

Title: Wednesday, November 23, 2005 COI Review Committee

Date: 05/11/23

Time: 6:07 p.m.

[Dr. Brown in the chair]

The Chair: Good evening, everyone. If I could call the meeting to order.

The first item of business is the agenda, which has been circulated. Does everyone have a copy? Would someone like to move adoption of the agenda as circulated? Mr. Groeneveld. All in favour? Carried.

The minutes from the last two meetings, October 24 and 25, are still outstanding. I gather that we haven't got the final version of those done yet for approval, so we'll defer that to the next meeting.

The main order of business for this evening is to review the draft recommendations, which are a consolidation of the work that we've done at the last three meetings: September 19, October 24, and October 25. We had the two all-day meetings. These draft recommendations have been circulated. Everyone should have a copy of these, dated November 17. They were completed with the assistance of our writer, Nancy Mackenzie, with input from Sarah Dafoe and Rob Reynolds and myself as the chair prior to circulation last week.

What I would hope to do this evening is to move through the draft recommendations as circulated to confirm that what we have here in black and white is an accurate reflection of the discussions of the committee on each of those particular items. There are also a number of outstanding issues that we never came to a resolution on and that we've asked our support staff to give us some assistance with. In conjunction with those particular outstanding items, we have circulated a number of further information papers. I think there are five or six of them. You should all have copies of those.

What I would suggest that we do is to go through these things numerically, and as we discuss each of them, you can comment on any proposed changes to the wording which you feel is appropriate. After we've discussed and come to a consensus on each of those, I would ask someone to bring a resolution to the committee approving the wording as it's articulated. That will ensure that we have on the record a proper reflection of what the committee's recommendations are.

If I can just briefly suggest what I think the further progress of the committee would entail. After we have gone through all of the recommendations – and I'm not sure that we'll be able to accomplish that this evening – I would suggest that we would want to elaborate in some way on the recommendations from the rationale standpoint so that we can explain how we got to each one of those recommendations and perhaps put some background in there regarding what other jurisdictions are doing, what we heard from our stakeholders when we asked for input, and maybe some summary of what the essence of the discussion was in this committee so that the reader is not left wondering why we're recommending certain options.

With that said, we'll move on to the draft recommendations dated November 17, starting with recommendation 1, the preamble. The essence of the discussion there I believe was that the preamble should be expanded to include provisions similar to those that are contained in the statutes of Ontario in the Members' Integrity Act, 1994. This was something, you'll recall, which was suggested as bringing some sort of balance to the whole concept of ethics in government and conflicts of interest. We have before us the wording of the Ontario act. I'm going to open the floor for discussion as to whether or not you wish to adopt something similar to that or you wish to recommend some changes to it or you are content with the essence of what's there in the Ontario act.

Mr. Martin: Which is Ontario's?

The Chair: It's recommendation 1 on page 1, the one to do with the

preamble. The committee had recommended that we include provisions similar to those in the Ontario act, and what you have there is, in fact, what is in the Ontario act. I'm asking if somebody wants to make a proposal regarding the wording of our recommendation. Do you want to just leave it as it is?

Ms DeLong.

Ms DeLong: Yeah. I move that we accept this wording as it is.

The Chair: Any discussion?

Mr. Oberle: The idea was to add it somehow to the current wording?

The Chair: Yeah. Not to replace the preamble but to add this in there because the Ontario preamble gives some flavour about representing the people more effectively and recognizing that they have experience and knowledge in relation to various aspects of life or in their profession or otherwise.

We have a motion. Any further discussion? I'll call the question then. All in favour of the recommendation as worded? Any opposed? That's carried.

Okay, recommendation 2 has to do with the definition of direct associates. The Ethics Commissioner had identified a possible loophole that could allow private corporations to be not identified as direct associates. We had asked for some input from our technical staff on that. Perhaps it would be appropriate to have Ms Dafoe comment on that provision.

6:15

Ms Dafoe: Would it be helpful if I reviewed what the concern was before I discuss it further?

The Chair: Sure.

Ms Dafoe: I'll just quote from the Ethics Commissioner's submission. It says:

Presently, a Member may own shares in a private corporation or be an officer or director of a private corporation and that private corporation is a direct associate. If that private corporation owns shares in a second private corporation . . . the second private corporation may not be a direct associate. Similarly, the private corporations of Members' spouses or adult interdependent partners may not be a Member's direct associate.

So, fundamentally, what we see from this comment of the Ethics Commissioner is that there seems to be a possibility that a member may actually have some kind of control of a corporation but through an intermediary of a private corporation that they own shares in or control.

In an attempt to identify some way to close that loophole, we were asked to come back with some excerpts from other Alberta legislation that addresses linked corporations, affiliated corporations, that sort of thing. Today one of the pieces of paper that you were given says, "Questions arising from the September 19, 2005 meeting: definition of "direct associate." It's a two-page document, and on that there are excerpts from the Business Corporations Act, which refers to corporations that are affiliated with each other. There are references to the Securities Act, which talks about when a company is controlled by another. I've included an excerpt from the Workers' Compensation Act that describes when one corporation is associated with another. Then there's also some information about Alberta statutes that use the term "arm's length" because that was one question that came up specifically.

With respect to arm's length, there are a number of statutes in Alberta that use that phrase. They don't define it; they refer to the definition in the Income Tax Act, which I didn't provide because it's about four pages long and is quite detailed. There are other Alberta statutes that use the phrase arm's length and don't define it at all, not even by a reference to the Income Tax Act. The only Alberta act that provides something that's sort of related is the Condominium Property Act, which refers to an "arm's length transaction," and you'll see that definition under point 1 on this document.

I think that, ultimately, wording could be put together that would close the loophole, perhaps, by using something close to the wording provided in the Securities Act. Karen South has advised me that on some of their forms they already make a reference to the Securities Act just as a reference tool for members, particularly to the definition of when a company is controlled and what a control person is.

If you look on page 2 of the document that I've been mentioning, it identifies when a company is controlled, and it says:

A person or company is considered to control another person or company if the person or company, directly or indirectly, has the power to direct the management and policies of the other person or company by virtue of . . .

and then there's a list of four ways. I would recommend to the committee that they might want to consider putting something like that into the legislation to plug the loophole that the Ethics Commissioner has identified.

