

Title: Friday, December 16, 2005

Date: 05/12/16

Time: 8:44 a.m.

[Dr. Brown in the chair]

The Chair: Okay. We'll call the meeting to order. Good morning, everyone, and thank you for coming. I think we'll begin by doing introductions of those present. We'll start with you, Ray, on that side.

[The following members introduced themselves: Dr. Brown, Mr. Elshahy, Mr. Lukaszuk, Mr. Martin, Dr. B. Miller, and Mr. Shariff]

Ms Croll: Sandra Croll from PAO.

Mr. Hamilton: Don Hamilton, Ethics Commissioner.

Ms South: Karen South, senior administrator with the office of the Ethics Commissioner.

Ms Dafoe: Sarah Dafoe with Alberta Justice.

Mr. Reynolds: Rob Reynolds, Senior Parliamentary Counsel at the Legislative Assembly.

Mrs. Mackenzie: Nancy Mackenzie, writer.

The Chair: Ladies and gentlemen, we've got a quorum, and we have a couple of other individuals on the way, so I think we'll get started in view of the time.

A number of us have obligations back in our constituencies, and it's a Friday, which is traditionally constituency day. The proposal has been made that we perhaps have a short coffee break around 10:30 and then have a working lunch and work through till around 1 o'clock if that works for everyone. Is that agreeable? Okay.

I think we'll move on to the first order of business, which is the adoption of the agenda as circulated. Mr. Shariff has moved adoption of the agenda. Any suggestions? Comments? All in favour? Anyone opposed? That's carried.

Next we have two sets of minutes at the present time to be approved. Those are the October 24 and October 25 meetings of this committee. Those have been circulated in advance to the committee. Has everyone had an opportunity to go through the minutes, or would you like a couple of minutes to briefly review those?

Mr. Martin: I can never remember back that far anyhow.

The Chair: These are the ones dealing with the questions and the review of the questions. The last meeting, you will recall, November 23 – and we don't have the minutes yet completed – was the meeting at which we started to go through the draft recommendations. To some extent the minutes of the November 23 meeting will supercede the discussions at the previous meetings in any event.

Does somebody wish to move adoption of the minutes as circulated? Mr. Martin. Thank you. Any comments, errors, or omissions? I'll call for the question then. All in favour of adopting the minutes as circulated, please raise your hands. Thank you. That's carried.

We'll move back to the review of the draft recommendations dated November 17. As you'll recall, we completed our review up to and including recommendation 8. We had some preliminary discussions on recommendation 9, but we were not able to conclude our discussions in that regard, so we're back on recommendation 9. We have some additional information, which has been circulated by

our support staff. Mr. Reynolds and Ms Dafoe put this document together.

Would you like to kick things off and give us a few preliminary comments, Rob or Sarah?

Mr. Reynolds: Sure. That would be fine. Thank you very much, Mr. Chair. I just want to point out that this was handed out just prior to the last meeting in the event that we thought you might get there.

One of the issues that came up during the committee's discussion on September 19 was whether there were implications from increasing the level found in section 7(2)(a) of the Conflicts of Interest Act from \$200 up. That discussion is found at pages 69 to 72 of the *Hansard* transcript from that day, September 19.

8:50

Mr. Hamilton had mentioned that there could possibly be tax implications. Now, I will start with the major caveats here. Tax law is a pretty specialized area. Quite frankly, when I went to law school, I couldn't even spell tax, but notwithstanding that, I ventured forward.

I've examined the various sources on income tax rulings, et cetera, but I cannot say that this is a totally comprehensive opinion. Obviously, with tax matters it depends on your individual income situation. This is not meant in any way to replace the advice that you would receive from your personal tax adviser or accountant. Also, going on to discuss gifts, I just want to make the point that this will depend on the nature of the gift itself. This is a general view. It's not meant to be, as I said, totally comprehensive nor cover every possibility that comes up. So this is rather cautiously worded.

The bottom line is that, yes, the CRA, the Canada Revenue Agency, what you used to refer to as Revenue Canada or the CCRA, now the CRA, has issued bulletins concerning gifts. These bulletins, some of which are attached to your briefing note, deal mainly with gifts and awards given by employers to their employees. Technically you, of course, in the political-theory sense are not employees in any way because you're elected office-holders, but for the CRA purposes your employer would be the Legislative Assembly in the sense that members have tax deducted from their income, et cetera, and that's done by the Legislative Assembly Office.

