision-making. Ministers may avoid pursuing certain policies or initiatives that could inadvertently benefit any of their declared interests even if those policies are in the public interest. This cautious approach can stifle innovation and robust policy development. The structures of this act and its implementation can inadvertently create obstacles for ministers tasked with the responsibility of making decisions that are in the best interest of the public. These obstacles not only impact the efficacy of their roles but also the broader functioning of government.

One of the fundamental ways in which the act can negatively impact ministers is through its stringent restrictions on private interests. The act necessitates that ministers should not have any pecuniary interests that are in conflict with their public duties. While this is crucial for maintaining the integrity of the office, it can also lead to an overcautious behaviour. Ministers wary of even the perception of a conflict may avoid certain policy initiatives or decisions that could be indirectly linked to their private interests even if such decisions are beneficial to the public. This overly cautious approach can result in a paralysis of decision-making where bold and swift action may be required.

The act's broad definition of conflict of interest, which encompasses any matter that could potentially affect a minister's private interest, can lead to situations where ministers are overly cautious, recuse themselves from important discussions and decisions. This avoidance, while compliant with the act, can deprive the decision-making process of valuable insights and expertise that the minister might otherwise offer. This can be particularly detrimental in specialized portfolios, where the minister's background or professional experience is directly related to the ministerial responsibilities.

Moreover, the compliance with the act entails a comprehensive disclosure of financial interests, which is both time consuming and a potential deterrent to skilled professionals considering public service. The disclosure requirements, while intended to prevent conflicts of interest, can also act as a discouraging factor for those with successful careers outside of politics who might bring a wealth of knowledge and experience to government.

The act may also have a chilling effect on robust debate and policy development within government. Ministers might steer clear of policy areas where they have significant knowledge due to prior professional engagements, leading to suboptimal policy outcomes. The fear of being accused of a conflict can deter ministers from engaging fully in policy areas where their contributions could be most valuable.

Additionally, the act's provisions can lead to the perception of impropriety even when none exists. The public scrutiny that follows any disclosed interest can spawn unfounded allegations and suspicion, potentially undermining a minister's credibility and the trust in the governmental process. The constant vigilance required to ensure compliance can be exhausting and divert a minister's attention away from their primary task of governance.

Lastly, the act's postemployment restrictions can also negatively influence decision-making. Knowing that certain career paths may be closed off after leaving office could lead ministers to make decisions that are less about the public good and more about safeguarding future professional opportunities. This conflict between long-term career considerations and immediate public service responsibilities can compromise the quality of decision-making.

In summary, while the Alberta Conflicts of Interest Act serves as an essential function in maintaining the ethical conduct of ministers, its provisions can also lead to unintended consequences that hamper decision-making. The constraints placed on ministers can result in overcaution, loss of valuable expertise in the policy-making process, deterrence of potential public servants, undue public suspicion, and a conflict between personal career goals and public service. Balancing the need for ethical governance with the practical realities of decision-making is a nuanced challenge that requires continual reassessment to ensure the act supports rather than hinders effective governance.

The Alberta Conflicts of Interest Act plays a crucial role in maintaining transparency and integrity; however, there is room for improvement in the act's definition of conflicts of interest to provide clarity and specificity. One approach to enhancing the effectiveness of the act could involve changing the definition of what constitutes a conflict of interest by clearly outlining specific scenarios or relationships that qualify as conflicts. The act can reduce ambiguity and ensure that the public officials are held accountable for their actions. Moreover, establishing clear exceptions as to how conflicts of interest affect different groups or subgroups can also address unique circumstances that may arise in governmental decision-making processes. These exceptions could provide guidance on how conflicts could be managed within specific contexts such as when dealing with issues that impact groups of people or a group of particular individuals or even vulnerable populations.

By tailoring the act to consider the diverse needs and interests of various groups, policy-makers can ensure that decision-making remains fair and equitable for all Albertans. For instance, if a minister was a business owner previous to his role as minister and his ministry position gave him power to make decisions over things that affect a group or groups of professionals from his business life, there should be a demonstrable way to authenticate that the decision is affecting a population large enough so as to not be perceived as a benefit to the minister's related party. I pose the question: what is large enough? Is it five times the minister's related party size? Is it 10 times? Is it related to the size of the professional group? What if the group is 100 people? What if it is 1,000 people? What is the

measure the decision must impact in order for it to be a nonconflict? This is not properly contemplated in the act, so how can we effectively mitigate the consequences of interpretation?