There's a second part to the loophole identified by the Ethics Commissioner, and that is that private companies owned or controlled by a member's spouse, adult interdependent partner, or minor child are not included as direct associates. That would be a simple thing to fix, as well, just by putting it straight into the act under the definition of direct associates, if the committee chooses to do so.

The Chair: You're suggesting, then, that the section that's marked number 3 on page 2 there might be a starting point for a recommendation to achieve what the Ethics Commissioner has recommended we might want to do.

Ms Dafoe: That's right. I think that, as we've discussed before, the committee may not want to actually try and draft legislation in their recommendation but outline what the principles are that they're trying to achieve.

I think the principles would be that the legislation needs to be updated to ensure that companies that are under the control of a member, whether it's direct control or control through a company that the member controls, would also be covered.

The Chair: Any discussion?

Dr. Morton: It certainly makes good sense to me. Unless the Ethics Commissioner objects to that, I would support it and move that we adopt it.

Ms DeLong: I've heard three issues that you've brought up. So I'm just concerned that we do actually cover all three of those issues. The first one, having not more than 20 partners, covers one. Okay. But did I hear you say that a direct associate right now does not include a company owned by the spouse?

Ms Dafoe: That's right. The description of "directly associated" is in section 1(5) of the Conflicts of Interest Act. We're looking specifically at (b) and (c), and they both refer to corporations that the member is involved with either as a "director or senior officer" if it's a public corporation or the member is an owner or is "the beneficial

owner of shares" of a private corporation. There's currently no reference to private corporations or public corporations associated with the spouse or adult interdependent partner of a member.

Ms DeLong: Then the third issue has to do with if you own a company and that company essentially controls a second company. So there are actually three issues that we need to deal with here.

Ms Dafoe: That's right. The issue about the number of partners in a partnership is actually not part of the loophole identified by the Ethics Commissioner's office. That's a separate issue, so I wasn't addressing that here. But you're right. There are three issues with respect to directly associated entities.

The Chair: Can I make a suggestion, then, that the committee allow Ms Dafoe to articulate in general terms, without getting into drafting the proposed amendment in detail, what we are trying to achieve in terms of the objectives and make that in the form of a recommendation for the consideration of our next meeting? Is that agreeable to the committee?

Hon. Members: Agreed.

The Chair: Okay. Can we move on, then, to recommendation 3? This was the one, you'll recall, where there was a rather arbitrary limit to the number of partners that was referenced, and it was felt by the committee that that was an arbitrary number and that the reference to "having not more than 20 partners" should be removed. Any discussion on that recommendation 3?

Mr. Oberle: I'll move that recommendation, Mr. Chairman.

The Chair: Mr. Oberle has moved

the adoption of recommendation 3 as circulated in the draft recommendations of November 17.

Any further discussion? All in favour? The motion is carried.

Recommendation 4 to do with insider information. This is a new concept that we discussed. The recommendation as listed here is that "section 4 of the Act should be amended to prohibit a Member's sharing of any information not available to the general public to improperly further a private interest of any other person." Have we captured the essence of what the committee was trying to achieve there?

Mr. Martin has moved

adoption of recommendation 4 in the draft recommendations of November 17, 2005.

Any further discussion?

6:25

Ms DeLong: My only concern with this is: does this really come under the Conflicts of Interest Act?

The Chair: We had a very full discussion on that to do with impartiality. I think the consensus of the committee at the last meeting was that it was something that was appropriate to deal with in the legislation.

Ms DeLong: Okay.

The Chair: Mr. Lukaszuk, do you have anything to add on that?

Mr. Lukaszuk: No. I concur with you, Mr. Chairman, and I think we're ready to vote.

The Chair: Any further discussion?

Okay. We'll call the question. All in favour? Anyone opposed? That's unanimous.

Recommendation 5. There was some concern regarding the use of the word "constituents" in section 5 of the act. The suggestion was that that should be changed to "Albertans." There's a note there. Mrs. Mackenzie, do you want to mention the context of the note, or Ms Dafoe or whoever recommended that we look again at this?

Mrs. Mackenzie: That was Rob's.

Mr. Reynolds: Well, there are two points that come up. One relates back to the point that Ms Dafoe made that usually committee reports would deal with the principles that you're trying to get across rather than specific redrafting. In this case it would be whether section 5, which is, if you will, an exception under the act, that members can engage in activities that they normally do on behalf of constituents – when you look at it, do you want that to be all Albertans because it is an exception from the rules that apply? Or is it the narrow sense of constituent in the sense of those people in the constituency you represent? When I went back and read the committee's discussion, I was wondering whether this was a discussion on principles, something, if you will, that would more appropriately belong perhaps in the preamble. That was one of my concerns.

Is the committee's point that the exception that applies in section 5 should be of such a nature that it applies to anyone you represent in the province of Alberta, not just your specific constituents? I thought that the committee should perhaps look at that, just add clarity to the point, and that perhaps the Ethics Commissioner may have a comment on how widening that provision may affect his role or decisions.

Those are my points, Mr. Chair.

The Chair: I think it's a good comment. If I recall the discussion as it ensued in that previous meeting, I think the concern was that one could certainly engage in making representations on behalf of people that were not within the boundaries of one's constituency.

Mr. Lukaszuk.

Mr. Lukaszuk: Thank you. As I recall, I brought that issue forward in one of our past meetings, and my argument at that point was that the term "constituent" really is an entity born out of the Election Act. To have an electoral process, the province has to be somehow subdivided so that each resident of the province of Alberta has someone representing him, so there's a proportionality to it. Once elected, one becomes a Member of the Legislative Assembly of Alberta, and even though he stems from that particular riding, he makes decisions on behalf of all Albertans and for all Albertans. So limiting the scope to only representing constituents would be misleading. I think that in the interests of Albertans and transparency it would be better to have the term "Albertans" included.

Dr. Morton: Would it clarify matters or just make it more wordy if we said something like this: on behalf of Albertans, both nonresident or resident within the member's constituency. Or is that just more words?

Mr. Shariff: More words. It really doesn't achieve the purpose.

We had a very elaborate discussion, and basically Thomas summarized the gist of it, that once we're here, we even sit on different committees doing different work within various portfolios. So we don't necessarily only represent the residents within our riding.