In any event, upon my reading and review of the authorities related to section 6(1)(a) of the Income Tax Act, this appears to relate mainly to gifts in an employment context. True gifts, it appears, would not be covered in terms of income. That's based on the rulings that I've seen. It's true that your offices are included as offices of employment for the purposes of this section of the Income Tax Act, but quite frankly I can't find a ruling where a true gift to a member has been held to be income, which in my view is in accordance with what you perceive to be income, which is from a recurring source. Now, having said that, if a member goes out and solicits a gift, if the gift is part of a recurring payment in any way, if it's expected or anticipated as income, then you may have an income tax situation.

As I say, in increasing the limit to whatever you increase it to, \$500 or less, I do not necessarily see a tax problem per se with that. That's the long answer. Thank you very much.

The Chair: What I have gathered from reviewing the briefing note is that basically we can't look for any assistance to the Income Tax Act because the Income Tax Act takes the position that the funds have been taxed in the hands of the donor, so they're not taxable. The only thing they're concerned about is employers giving some kind of a benefit under the guise of a gift which would really amount to compensation, and they want to catch the tax on that.

We're back to square one with respect to the issue before us, which is to deal with the issue in the Conflicts of Interest Act. Really, I think the nub of it is: what is the issue from an ethical standpoint? I don't think we can look for any assistance to other legislation here other than ourselves. I think we really need to address the issue.

Perhaps the Ethics Commissioner can give us some assistance with what he thinks is an appropriate level of gifts or benefits from which the person would be exempted.

Mr. Hamilton: The information that I brought was from the Auditor General. I think the \$200 was 10 years ago or more.

The Chair: I think we had a fairly full discussion last time about the nature of some of these gifts too. The distinction was made between something which was expendable or consumable and something which was, you know, of a hard monetary value perhaps. Things like tickets to events and so on we talked about at some length.

Mr. Hamilton: I would suggest \$400.

The Chair: And that's per calendar year then?

Mr. Hamilton: Yeah.

Mr. Shariff: I think, Mr. Chairman, we had an extensive discussion on this subject last time. I suggest that we do have a vote. Quite frankly, when I look back at my 10 years of service, there's not a single occasion where I've received a gift of that value, so whether it's \$400 or \$500, it's covering the upper limit for some people. I suggest that we move on and have a vote on this.

The Chair: Would you want to make a motion then?

Mr. Shariff: I move that we increase the amount to \$400 as recommended.

The Chair: Per year? Cumulatively?

Mr. Shariff: No. Per occasion, right?

The Chair: Well, that's what we've got now: \$200 per calendar year. So you're suggesting we move it to \$400?

Mr. Shariff: Isn't it currently per occasion?

Ms Dafoe: No. Right now it's \$200 total in a calendar year, so all of your gifts combined.

Mr. Shariff: From one source?

Ms Dafoe: From one source, yeah.

Mr. Shariff: Okay. In your capacity as an MLA if you were to receive from different sources different invites . . .

The Chair: Well, with respect, I think we might want to nuance this a little bit further because I think that there was general agreement at the last meeting that things like tickets to political fundraisers or charitable fundraisers and so on ought not to be considered within the parameters of those gifts. As Mr. Lukaszuk I think quite correctly pointed out at the last meeting, those are more of a civic

obligation to attend than they are some sort of a monetary gift. So I would like to receive, I guess, some more information.

If you want to make that motion, Mr. Shariff, that's fine, to raise it to \$400 per calendar year.

Mr. Shariff: Mr. Chairman, the way I look at the two recommendations, 9 and 10, is that 10 deals with the dollar value, that 9 deals with the exemption. The dollar value really applies to number 10, not to number 9. Correct? So we should have a vote on number 9, and then on number 10 I'll make a motion that we increase that amount to \$400 or \$500, let's say.

The Chair: So your motion with respect to 10 is that the act should be amended to receive noncash gifts to a maximum of \$400 per year.

Mr. Shariff: Four hundred dollars per year.

The Chair: Okay. Any discussion on that motion?

Mr. Martin: Did we not vote on 9 last time?

Mr. Shariff: No.

Mr. Martin: No, we didn't. Okay.

Mr. Shariff: We just need to vote on it and then have number 10.

Mr. Martin: I'm just trying to add up how much all the school mugs I get add up to in a year.

Mr. Shariff: Well, number 9 would cover you on that. That would be exempt.

Mr. Martin: No. I'm just kidding.

Mr. Shariff: I'll send you a couple of mugs too.