In conclusion, by refining the definition of conflicts of interest and incorporating clear instruction for different groups or subgroups, the Alberta Conflicts of Interest Act can strengthen its effectiveness and promote greater accountability in government operations. Clarity and specificity in the act are essential to upholding public trust and ensuring that elected officials act in the best interests of the people they serve.

I think I'll leave it at that for now and go to questions.

The Chair: Thank you, Minister.

We'll open up the floor. I had MLA Long up first. I had Rowswell, Lovely, and we'll just go back and forth there. MLA Long, you're up.

Mr. Long: Thank you, Mr. Chair. Thank you, Minister, for taking the time to be here today. I'll get right into it. Currently the term "private interests" in the act is defined in negative; i.e., the specific words "in private interest" do not include the following, and it goes into a short list. Section 3 of your submission to the committee calls for more specifics on what constitutes a conflict of interest and what does not. The need for a more concrete positive definition of conflicts of interest is a concern echoed by a number of other submissions, including the former Ethics Commissioner. I believe that as a member of Executive Council you can likely provide some unique insights on this. Specifically, I was wondering if you might share your thoughts on how a clearer definition for conflicts of interest, with an explicit definition in the positive – i.e., these are the things – would allow for a better understanding of an ultimately easier compliance with the act.

Mr. Loewen: Yeah. I appreciate that question. I just want to start off by saying how important it is to build that trust and confidence. That's what this legislation should do, but it has to also make sense, and it has to be very clear.

I guess, kind of thinking of my personal experience with this, when I first became a minister, I had to divest myself of my business, put it in a trust. At that time I never heard any, you know, comment from the Ethics Commissioner's office about any kind of conflict or anything like that. But then, of course, a complaint came in, and somebody suggested that maybe there was. Then I received a letter from the Ethics Commissioner's office suggesting that there are some decisions I couldn't be involved in. I couldn't make certain decisions on certain things.

When I first received that, both myself and my department thought this was kind of odd because it basically cut down a huge chunk of what I could make decisions on in that particular department. So myself and the department prepared basically something to take to the Ethics Commissioner's office to be able to present and maybe get a little clearer understanding and maybe provide a little extra information for the office to make a different decision. So that was done, and then the next thing we got was a letter that even was more restrictive and more broad as far as what I couldn't do or couldn't be involved in. In a subsequent conversation we found, you know, several months later, that the Ethics Commissioner's office suggested that they were surprised that this was still an issue, that it was still bothering me that I couldn't make these decisions.

3:15

In meeting with the Ethics Commissioner one time, I threw out a couple of issues that needed to be decided within the department. The Ethics Commissioner's office at the time suggested that those wouldn't be a problem to make a decision on and I could be involved with those ones; just submit them in writing. Since that time, I've submitted multiple issues to the Ethics Commissioner's office, and I believe every single one of them I was approved to make a decision on, even though both letters that I'd received previously suggested I couldn't make those decisions.

I think what's happening and what I've seen with this is that I received – and maybe others have had the same issue, too – a broad restriction on a very narrow interest. That's why I think there needs to be more clarity and more preciseness in this legislation so that when a minister discloses interest, goes through that process of putting a business in trust, they're allowed to make the decisions that they should be allowed to and not be kind of brought – you know, if I hadn't tried three times to try to get the ability to make these decisions, I would have never been able to make those decisions which do affect people's lives. It affects Albertans' lives and I think is not helpful for the job that we try to do.

The Chair: You have a follow-up, MLA Long?

Mr. Long: No. Thank you. I appreciate that explanation. Thanks, Minister.

The Chair: We'll go over to MLA Ellingson.

Mr. Ellingson: Thank you, Mr. Chair. Maybe it is a follow-up on MLA Long's question. Maybe this is my approach now, just to follow up on other people's questions.

I guess it's difficult for me to absorb what you're putting on the floor without knowing any of those things, not knowing what it is that was in the letter that you were restricted to do, not knowing what you had, you know, asked to override from those original letters. I guess it appears the government is still functioning, and I'm hoping, assuming that this has not happened to, like, a proliferation of ministers, where government is grinding to a halt because with every decision you have to write a letter to the Ethics Commissioner.

I guess without knowing all of that, it's tough for me to wrap my head around: like, what boundaries are you putting down? I guess my question is that what I hear from you are concerns but not necessarily alternatives. I think we do absolutely want to maintain transparency and accountability. We do absolutely want to maintain the functioning of government, so I guess what I'd like to hear are some alternatives or suggestions, because you have the specifics of the situation, and I do not.