The Chair: It could be a disabled community. It could be a community that crosses boundaries. I think that was the concern. Engaging in those types of issues certainly is not what the act is meant to control.

Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. I would agree with this proposed change as well. Without this, if it stays at constituents, I think we run the risk that someone or individuals might seek to use that particular provision against the member to try to be very narrow, to say that you're doing something that goes beyond your specific four walls of your constituency. I think the speakers that have spoken before have touched on the point that once you become a member of this body, your focus is much larger than that defined boundary that you represent. I think it's important that the act spells that out.

The Chair: Mr. Hamilton, do you want to contribute to this discussion? Do you have any concerns with the change to "Albertans"?

Mr. Hamilton: If it was me, I'd leave it.

An Hon. Member: Leave it how?

An Hon. Member: Constituents?

Mr. Hamilton: People call it ridings. We don't have ridings in Alberta, but people talk about ridings.

The Chair: Anyone else?

Ms DeLong: I know that even on this committee I'm not here on behalf of my constituents because I have not gotten any calls at all regarding conflicts of interest. I am very much here on behalf of Albertans. So all of this work is on behalf of Albertans here.

The Chair: Mr. Martin.

Mr. Martin: Yeah. Let's have the question on it.

The Chair: Okay. We'll call the question. All in favour of the recommendation as presently worded, please signify. Anyone opposed? It looks like it's unanimous. Okay, recommendation 6 is that

the Act should be amended to provide that "no Member should use his or her influence in a manner, or use inside information in a manner, that would advance his or her own private interest or that would improperly and I've put in brackets the word "inappropriately" further the private interests of any other person.

Now this wording here is adopted from, I believe – was it Nova Scotia? One of the jurisdictions that was in the information paper was referenced in our last meeting, and that was taken out of the meeting. We've not specifically resolved that wording, but I put that wording in as a focus of the discussion because I tried to capture what the essence was of what we were trying to achieve there. I did use the parts in the quotes there as a starting point.

We'll put it to the committee. Do you want to have any discussion on the wording as proposed there?

Mr. Oberle: Mr. Chairman, I guess I'm prepared to proceed with that as a recommendation in that we're not drafting the legislation here. As legislation I'd be very uncomfortable with either of those

two words in that they're very subjective. Just about any policy discussion you take part in here is going to further somebody's private interest. What if you've met them once? As drafted legislation it wouldn't work, but as a recommendation I think it's proper, and I think we should proceed with it.

The Chair: Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chairman. I share a similar concern. If we are talking about further advancing the interests of any other person, I think it's very wide. This is really loose. If we replace this with, "further advancing the private interest of a direct associate," then it becomes more focused. Our concern is, you know, if we're advancing the interests of a direct associate. Now we're expanding the definition of a direct associate, so I think this really covers it. But "any other person": I could be voting on something that might advance the interests of a farmer, you know.

6:35

The Chair: Well, yeah, but the key is: improperly or inappropriately.

Mr. Elsalhy: So "improperly" is the qualifier.

Mr. Oberle: You have a number of friends that are not direct associates. So "improperly" would be the key word.

The Chair: Or your brother. That was the example that we used in the discussion: to inappropriately further another person's interest. It may not fall within the definition of direct associates, but it could be your best buddy, as Mr. Oberle suggested last time, or it could be a brother or it could be anybody else.

Mr. Oberle, just to get around the wording of that, could we remove the brackets and put in the words "or inappropriately," just as a recommendation, take the brackets out and put in the word "or"?

Mr. Oberle: Yeah.

Mr. Groeneveld: Mr. Chairman, what were you trying to achieve by changing those two words? I mean, it's quite subjective to what?

The Chair: I don't think we want to get into the drafting of it, but the I think the recommendation is that . . .

Mr. Groeneveld: I know, but you put that there. You threw it out there for us now.

The Chair: The word "improperly" was the word that was used in some of the other provincial legislation, and it got at the idea of improperly influencing or using inside information. I think that the core of the discussion at the last committee meeting was that we wanted to put something in there which isn't in there now. It's reflected in the preamble of the existing act, but there's no provision in the act itself which addresses that particular idea of integrity and impartiality.

Mr. Lukaszuk: I can appreciate Mr. Oberle's concern. However, we have to put this whole act in context of the fact that this entire act is a very subjective piece of legislation and many of the definitions that we have here will be ultimately interpreted by the Ethics Commissioner. So what you and I may find to be appropriate or inappropriate at the end will become irrelevant. It will be what the commissioner finds to be appropriate or inappropriate that will

finally make the day. So defining those words would be impossible. None of us around the table would agree on the definition of those words.

The Chair: Yeah. I don't think we want to get into applying definitions.

Mr. Shariff.

Mr. Shariff: No. I'm fine with where the discussion is heading.

Mr. Rogers: Mr. Chairman, I have trouble with this provision. I just find that it's open to so much interpretation. I think of just an example. I've been asked by someone – and I'm going to be specific here – to deal with the department of transportation on a matter of a berm on a piece of the Anthony Henday relating to a number of homes. Now, just for argument's sake, if I speak to the minister or someone in his department and that berm gets built because it's necessary, what have you, could I be attacked for benefiting those specific six homes in that area? [interjection] I don't know. I'm a little uneasy with this.

Mr. Elsalhy: Would this be inappropriate?

Mr. Rogers: That's what I'm wondering. Could I be challenged?

The Chair: I can't see it myself.

Mr. Oberle: Mr. Chairman, I think our purpose here tonight is to write this recommendation in a way that will provide enough clarity to whoever is drafting the actual legislation. If you remove the brackets and put "or," I think it conveys the thought. It's a difficult one to write.

Ms Dafoe: I just wanted to issue a reminder, I guess, that section 5 will also have to interplay with this provision, section 5 being the one that says that a member doesn't breach the act if the activity is one in which an MLA normally engages on behalf of Albertans. So there will have to be a weighing process.

Ms DeLong: Again, I'm very uncomfortable with this because it is so loose. We're trying to find a word that specifically says that you're doing something wrong, yet we're not specifying what that wrong thing is. So we're doing something wrong, but what's the wrong thing? I'm just generally uncomfortable with us putting in something that is so very loose, and we're struggling to find the word. Why is it that when it becomes drafted, suddenly they'll find this magic word? I don't think that there is a magic word out there that specifically says: this is right, and this is wrong. So I hesitate to put it in there at all.