The Chair: Any further discussion? Are you ready for the question? All in favour? Anyone opposed? That's carried.

We're back to number 9 then. That is the suggestion that the act be amended to exempt gifts, fees, benefits, or tickets to a political fundraising event that were received from political parties and constituency associations.

9:00

Mr. Shariff: I move that we adopt that recommendation as presented.

Mr. Reynolds: Sorry. Well, you've moved it. Last meeting I raised a concern that if you included fees and benefits, you could be going beyond what it is you intend in the sense that in the hypothetical situation, not likely to occur – are you opening the door to cash gifts from your political parties by doing this? I'm not saying that this would happen, but you are potentially opening – I mean, what I believe I hear the committee saying is that you want to exempt tickets to events that you would attend in the course of your life as an MLA. When you start talking about fees, et cetera, in my view you're opening the door to receiving money from political parties, which would perhaps run contrary to the spirit of the legislation and potentially could involve a situation where you're receiving money from your political party which could have originated obviously from a different source.

Mr. Shariff: Yeah. I think, Rob, that you just clarified the discussion that we had last time. So let me amend the motion that I made. It should read as follows: section 7(1) of the Act should be amended to exempt any noncash gifts. And then delete fees, and the rest remains as is.

The Chair: Fees or benefits.

Mr. Shariff: Delete “fees, benefits,” and then in gifts make it non cash.

The Chair: Well, it would read then: section 7(1) of the Act should be amended to exempt any noncash gifts or tickets to a political fundraising event that were received from political parties and constituency associations.

Mr. Shariff: Correct.

The Chair: Mr. Elsalhy.

Mr. Elsalhy: Yes. Mr. Chair, thank you. How about charitable organizations that invite us to charitable fundraisers? Can we include that here?

The Chair: I think that’s another point. If you want to address it as part of this resolution, that’s fine, or we could have it separate.

Mr. Shariff: I think we’ve already addressed that because in those situations you are attending in your capacity as an MLA. It’s a social obligation as an MLA, and that is exempt. We’ve already dealt with that subject, I think.

Mr. Elsalhy: So you don’t need to incorporate it here.

Mr. Shariff: I don’t think we need to incorporate it in this. This is more to clarify the political relationship.

Mr. Martin: Where is it? Do you remember where we deal with that?

The Chair: I think Mr. Shariff is referring to the provision in the existing act.

An Hon. Member: Section 7(2).

The Chair: Yes, section 7(2), correct, which states that subsection (1) does not apply to a fee, gift or other benefit that is accepted by the Member or the Member’s spouse or adult interdependent partner or minor child as an incident of protocol or of the social obligations that normally accompany the responsibilities of the Member’s office if

- (a) the total value of the fees, gifts and benefits given from the same source to the Member . . . is \$200 or less,

Now we have suggested that that be changed to \$400. “Or”

- (b) the Member applies to the Ethics Commissioner and obtains approval. Those are the two exceptions. So I think we’re covered there.

Mr. Elsalhy: Thank you.

Mr. Shariff: And that dollar value changes to \$400.

The Chair: So is everyone clear on what Mr. Shariff’s motion is? Ms DeLong, for your benefit we’ll just restate this. In the recom-

mendations draft, page 3, under recommendation 9 the suggestion has been made that section 7(1) of the act should be amended to exempt any noncash gifts or tickets to a political fundraising event that were received from political parties and constituency associations.

Ms Dafoe: Just for my clarification, the noncash gifts do not need to be from a political party. Do I have that right? It’s just the tickets that need to be from a political party or a constituency association.

Mr. Shariff: No. This section refers to contributions from a political party or association. Right? The other one I think is reflected in 7(2).

The Chair: Clearly, the intention is that this is only applying to political parties or constituency associations on both aspects of it. If there is some patent ambiguity in the wording there, perhaps we could tighten it up.

Mr. Shariff: I just have a question for the lawyer who doesn’t know how to spell tax. Are we okay with this clarification, Rob?

Mr. Reynolds: Yes. I think that certainly captures the point that I was trying to make.

Mr. Shariff: Good. Thanks.
Question.

The Chair: Can we call the question then? All in favour? That’s carried unanimously.

So that brings us to recommendation 11, which states that the Act should be amended to permit air flights on private carriers to be exempt from disclosure when the flights are for the purposes of fulfilling Member duties to the province.

We’ll open that one for discussion.