Mr. Loewen: I agree completely that we need to maintain the integrity of the process. We need to maintain the trust that the public has in our offices as we do our jobs, so I agree 100 per cent with that. Is government still functioning? Yes, I think so. Is this happening in more cases than it should? I would probably say yes, it is. Can we fix it with alternatives? Again, I believe we can. Again, I think the problem that I experienced is that, again, it was a broad restriction, and the interest that I was involved in was very narrow.

So I think that the problem is we need to make sure that the decision that comes from the Ethics Commissioner's office is concise, and we need to make sure that the legislation that we have provides that direction to the Ethics Commissioner's office so that the Ethics Commissioner, when providing a ruling or a decision – that it's very clear direction from the legislation to the Ethics Commissioner to make sure that it's done in a way that's as open as possible but still providing that accountability and trust for the people of Alberta.

The Chair: Do you have a follow-up?

Mr. Ellingson: I do, Mr. Chair. Thank you.

The Chair: Yeah. Go ahead.

Mr. Ellingson: My follow-up is about kind of the restrictive nature of the Conflicts of Interest Act in preventing talent in both our public service and in our MLAs. I guess what I'll also ask is, you know, if we have examples where you see that is happening. I see very highly qualified, connected individuals, knowledgeable in their industries, that have stepped forward to be MLAs, and we weren't held back by the Conflicts of Interest Act. So I'm wondering, again, like, to get a sense for how you think that's actually happening, because it feels like people are stepping up in both the public service and to be MLAs even with the Conflicts of Interest Act that we have.

Mr. Loewen: Yeah. Agreed that we do have some talented individuals in government and that have stepped forward for public service. I agree with you completely on that, but I guess what we don't know is that we don't know who we don't have because most people don't announce publicly: I'm not going to run because I don't like the rules that I'm going to have to do; I don't want to divest myself of my company that I've run my whole life. People don't publicly disclose that when they decide not to run; they just decide not to run. So we could sit back and say: well, who are we missing? It's like: I don't know, and I don't think you know either. I don't think anybody knows who we're missing because those people don't do that. They just don't publicly say: I'm not running because of that. They just don't run.

The Chair: MLA Rowswell, MLA Ip, Lovely, and then Wright is what I have for the speaking list.

Mr. Rowswell: Okay. Thank you very much, Minister. You know, throughout the review of this act I've noticed that Alberta has some pretty stringent rules of what a minister is allowed to hold compared to other jurisdictions, but it's kind of along the same vein as: are we scaring people away? Ministers tend to be ministers of things that they know the most about, and the reason you know the most about it is because you've probably got an interest in something that you learned that in. Then if you get there and you can't implement anything and do stuff that you know will help the industry or whatever, why are you doing it?

I appreciate that your point of view is that we don't know who we haven't got. I know I've met a number of people, you know, trying to get them to get involved, and they just said, "Well, I just won't; I've got too much going," right? I think, from that perspective, maybe you can talk to having your assets held or managed by someone other than yourself and the problems that that's created.

Mr. Loewen: Yeah. I guess with myself I had a business for over 30 years. That's been the way I've fed my family, you know, paid the bills, and it was basically what I did for 30 years for my total income right there. To have to be able to turn that over to somebody else in a blind trust and not be able to have any influence on it or any commentary on it is – I think myself and I think others would think the same thing – a little scary because at some point, moving forward, I won't have this position, and then what will I go back to? What will be there when I get back to that business? I don't know.

So I think when we look at other people in the same situation, you know, that have put their whole life into a business and their whole life into developing something that they could be proud of and everything but still have that desire to fulfill a career in public service and then to have to have that put into a blind trust and not have any control, maybe there's no way around that. Maybe that's just the way it has to be, but I can tell you that I'm sure others would probably consider that just a step too far.

Mr. Rowswell: Yeah. As a follow-up, that's what I was going to ask. Maybe you don't know what it is, and that's going to be the job of this committee, to figure out, "Okay; how do we manage that, right?" and have a more in-depth conversation with the Ethics Commissioner about, you know, "I'm getting this ministry now; what can I do?" and then push them a little bit and make sure that it's clarified. You'd like it clarified it in advance, but how do you do that? How would we go about that if we don't really know given the rules that the Ethics Commissioner has to follow?