Mr. Martin: I don't see this particularly as a problem. The one that George talked about: to me that's fairly self-evident that you're doing constituency work. I think the Ethics Commissioner would look at most of those things and say that that's constituency work. I think the way that this is worded – "that would advance his or her own private interest" and "use inside information" and those sorts of words – clearly indicates, I think, that something is dubious at best.

Again, we don't have to lay out what that is in each case. That would be an individual case that would go to the Ethics Commissioner, and if it was inside information or something else that was wrong, he would make that decision. Broadly, this makes, I think, some sense and gives some latitude. We're not writing legislation, and we don't need to pick every case. I think the vast majority of

things would be constituency work, certainly the one that George talked about.

I think we should move ahead and support it.

Mr. Hamilton: That happens. Somebody comes in and it's not black and white, and we talk about it and then make a decision. There are going to be times, no matter what you do, when there's going to be a decision that has to be made just off the top of our head on what the people are thinking and what they're doing. Okay?

Mr. Groeneveld: I would make a motion that we proceed with that so that you can put it to the test. That would be with the changes.

The Chair: With the word "or" in there and the removal of the brackets?

Mr. Groeneveld: Yes.

Mr. Shariff: Mr. Chairman, just sensing the room, there is some hesitation about that last phrase in the recommendation, "interest of any other person." The last time we were discussing, the discussion pertained to personal interest meaning, you know, if somebody would financially benefit from a decision or a recommendation he would make. We said that there are people other than your immediate associates who could also benefit. That's why we wanted to capture it.

The way it's worded here, I'm sensing some hesitation. On most of the recommendation we've been able to come to a consensus as a team; on this one I'm sensing some hesitation. So let's talk about that last phrase and if there's an alternate way to capture it.

The Chair: Well, trying to back up to where we were on that discussion, I believe that the problem was that you could do something that might well not further your own personal interest but that might further the interest of somebody who is a close relative or a close associate or a close friend. Rather than get into the nitty-gritty of trying to define all of those permutations of who might fall into that proscribed group of people that might benefit, we decided that we should try to make a general statement about the impropriety of it. I think that's what the legislation that we copied there was trying to do in the same sense. Rather than looking at the specific categories of people, it was aimed at the impropriety of it.

Mr. Shariff: Mr. Chairman, my argument – and I agree; I have no difficulty with the wording – is that if within this room we have a few members having difficulty with, you know, this last phrase, when you take it to a broader Assembly, there will be even more doubts and questions about that last phrase. That's why we need to see if there's any other way of capturing that same intent.

6:45

The Chair: I'm open to suggestions.

Mr. Lukaszuk: Let me bounce one by you, Mr. Chairman. Maybe we can alleviate some of the hesitation if it was to be drafted to say that the act should be amended to provide that no member should use his or her influence in a manner or use inside information in a manner that would advance his or her own private interest or that would, in the opinion of the Ethics Commissioner, improperly or inappropriately further the private interests of any other person.

Ms DeLong: What if we changed that last phrase? I mean generally. I think you're going in the right direction. For that last phrase what if we were to say: the private interests of a close associate?

Mr. Martin: It seems to me that we've already talked about it to some degree in 4 – right? – "should be amended to prohibit a Member's sharing of any information." We're sort of in that general direction in 4, and I think 6 is just alluding to it. It seems to me that it's a broad sort of thing. If it's improper, it's improper. Probably 9 out of 10 people would see it as improper if the Ethics Commissioner was going to move on it. All we're saying is a general statement there that people should not use information in an inappropriate way for anybody, period.

Mr. Shariff: Maybe the appropriate question to ask is: for those who have hesitation, are you convinced that we can leave the words, and would you be able to live with it? I'd much rather we have a consensus going forward. It's still no? Okay.

Dr. Morton: It doesn't have to be now.

Mr. Shariff: No, no. But generally. How many people feel very strongly that those words are not appropriate? Two? Okay.

The Chair: Would the two individuals be more amenable to this if Mr. Lukaszuk's suggestion was adopted, if you put something in there relating to the discretion of the Ethics Commissioner?

Mr. Rogers: Mr. Chairman, I just find that this section is open to too much interpretation. That's my only hesitation. I can appreciate a need for some of this type of language, but I find this just very open to a lot of interpretation.

The Chair: Again, we're not writing the legislation.

Mr. Rogers: No, no. I realize that.

The Chair: We're making recommendation here that the act try to capture this concept of improper influence to further an interest of someone personally or somebody who is a close relative, associate, friend, whatever. That's the essence of it.

Mr. Rogers: I'll suggest this, Mr. Chairman. If we can tighten the language in some manner, and again without trying to draft it here – it has to zero in on me trying to get a benefit for Ray and not just something that . . .

Mr. Martin: That would be okay.

Mr. Rogers: Well, there you are. I'm sure Ray would like that.

Rather than something that could benefit Albertans, members of a community, a neighbourhood – but, by the same token, because my good friend happens to live in that cul-de-sac, I'm going to be attacked and persecuted. Even if I'm found to be innocent at the end of the day, my name has been dragged through the mud, as has happened around these parts. That's the hesitation I have, Mr. Chairman.

Mr. Shariff: Can I ask George this question? Just taking Ray's analogy, if you went just one before, number 4, where we do talk about "any other person," you were okay with that, but on number 5 you're not. Just read that again.

Mr. Rogers: Number 4 says something that's "not available to the general public." That's very specific. I just find this number 6 very open to interpretation, and again, even if the member were found to be well within what's expected of his duties, it has the potential to

drag your name through the mud. I'm only one dissenting voice here. I mean, we can move on.

Mr. Oberle: Given that this is a recommendation, why don't we add another sentence to it, something to the effect that the committee in general felt some sensitivity around the use of the words "improperly" and "inappropriately" and recommends careful drafting of this section and ensuring consistency with section 5? You know, just to add some clarity to what we're talking about here.

The Chair: Ms DeLong, would that satisfy you?

Ms DeLong: Well, right now it's so wide, and that's our whole problem, that it's just so wide. I can't agree until we do get down to something that actually does narrow it down. I mean, George's point is right on in that if an investigation is taken, then your name is dragged through the mud. As soon as there's an investigation, your name is dragged through the mud, and it gets dragged and dragged and dragged.