Mr. Martin: Well, I don’t quite understand what we’re talking about here. Clearly, it’s not the government plane that we’re talking about. Are we talking about a person going up with a private person and then saying that this is fulfilling a member’s duties? I guess I would want some expansion.

The Chair: I think that the Ethics Commissioner last time pointed out some examples. For example, there were flights taken to look over the Wabamun oil spill site. We’re not talking about flights to fishing lodges or hunting lodges or anything of that nature but ones which are for the purpose of fulfilling a member’s duties.

Mr. Hamilton, do you want to clarify that? I think it was your suggestion that we wouldn’t need to include those particular items.

Mr. Hamilton: The best way to see what’s going on in the forestry industry, for instance: they have a plane, and that’s the best way to see what’s going on. That sort of thing, not jets going to Vegas.

Mr. Martin: They may be checking out gambling.

Ms DeLong: I think that the complication here that puts us in the position where we do this is that because of federal air regulations it’s not possible to reimburse a company for airfare if they’re not an authorized airfare deliverer.

The Chair: Commercial carrier.

Ms DeLong: Yeah. So that’s why this exemption is needed.

Mr. Shariff: Good point.

The Chair: Further discussion?

Is the wording then adequate, Mr. Hamilton, as far as you're aware?

Mr. Martin: The note that we have there is an important thing to discuss. Is it up to the member to decide that this is in his duties? Maybe Vegas could be included in that because of just checking out the gambling. So maybe there should be some input from the commissioner.

Mr. Hamilton: I agree with that. If you can put it in there that they're going to go there only if they get permission from the commissioner.

Mr. Shariff: I would be concerned, if some minister has to travel on an emergency matter, about trying to reach you to get an approval before they do that. Maybe there should be a disclosure procedure to let you know. Because in an emergency case, to go and look at a disaster situation on a Saturday evening, where do you track the Ethics Commissioner?

The Chair: Yeah. There was another example that was made. The clerk just reminded me of the incident involving the flooding down in southern Alberta where some of the individuals were down there surveying the flooding south of Calgary.

9:10

Mr. Hamilton: The Premier was in New York, and there was a plane there from Alberta, and they had to get back. They took the flight, and then they came and told us.

Mr. Shariff: So that was after the fact.

Mr. Hamilton: Yeah.

Mr. Shariff: So if there is a process to let you know and have it cleared, that would be a better system than to ask for preapproval.

Mr. Hamilton: Well, you could have both.

Mr. Martin: I think that it's just common sense if we say in there that there should be input. If there's an emergency, well, clearly they can do it after, but if you know that something is coming up ahead of time, you should have the courtesy to get that, you know.

The Chair: Mr. Martin, would you like to suggest an amendment to the draft wording of number 11 there to incorporate the idea of a preapproval?

Mr. Martin: Yeah, to keep it broader. The Ethics Commissioner should be involved in approving such air flights, and then just leave it broad. Or there should be consultation. How's that? The Ethics Commissioner should be consulted when dealing with private air flights. Then that's broad enough that if you can't, if it's an emergency, they can deal with it after the fact. Rather than being specific, getting approval, there's a consultation process, and that makes it broader.

Mr. Shariff: If there were this consultation, I'd find it okay.

Mr. Martin: Yeah. That's what I'm saying: a consultation.

Mr. Lukaszuk: I'm not certain if it has to be an emergency. The Ethics Commissioner just gave a prime example. The Premier is in New York, and there happens to be an Alberta aircraft on the tarmac – I'm not sure whether it was privately owned or publicly owned – and he wants to fly. I would find it very impractical that he would have to now call the Ethics Commissioner in Edmonton and say: "Look, I have this plane here. Is it fine if I board the plane to fly back?" Obviously not an emergency. The Ethics Commissioner's role is, yes, to provide advice on a proactive basis but also to review decisions made by members on a retroactive basis. So I think that a member should be able to make the decision to board the plane and then disclose it to him later on.

Mr. Martin: Yeah. I didn't say emergency; I said consultation. Just keep it broad like that.

The Chair: Mr. Hamilton, are you okay with that proposal then?

Mr. Hamilton: Yeah.

The Chair: Other discussion?

Mr. Shariff: Just for clarification, the wording – and we don't have the clarity of wording – but it'll reflect somehow an inclusion of a statement that wherever practical the Ethics Commissioner should be consulted prior to taking the trip. Something along those lines?

Mr. Elsalhy: Or informed after.

Mr. Shariff: Yeah, and must inform afterwards.