3:25

Mr. Loewen: Yeah. You know, when I look at some of the information that the Ethics Commissioner office follows, there's some clarification documents on some of these things. When I looked at the clarification documents and then I looked at my situation, I thought it was very clear that I should be able to be making some of these decisions because they were affecting a broad class of people in Alberta, a larger group of people, but I still seemed to run into a brick wall there when it came to being able to make those decisions. I think that's what was frustrating.

When it comes to who we attract, I mean, it just says in the preamble that we want "a spectrum of occupations" represented. I think the more we do to limit that spectrum is counterproductive to both the policy, but it's also counterproductive for Albertans.

The Chair: MLA Ip.

Mr. Ip: Thank you, Mr. Chair. Through you to Minister Loewen: thank you, Minister Loewen, for sharing your own personal, very personal perspectives.

From the testimonials that we've received to date, it's quite clear that all of those who offered a submission thematically have said – at least my interpretation of it is asking this committee to consider erring on the side of caution in the public interest. That is quite clear in each of the messages.

It sounds like to me that the process, even the current process, as imperfect as it is, did work because, Minister Loewen, you clearly went through a series of different conversations with the Ethics Commissioner, and you were ultimately approved to do your job. So currently the system, it seems, is that there are some broad catch-alls, and then individual circumstances are considered for each minister. Would you not agree that the system actually is working as designed?

Mr. Loewen: What I would say is that it could definitely be a lot better. I agree that erring on the side of caution is probably a wise thing to do, but, again, it could be better. When we brought our second presentation to the Ethics Commissioner's office, that included graphs and maps and all the information that we could possibly give so that the office would understand how the broad restriction compared to the narrow interest, and still the answer was no. In fact, it was even more restrictive than the first letter. That's where I see that the system maybe isn't working as good as it could.

I appreciated the opportunity that I was able to go back and ask the question again, but it almost goes back to some of the early conversations about the appeal. You know, the opportunity for appeal is to go back to the same person that said no the first time and the second time and possibly the third time. Maybe there's something we can do there to make that process a little smoother, but, again, the information that was presented should have got me

in a position, I think, a lot quicker to be able to make those decisions for Albertans.

Mr. Ip: Thank you, Minister Loewen. Through you, Mr. Chair, then perhaps do you think the same objectives could be achieved, some of the concerns can be addressed by perhaps more clearly enumerating the process as opposed to actually changing the legislation, and perhaps changing legislation isn't necessary?

Mr. Loewen: I guess what I see is the – and a lot of it is the application of it, of the existing legislation. There's no doubt about that. When I read the legislation, it was very clear, and when I read some of the supporting documents that were produced by the Ethics Commissioner's office, the information was very clear there, but there is some distance between that clarity and the decision that was made. It made me realize that we need even more in that legislation to make things even more clear and more concise and specific so that there is not this kind of wobbling thing where the decision could kind of go off track and still be kind of loosely related to what the legislation is. That's where I think the clarity needs to be.

Mr. Ip: Thank you very much.

The Chair: Over to MLA Lovely. I see Member Arcand-Paul has also raised his hand, and we'll fit you in the speaking order.

MLA Lovely, it's yours.

Ms Lovely: Thank you so much, Mr. Chair. Minister, your submission also discussed how the extensive disclosure of financial interests can be both time consuming and serve as a potential deterrent to skilled professionals considering public service. You mentioned that the disclosure requirements, while intended to prevent conflicts of interest, can also act as a discouraging factor for those with successful careers outside of politics who might bring a wealth of knowledge and experience to government.

The former Ethics Commissioner mentioned that the late disclosures have been an issue in recent years and suggested increasing the fine associated with not submitting disclosure on time, which, to me, indicates that the process may be too cumbersome. Do you think simplifying the form could help alleviate some of the difficulties you mentioned in your submission?

Mr. Loewen: Yeah. Kind of, you know, where you started there, about disclosing all this information, again, I'm not exactly sure where the line should be on what has to be disclosed. But I do know that many people in business and in life are very private about their interests, so just disclosing their information to anybody would be something they wouldn't really want to do.

When it comes to the process of disclosing the information, I believe it could be simplified. I know that each time we disclose, we have to start from scratch. The whole form, you have to start right from the beginning, from putting your name on the form to everything that hasn't changed in the last 10 years and not likely to change. You have to start from scratch. So that's frustrating.