The Chair: Ms Dafoe, do you have any comments? This is out of another piece of legislation, provincial legislation, and we're not reinventing the wheel here exactly. Do you have any comments that you'd like to add?

Ms Dafoe: I don't want to make this discussion any more difficult than it already is, but I did put together some alternative wording. I'm not intending to suggest that the wording that's submitted there isn't decent, but there are other options that I put out. In the document that has "Questions Arising from the September 19, 2005 meeting" and then it says, "Improper influence" – it's just a one-pager – I had sort of separated out recommendation 6 into three sections: an amendment to section 3, an amendment to section 4, and then a discussion of section 5. This is just my take on it, so I'm just letting you know the way I perceived this to go, but I saw that the proposal regarding improper influence is already going to be incorporated into section 4 by way of recommendation 4, which Mr. Martin raised earlier.

The Chair: Well, that's only insider information that that deals with. It doesn't deal with the concept of improper influence though.

Ms Dafoe: The way I took that was that any use of information that is not available to the general public for anybody's private interest would be improper, so there's no need to put the term "improper" in there at all. That was just my view, but what that did do was make it more simple to address improper influence in section 3, I thought. You'll see there's option 1 and option 2 that I laid out there. Option 1 is wording that they use in the federal code. There are other jurisdictions that talk about improper advancement of any other person. So Alberta wouldn't be out there on their own in using broad language in this instance. The federal Conflict of Interest Code for Members of the House of Commons says that a member breaches the act if a member uses his or her position as a member to influence a decision of another person in order to improperly further the private interest of any other person.

The Chair: That's very similar to what we've got in 6 right now.

Ms Dafoe: It is. It's very similar. It just takes out the insider information bit. I don't know if it makes it clearer or not, but it does separate the two issues.

The Chair: Well, that's one way to achieve it because we've already dealt with the insider information in number 4. We could properly delete the words "or use inside information in a manner" from number 6 then. Further discussion on that point?

6:55

The options that are suggested in the discussion paper here are slightly narrower than what we've got there. They don't include the use of the concept of inside information, which we've already dealt with in recommendation 4. So the suggestion is that we would just deal with the concept of improper influence to further a private interest or improperly further the private interest of another person.

We do have a motion on the floor.

Mr. Groeneveld: I'd be willing to change that if that would help the other people.

The Chair: Do you want to withdraw the motion?

Mr. Groeneveld: You want me to withdraw the motion?

I think we have to remember that the commissioner feels that he has to have some latitude here.

Mr. Rogers: All of this will ultimately go through the commissioner's hands at some point.

The Chair: Okay. I hear two different suggestions here, one of which is that we get rid of the phrase within the commas there, which is "or use inside information in a manner." Can we vote on that proposal first? All in favour of deleting those words?

Hon. Members: Agreed.

The Chair: Anyone opposed? Okay.

The second proposal is by Mr. Lukaszuk. Do you want to articulate that, Mr. Lukaszuk?

Mr. Lukaszuk: To be honest with you, it's not necessary because the whole act is subject to the Ethics Commissioner's interpretation. To alleviate some of the hesitations on behalf of those members, insert after the word "would": in the opinion of the Ethics Commissioner improperly or inappropriately further the private interests of any other person.

Mr. Shariff: I have a concern with that. If we were to insert it in this one section, we may have to insert it in many other sections.

Mr. Lukaszuk: Which proves my point that we don't need it in the first place.

The Chair: Mr. Elsalhy.

Mr. Elsalhy: Yes. Thank you, Mr. Chairman. Finally. If we are removing the phrase between the commas "or use inside information in a manner," then we would probably have to add in section 4 or under insider information "own private interest" because "own private interest" is not added under section 4. So if you're going to remove the phrase "or use inside information in a manner" from number 6, then in number 4 you would have to add something regarding furthering his or her own private interest because it's not captured under 4.

Did I make it clear?

Mr. Shariff: It says for “the private interests.”

Mr. Oberle: It doesn’t say: his own private interests.

Mr. Elsalhy: Yeah. It doesn’t say: his own.

Mr. Oberle: So in number 4 after “further” we have to say: his own private interest or the private interests of any other person.

Mr. Elsalhy: So if you are weakening number 6, you have to strengthen number 4.

The Chair: Everybody on board there? Can we first deal with number 6? Then if the wish is to go back to number 4, we can do so. I think that what we want to do is see whether or not we can deal with the suggestion. Mr. Lukaszuk has made a suggestion now that we insert some words after the word “would” and then “in the opinion of the Ethics Commissioner.” Some people are not agreeable to that. So let’s open the floor for other discussion.

Ms DeLong: Can we talk first of all about what it is that we’re trying to stop? Some examples. Okay? Maybe if we talk about the examples, then we can get more specific as to what kind of wording we need to stop whatever this bad thing is that could happen.

The Chair: I think it’s fairly obvious. What it says is that a member should not use their influence in a manner that would advance their own private interests or those of someone else inappropriately.

Ms DeLong: The first part is really clear. Okay? I mean, that’s what the whole act is about: that you’re not supposed to be working on your behalf. You’re working on Albertans’ behalf. That’s what the whole act is about.

The second part, about someone else’s private interest. That’s what we do all the time. We work on other people’s private interests. You know, a guy came in, and he wasn’t getting his AISH payments. That’s his private interest, and that’s what I’m working on.

The Chair: That’s where the word “improper” is the foundation of the whole concept. It’s the impropriety of it. It doesn’t pass the smell test. That’s the issue. It’s not whether you’re furthering somebody’s interest because we all do that. That’s what we’re elected to do.

Ms DeLong: Right. But if we can maybe give some examples of some things that we have not covered in here, and that’s why we’re having to do this.

Mr. Oberle: We do have the section here that says that you’re allowed to act normally as an MLA, and this says “improperly.” If I were to influence or try to influence the minister of transportation to relocate a road that just happened to run across my brother-in-law’s property, that would be improper, right?

Ms DeLong: Your brother-in-law?

Mr. Oberle: Yeah, whoever. Not a direct associate but somebody I happened to drink with on Friday nights or whatever. Or if I were to use my influence back in Peace River and said to my contractor friend: “You should probably hire my brother-in-law. It would be a good idea.” Right? So you’re either influencing a decision of the Crown or in general using your influence improperly. That would

be improper. Neither of those would be in the normal exercise of my duties as an MLA.

Ms DeLong: Right. But what we’re talking about here are associates of some kind: family, close friends. So isn’t it who we’re actually helping out that matters here?

The Chair: Getting back to our discussion last time, I think that what we wanted to try to achieve, again just to restate this, is not to try and come up with a comprehensive list of people that were proscribed on this, that we couldn’t further the interests of, but to come up with something that dealt with the nature of it, the impropriety of it. That’s what we’re trying to get at. As Mr. Oberle said, there are certain circumstances where it could be the brother-in-law, where it could be the brother, where it could be your best friend.

Mr. Oberle: Although I argued against it before, the use of the word “improper” here is kind of interesting because if this was somebody that you didn’t even know, have never even met, then it would be really hard to say that it was improper that you’ve influenced somebody to help this guy out. If it was your brother-in-law, it wouldn’t pass the smell test. Right? So it probably works.

Mr. Lukaszuk: If you want a list of everything and anything that you can’t do, what we can do, Mr. Chairman, is we can appendix to our report the Gomery report, and that will give you a pretty exhaustive list.

Mr. Oberle: In fact, maybe we should do that.

Mr. Shariff: Let’s vote and move on.

Mr. Martin: Let’s move on.

The Chair: Okay. Do we have a consensus emerging here then? I need somebody to make a motion because it’s been withdrawn now.

Mr. Shariff: George has a motion.

Mr. Groeneveld: We’ve got a motion, and I’m not going to withdraw it until I see something better here, and I haven’t seen anything better.

Also, Mr. Chairman, the comment I’d like to make: if we’re going to have a unanimous decision on this whole book, we’ll be here Christmas Day.

The Chair: Well, a good point. Good point.

Are we ready then?

Mr. Shariff: Yes.

Mr. Rogers: We can go. I still have some thoughts, but we can’t belabour this one forever.

The Chair: Mr. Shariff, you were still trying to make a point?

Mr. Shariff: No, no, no. I’m saying: let’s vote and move on. You know, we try and achieve consensus. Where we can’t, we can’t. The majority will move on.

The Chair: Okay. So as I understand it, Mr. Groeneveld’s motion is that

we should proceed with recommendation 6, deleting the brackets around the word “inappropriately,” inserting the word “or” after the word “improperly,” and removing the quotation marks.

Is that correct, Mr. Groeneveld?

7:05

Mr. Groeneveld: That’s right because anything else was going to make us back up to number 4, and I think we better carry on here.

The Chair: Are we ready for the question?

Hon. Members: Agreed.

The Chair: All in favour?

Some Hon. Members: Agreed.

The Chair: Anyone opposed? Two opposed.

Dr. Morton: Is it the quotation marks you want to remove or the closed parentheses that you want to remove or both?

Mr. Groeneveld: Yes.

The Chair: Okay. Recommendation 7 is:

Section 2 of the Act should be expanded to add that a Member must declare his or her interest and withdraw from participation in decision-making if there is a known private interest that would advance the interests of a Member’s adult child.

Presently, you’ll remember, the word “associate” only deals with minor children.

Can I have a motion on this recommendation? Mr. Elsalhy moved that the motion be adopted as reflected in the draft.

Mr. Elsalhy: Yes. It just makes sense.

Mr. Hamilton: Mr. Chairman, you should know that members have children of age working in their offices. I think there are three or four. There may be more, but there are at least three or four on both sides of the aisle. You might have to think about that.

The Chair: Well, is this decision-making that we’re referring to here, as I understand it – Mr. Reynolds, you can help me here. This is a discussion that’s taking place in the context of either committees of the Legislature or in the Legislature itself. I don’t think it would apply to an outside contract. Am I correct in that in the context of section 2?

Mr. Reynolds: Yes, Mr. Chair. I think that you’re quite right that it does relate to committees and decisions in the Assembly, but of course under 2(1) it says, “If the Member takes part in a decision in the course of carrying out the Member’s office or powers knowing that the decision might further a private interest of the Member,” and I assume that that’s where you would add “adult child.”

The issue, as you know, is that when you have a constituency office, it’s the member who recommends the employee, and it’s the member who recommends the contract. Although the contract itself is technically entered into between the Clerk of the Assembly and the employee, it is the member that recommends the employee or the contract. So it would be difficult to say that the member is not involved in the decision.

The Chair: Could we avoid this particular difficulty as pointed out by Mr. Hamilton if we restricted the application of recommendation

7 to 2(2), to the second subsection, which appears to deal with meetings of Executive Council or committees of the Legislature or the Legislature itself? In other words, in (1) we wouldn’t say “minor child” and “adult child,” only in subsection (2) as it talks about the meeting in that context.

Dr. Morton: These are policy recommendations, not a statute, and it’s not going to go into effect right away, so it’s not going to affect people who are in the situation just described by Mr. Hamilton. My own personal view is that it’s quite inappropriate to hire family members to work in your office. I think a lot of people in Saskatchewan got in trouble for doing that. I think the word to describe that is nepotism. I don’t have any trouble at all making a policy recommendation that somewhere down the road might make it unacceptable to do what certain members are doing now.

Mr. Martin: That’s right. I think it’s inappropriate too.

Mr. Lukaszuk: I couldn’t agree more with Dr. Morton. That’s what I was about to say. It sounds like we’re trying to tailor our recommendation to a situation that’s already in existence and endorsing something which I personally feel to be wrong in the first place. We’re not drafting a piece of legislation right now. Those members who are in that position, no matter what side of the aisle they’re on, will have a chance to rectify their position once the new legislation comes into effect. This act shouldn’t be accommodating current practices but directing future practices.

Dr. B. Miller: I agree. I wouldn’t want to just restrict it 2(2), but it should be in 2(1).

Mr. Oberle: I’m not a lawyer, but the last line of that kind of doesn’t make sense to me. Maybe I’m missing something. You say that they would “withdraw from participation in decision-making if there is a known private interest that would advance the interests of a Member’s adult child.” Shouldn’t that be: if the outcome would advance the interests? Am I wrong there?