When it comes to the fines and late disclosures, I guess I'll kind of go back. Three years ago my dad passed away at about the time when I had to have the disclosure submitted, and I submitted this disclosure, but I missed a follow-up e-mail asking for more information, which caused me to miss the deadline for that follow-up information. So I went to the Ethics Commissioner office and just said, "Okay; you know, I'm a little late here" – I don't even know. I think it was hours late; not necessarily days late but hours late. So I'm missing that deadline. Is there any leniency there? It's like: nope. The response I got was: if you'd asked beforehand to be late, we could have given you permission to be late, but since you were late, you pay the fine.

I thought that was – you know, now if somebody is suggesting we need to even have the fines bigger when there's that, I guess, kind of lack of understanding in certain situations, I think I'm probably not in favour of that.

Ms Lovely: I just want to say, Minister, that I'm sorry for the loss of your father and disappointed to hear the harsh way that you were treated.

The Chair: MLA Arcand-Paul, followed by MLA Wright.

Member Arcand-Paul: Thank you, Mr. Chair, and thank you to the minister for appearing today before this committee. I'm conscious of the comments that you made earlier about your requests that were sent to the Ethics Commissioner were largely allowed. I'm curious. Why, then, are we to look at a potential change if this never prevented the minister or, to your knowledge, any other minister from making decisions? My question is rooted in this: what bold policies are the ethics laws of the province stopping?

Mr. Loewen: Well, I think the situation – and I appreciate the question. It's a fair question. You're right. The requests were allowed. But, unfortunately, it took three tries to get to that point, and that took almost a year. So for almost a year I wasn't able to make these decisions or be involved in these discussions. Finally, you know, most people probably would have given up after the first try, but I tried a second time, and then it was just by chance that I had the chance to ask a third time. So I asked a third time, and I got a different answer. I think that's the problem – fair enough; in the end I was allowed to make those decisions, but, again, I don't know that it was very productive to have to wait almost a year to get to that point.

Member Arcand-Paul: Thank you.

I have a follow-up if the chair allows.

The Chair: Please proceed.

Member Arcand-Paul: Just in terms of the clarity that you just provided, would it be helpful, then, to provide some reasonable measures in the legislation that would deal with some certainty of timelines to provide government that certainty of making good decisions and being hyperconscious of the important work that a minister must do to enable good decision-making in the province? Would that be something that the minister would be open to in terms of providing those reasonable timelines and certainty of decision-making?

3:35

Mr. Loewen: Yeah, I think that would be helpful, because you are right. You make a good point that it is important work that we do; as MLAs and as ministers it's important work that we do. I think it's best that times are critical and are important to follow, and then being able to have that certainty in legislation, I think, would be helpful.

The Chair: MLA Wright.

Mr. Wright: Thank you, Chair, and, through you, to the minister. Minister, on the impact on decision-making section of your submission, you noted specifically that the postemployment provisions of the act can lead to challenges, and I think we've heard a bit about that from both sides here, but can you speak to how the

limitations of postemployment opportunities might dissuade qualified and competent individuals from applying for government positions?

Mr. Loewen: Yeah. I think you're – you know, I heard some of the discussions earlier and the justification, the reasoning why, but I actually think that when we're finished the positions that we're in now as MLAs or as ministers, there has to be something else afterwards. Some of us, some MLAs and ministers have quit jobs that they've had before. Some have put their businesses in blind trust, like myself. We don't know what's coming after this, and we're just one election away from – we don't know on election day, when we walk into the room after the votes are counted, whether we've got a job or not.

Having a cool-off period: I don't have a problem with that, but making it exceptionally long, I don't think that's helpful to have somebody's life tied up for that long and not have, you know, a full range of opportunities to do a job that they feel qualified to do.

The Chair: A follow-up?

Mr. Wright: I do, and you've kind of alluded to it, but maybe if you could speak a bit more to the practical challenges of cooling-off periods and what you feel the appropriate time might be, on what that looks like.

Mr. Loewen: Yeah. I'll be honest. I haven't given that a lot of thought as far as what would be the most appropriate. I think 12 months is plenty long. I think that's a year to not have a full range of opportunities as far as career choices moving ahead, so I think the 12 months is plenty long.

Again, you know, and not complaining or trying to make any other point on this, but, you know, there's no pension for this job. There's no golden handshake when we walk out the door. When we walk out the door, we walk out the door. On election day, we either have a job or we don't, so I think – I don't know. I think the people of Alberta would understand that we need some cooling-off period, but we also need some ability to be able to get back to work and provide for our families.

The Chair: Thanks for that.