The Chair: I think the reason it’s “known” is because conceivably somebody might have shares in a company that was unknown to the person. You might inadvertently further the interest without being aware of it. I think that was the reasoning there, and I think it’s an appropriate restriction on that.

Mr. Oberle: I understand what you said, but how can a known private interest advance the interests of the child? I don’t understand that wording there.

The Chair: It’s kind of awkwardly worded. You want to massage that?

Mr. Oberle: It’s just a funny wording. Again, it’s a recommendation, and I think it’s clear what we’re doing here.

The Chair: Perhaps the words: that would advance the known private interests.

Mr. Oberle: That would advance the known private interests of a member’s adult child. Exactly.

Mr. Rogers: It almost seems like it needs to be both, Mr. Chairman.

Mr. Oberle: Now you’re going to change it to: participation in

decision-making that would advance the known private interests of a member's adult child. That makes it clear.

The Chair: Does that make sense? Ms Dafoe, do you want to comment on that?

Ms Dafoe: If you're happy with that, I won't say anything.

The Chair: Well, I'm going to make a suggestion here, then, that section 2 of act should be expanded to add that a member must declare his or her interests and withdraw from participation in decision-making if that decision would advance the known private interests of a member's adult child. Does that make sense?

Mr. Hamilton: Adult child?

The Chair: Yes.

Mr. Hamilton: Explain that to me.

The Chair: An adult child is somebody over the age of 18.

Mr. Hamilton: But he's an adult, not a child.

The Chair: But he's the child of the father. He's still a child. If you have children, they could be 90 years old.

Mr. Hamilton: Okay.

Mr. Rogers: Mr. Chairman, I'd just again try to get to the bottom of this. What is the desired outcome of this? I'm reading this that it could be specific to an adult offspring of someone or, again, a private interest. Is number 7 specifically aiming to deal with offspring? That's it? Okay.

7:15

Mr. Oberle: They're not direct associates once they're an adult child or offspring. Your minor children are already captured.

Mr. Rogers: Okay. So this is just specifically about your offsprings. Thank you.

The Chair: Okay. I'm going to read again the proposal that I made just so that everybody understands.

Section 2 of the Act should be expanded to add that a member must declare his or her interest and withdraw from participation in decision-making if that decision would advance the known private interests of a member's adult child.

Any discussion on that. Would somebody like to move that motion?

Mr. Shariff: No, no, no, no.

Mr. Oberle: "The" member's adult child, not "a" member's adult child.

Mr. Shariff: I just want a clarification based on the discussion we had last time. Did we at any stage capture other family members? You know, today's families are very blended. This is talking about a direct child, not a stepchild, not a brother or uncle. Did we in any way capture or decide that we're not going to deal with them? Can I advance my brother's business and get away with it but not my child's?

Mr. Martin: It's captured elsewhere.

Mr. Shariff: It's captured elsewhere. Okay. I know that there was some discussion about it, but I don't remember where we captured it.

Mr. Martin: In some degrees in some way this is sort of adding on because when we talked before we were covering theoretically everybody and now we're being . . .

Mr. Shariff: No. No. The reason I'm asking is because if you go back to number 6, we're talking about "any other person," and that child is also any other person.

Mr. Martin: Exactly. That's what I'm saying.

Mr. Shariff: So is this redundant?

Mr. Martin: To some degree.

Mr. Oberle: Well, you can't withdraw from participation in decision-making for any other person. We would all stay home then.

The Chair: Are we ready to vote on the question then? All in favour? Anyone opposed? Carried unanimously.

Recommendation 8 is that

section 1(5)(e) should define the term "agent" as a person acting with the express or implied direction or consent of the Member or Minister and who is acting to further the interest of the Member or Minister.

Can I have a motion on that? Mr. Rogers?

Mr. Rogers: Sure.

The Chair: Discussion?

All in favour? Anyone opposed? It's unanimous.

Recommendation 9 is that "section 7(1) of the Act should be amended to exempt any gifts, fees, benefits, or tickets to a political fundraising event that were received from political parties and constituency associations." This is a recommendation of the Ethics Commissioner. Would someone like to move that motion?

Mr. Rogers: Well, I have a question, Mr. Chairman.

The Chair: Would someone like to move it? Mr. Martin.
Discussion. Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. Again, if this is speaking specifically to political affiliation, then that's one thing, but we also talked about tickets to fundraising events, and this doesn't address that. So I'm wondering if this shouldn't read "political or fundraising" because not all fundraising is political.

The Chair: We did talk about that last time.

Mr. Rogers: Yes, we did, but is that captured someplace else? If all we're dealing with here is political fundraising, then we missed the boat. When I get invited to the Grant MacEwan Mad Hatter's Ball or NAIT or SAIT or many other charity functions, that's not political at all. So if we haven't captured that someplace else, we need to plug it in here.

The Chair: Mr. Hamilton, do you want to wade in on this? I believe you mentioned last time that this was a result of the fact that

people were declaring the fact that they got a \$300 ticket to the leader's dinner or something, and they had to declare that as a benefit of \$300 or something like that.

Mr. Hamilton: As I see it, there are two parts to this. One is when the MLAs go to fundraisers to be there. They should not have to declare that. That's the work they do. If, though, the next month you go and cut a ribbon for something, and they give you a \$400 painting, that is different. They're two different things, as I see it. The writers have tried to capture this – and that's not easy – wherever they are, but we have a problem with that.

Mr. Lukaszuk: A question for the commissioner. I find myself attending, gosh, probably on average two functions per day in Edmonton for which I don't pay because I'm asked to show up to either appear as a guest of honour or to speak, but others who attend that very same function pay to be there. I'm there in my official capacity because I'm asked to do so, not by choice but by duty. Now, does this capture that? Is this somehow a benefit to me?

Mr. Hamilton: No.

Mr. Lukaszuk: Okay.

Mr. Hamilton: If somebody invites a few members to go to the hockey game, or they keep going every week, that is a problem. But once a year? Well, that's . . .

Mr. Oberle: How do you draw the line there then? If you're invited to the chamber of commerce luncheon, all the people in the chamber of commerce pay, but you're not asked to pay. It's not a fundraiser. It's private business. It's not a charity.

Mr. Hamilton: No. You're an elected official.