With that, if there are no further questions, Minister, thank you for your time. You're more than welcome to remain in the gallery if you wish or head on and get some of that other important work done. Thanks, Minister.

Members, we'll move on to our research updates. As of our April 25, 2024, meeting the committee asked for two additional research items from the Legislative Assembly Office's research services. The first request was for supplemental written responses and questions raised by committee members to research services at the meeting. The second is an addendum to the crossjurisdictional comparison related to the statutory provisions laying out the powers of the ethics commissioners in Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, Ontario, Nova Scotia, and federally to engage in these investigations and inquiries. The documents are posted on the committee's internal website.

Are there any questions on those documents? MLA Wright.

Mr. Wright: If we take a look at page 4 of the crossjurisdictional addendum document, under section 2, which deals with the initiation of inquiry or investigation, I see that Alberta is the only jurisdiction reviewed that does not have a provision for an inquiry into conflict of interest legislation. Later in the same section, it's mentioned that an inquiry is a judicial-like process that involves probing for information through asking questions. I'm hoping you could provide the committee with some more details and information regarding how an inquiry is laid out and what the jurisdiction is there versus what an investigation would be, just for clarification for everybody at the table.

Dr. Williamson: Yeah. Definitely. That's a great question. I'll do my best to respond as much as I can, and we do have some experts also in the room that might be able to add a little more information. My understanding is that this comes down a little bit to the way that powers are laid out in Alberta's COIA compared to other acts. An investigation: the powers of the commissioner to investigate are laid out – and this has been mentioned before today – under section 25(5), and these are powers to summon and compel people to provide oral or written evidence under oath and to compel somebody to produce documents or other relevant things to an investigation as well as to administer oaths. So those are the kind of three, on a high level, powers of the commissioner.

Now, in other jurisdictions that use the term "inquiry," a lot of the powers are framed within the Public Inquiries Act. They're not specified and laid out in the act itself, so I think there might be an element of kind of just the way that these powers are structured and how they're laid out. There are some differences in terms of what powers a commissioner has under their Public Inquiries Act, and that's true in Alberta as well compared to the Alberta commissioner.

I'll leave it there.

The Chair: Thanks, Dr. Williamson.

Any follow-ups? Any other questions? No? Okay. Going once, twice, sold.

Next step in the review. Hon. members, are there any other matters the committee members have questions about or wish to speak about regarding the Conflicts of Interest Act? Any other items?

Mr. Long: I'd like to make a motion, Mr. Chair.

The Chair: Okay. What would you be making a motion on?

Mr. Long: That

> the Select Special Conflicts of Interest Act Review Committee direct the Legislative Assembly Office to prepare a summary of the issues and proposals identified in written submissions and oral presentations made to the committee on the Conflicts of Interest Act.

The Chair: Perfect. Having heard the motion, any discussion?

We'll get it on the board. MLA Long, do you just want to take a quick eyeball at that and make sure it's as per your intent?

Mr. Long: Other than the XX part.

The Chair: I have a sneaky suspicion that someone thought that motion might be coming forward.

I'm prepared to call the question. All in favour? Any opposed? Online, all those in favour? All those opposed?

Motion carried.

Other business. Any other items for discussion today?

Hearing none, date of the next meeting. It is at the discretion of the chair, but obviously I'll be polling the committee members here through our clerks. Cognizant of summer vacations, kids, all those things, the amount of time that everyone here in the room spends here when things are busy, we want to make sure you guys get some time with your family. There are, of course, matters of business we need to take care of, so we'll be limited to how much time we might want to be away from this meeting room. So with that consideration, we'll poll you guys and figure out where it is. Probably the latter part of August, September-ish timelines: if that works for everyone, we'll try to work as much as we can. Again, we'll go under the majority, obviously.

If there's anything else to consider – one thing I do want to add: I appreciate the decorum, everybody here today. We got through a lot of really good business. I really appreciate that, so gold star from the chair.

Is there anyone that might be in a position that wants to adjourn this fine meeting we've been having today? MLA Ip. All in favour? Motion carried. We'll see you. Take care.

Oh, Irfan, are you against this? I hope not.

Mr. Sabir: If you want me to.

The Chair: Okay. I'm being told by the clerks that we have to do it properly, by the book. So all of those in favour in the room, please say aye. Any opposed? Online, all those in favour? Any opposed? The same result. Motion carried.

[The committee adjourned at 3:44 p.m.]

Published under the Authority of the Speaker
of the Legislative Assembly of Alberta