Mr. Elsalhy: So that could be exempted as well then.

The Chair: Ms Dafoe, do you want to comment on this?

Ms Dafoe: I think I do. My concern is that perhaps it might better reflect the committee's intention if there's a separation between tickets and gifts, fees, and benefits because I see a potential problem with this exception if it applies to everything. Wouldn't there be a possibility that if I wanted to give a gift to you of a value of \$600, Mr. Chair, I could funnel it through your political party? Since it comes to you from your political party, it would fall outside the scope of the rule.

The Chair: How would that work?

Ms Dafoe: I would give it to your political party.

The Chair: You're talking about a noncash . . .

Ms Dafoe: I'm talking about a noncash gift. I'm not talking about tickets, and I'm not talking about money; I'm talking about a painting. Normally you would have to decline it, but if this exception as worded were to be inserted into the act, you could accept it from your political party. So what I'm suggesting is that if you want to make an exception for tickets to political fundraising events or charitable fundraising events, that come from a source. That's one thing, and that's entirely kosher. But gifts, fees, and

other benefits might be something that you want to think twice about, maybe put some tighter parameters on.

The Chair: I think, if I recall correctly, though, that the discussion centred around those very things like a gift of appreciation from a riding association to their MLA or something. We didn't want to capture that as something that was proscribed. I think we wanted to make the exception for those types of things, for political. Maybe we ought to have a separate provision in here to deal with Mr. Rogers' contention about charitable or nonprofit organizations giving tickets. Recommendation 9 is very specific to the political arena. Maybe we want to deal with it not by whittling away at it but by adding something separate.

7:25

Mr. Rogers: That would be my thinking, Mr. Chairman. Again, the whole issue of gifts around the political association: that's one thing. Whether this particular provision, taking out the tickets, is tight enough is something we could discuss some more. We definitely need a section that makes it very clear that if you're given a ticket to a political event, a leader's dinner, or the Mad Hatter's Ball, that's not a benefit because if I was not the MLA, I would not be invited to those things.

The Chair: As Mr. Hamilton I think has pointed out, there's a distinction to be drawn between something which is tangible and something which is consumable, going to a dinner or something like that. I think that there's clearly a difference between those two separate concepts.

Mr. Shariff: We did have a very extensive discussion on this subject, and we are wondering: where is that in this recommendation? Members had expressed very strongly that we get invited to umpteen events every month.

Dr. B. Miller: It's covered.

Mr. Shariff: Well, where is it covered?

Dr. B. Miller: Well, it's already covered in 7(2), "incident of protocol or of the social obligations that normally accompany the responsibilities of the Member's office." It's already in the act.

Mr. Shariff: You know, I think – and I'm just going by memory – that there was the issue about the dollar value, the \$200 limit per year.

The Chair: It's the next one.

Mr. Shariff: It's the next one? Okay. It's coming. Sorry.

The Chair: Mr. Martin, do you want to add anything?

Mr. Martin: Just so we're clear. In my political party we never have the money to do it. I think we're saying, then, following from the act, that the things we do as an MLA, where we're invited to various functions, that's part of the role of the MLA, and that's covered in the act. Just so we're clear on that.

The Chair: Right. Yeah.

Mr. Martin: Okay.

Mr. Hamilton: When the leaders have a dinner and they want you there, you go.

The Chair: You're expected to be there.

Can we vote on number 9 as a stand-alone item? We are running out of time. We've got about two minutes left to conclude the meeting. So can I have a motion on recommendation 9 as it exists?

Mr. Martin, you made that motion?

Mr. Martin: Yeah. I'm doing it for you guys.

The Chair: Ms DeLong. Discussion?

Ms DeLong: Yeah. I don't like the hole that this has put in there. In other words, somebody can give something to a political party to be passed on to you.

The Chair: Well, surely that is something that could be seen through: you're indirectly receiving it. I mean, indirect or direct you're still receiving it from someone. I don't have a particular problem with that.

Mr. Reynolds, do you want to comment on that?

Mr. Reynolds: Well, I think that it hasn't come up because it isn't in the act, but by solving one problem, I'm sure you don't want to create another. As you know, Mr. Chair, ambiguity is what lawyers thrive on. If it wasn't for ambiguity in language, there would be no point for lawyers. If you have something that says that a fee or benefit from a political party is exempt from the act – I'm not saying that you'll find people doing this because I believe that people are basically good – theoretically it could occur that someone could attempt to do this. I understand your point about doing it indirectly, but I'm sure that, conceivably, hypothetically someone could go to the commissioner and say: well, I received this from a political party; it's exempt.

I think that the other problem with fees from a political party is that, of course, if a member started receiving payments monthly from the party, this would trench on the tax issue. But perhaps that payment might be indirectly from someone else. I mean, are you saying, then, that that would not run afoul of the act or that this section would provide a loophole for that situation? I don't believe that that's your intention.

The Chair: Are you suggesting, then, that the words "fees" and "benefits" don't appropriately belong in there with the gifts and tickets?

Mr. Reynolds: At first blush that would be my submission. I think that we could take that back and hone that down to perhaps get at that particular situation.

Mr. Martin: Well, part of this would have to be under the election act. Some of that would be covered through the election act. It seems to me that the monies going and coming would be under that act, wouldn't it?

Mr. Reynolds: You're right. I think it could be covered under the Election Finances and Contributions Disclosure Act. Perhaps. I'd have to look at that because, I mean, certainly you can still make contributions to political parties, and political parties are able to extend the money to constituency associations.

The Chair: There are restrictions on transferring from that political entity to other parties as well.

Mr. Reynolds: You can also make contributions directly to the constituency association. There is a restriction, I believe. I just can't see how you would want to even create the possibility that that could occur under the conflicts act. That's my concern.

The Chair: We've run out of time here. I'm going to make a suggestion that if Mr. Martin is agreeable to withdrawing his motion, we would refer this back to our technical staff and come back at the next meeting to deal with it in some more detail. Is that agreeable?

Mr. Martin: I'm always agreeable.

The Chair: Agreed?

Hon. Members: Agreed.

The Chair: Okay. Would someone like to move to adjourn, please? Mr. Lukaszuk. All in favour? It's carried. Thank you.

[The committee adjourned at 7:32 p.m.]