Mrs. Sawchuk: One of the concerns of "must inform afterwards" is that if the commissioner says no, then what happens?

The Chair: Then you have breached.

Mrs. Sawchuk: Is it possible to word it in a way that they must consult with the Ethics Commissioner prior to the event except in emergency situations or disaster situations?

Mr. Shariff: I just have a general concern with that approach, and I'll tell you why. In our day-to-day lives we make a lot of decisions and disclose once a year to you. Sometimes some members breach what the act says, and that has to be dealt with at your level. So when we make so many decisions in our day-to-day lives, why would this one example stand out? I don't even know how many cases. I've never ever been on a private plane in 10 years, so probably I don't understand when this happens. Probably it happens with leaders of political parties. I mean, I don't know. Would the Leader of the Opposition, for example, be required to go and speak in Ottawa? I don't know.

Has anybody here been on a private plane? Yeah? Okay. Thomas.

The Chair: I've been on a Canadian Forces aircraft since I became an MLA.

Mr. Shariff: Oh, okay. So there are people around. Okay. Sorry.

Ms DeLong: It seems to me that either this is subject to disclosure or it's not subject to disclosure. I mean, that's what the wording is, that it's exempt from disclosure. So is it exempt or isn't it exempt from disclosure?

The Chair: I think the suggestion by Mr. Martin was that there should be a proviso in there that provided that the Ethics Commissioner ought to be consulted where practicable. I think that was the suggestion.

Mr. Elsalhy and then Mr. Lukaszuk.

Mr. Elsalhy: Thank you, Mr. Chair. I think, again, the issue to me is not whether they should ask permission first or consult with the Ethics Commissioner before they do it. Be it an emergency or not an emergency, they make that decision. Then part of their disclosure, if it's once a year or within an interval of time to be stipulated – two weeks or a month or so or at the annual submission – they have to stand by their decision. That's the judge. The judge of that decision would be, you know: I informed the Ethics Commissioner of something I did. If it doesn't pass the stink test, then it doesn't.

Mr. Lukaszuk: I tend to agree with Mr. Elsalhy. With all due respect to our Ethics Commissioner, I don't think we want to draft this legislation in such a manner that we put our Ethics Commissioner in a decision-making capacity. The Ethics Commissioner may say: no, I don't want you to board that plane. As a member you still can board that plane if you choose to do so at your own peril. You will be disclosing to the Ethics Commissioner later and probably be reprimanded according to the legislation, but you still are in a capacity where you can make a decision, like Mr. Elsalhy indicated, and live by it.

The fact of the matter is that no matter what the decision is that you made, you have to disclose it. It's an issue of disclosure, not of permission-granting authority.

The Chair: Do you have a suggestion, then, regarding the wording?

Mr. Shariff: Just repeal it. Let it be disclosure driven.

Mr. Martin: If we say that it's exempt from disclosure, how would he ever know?

Mr. Lukaszuk: It ought not to be exempt from disclosure.

Mr. Martin: That's what it says in there now.

Mr. Lukaszuk: One should not have to seek permission to board a craft. One has to disclose the fact that he has boarded a craft.

Mr. Shariff: Currently my understanding is that it would be disclosed to the Ethics Commissioner as part of our disclosure. Is that correct? So why not leave it just like that, as is?

Mr. Hamilton: I'll give you an example. A member was going to Vancouver to a conference. There was a plane going out there, and they asked him if he wanted to get on the plane. They could go out there, have the meeting, and come back. I advised him not to do that because of its perception. So he had to go the day before and then be there all day and come back the next day: three days. It could have been one day, but it was a company that had varied interests in this. I said: you should not do that. That's why I'm here. If you have a question regarding flying in planes, you should come and see me.

Mr. Shariff: I believe that the act is meant for that purpose. If I enter into a situation where I have some questions, I can pick up the phone, talk to you, and get some advice from you. Then I make my decision whether I follow your advice or not. If I don't, then there's a repercussion for it.

Mr. Hamilton: Yeah.

Mr. Shariff: That system works well.

Mr. Hamilton: Yeah.

The Chair: Just to come back to the status quo here. Right now we have a situation where if these gifts are \$200 or less or the commissioner gives permission, one does not have to report this gift or benefit. So the proposal here now is to deal with the air flights as a separate issue. The problem arises because with the air flights over \$200, or over \$400 as we have recommended that it be changed to, if it's of a value over that, then we've got a problem as it exists right now.

9:20

Ms DeLong: I think there's a question here whether that is a gift to the person or a gift to the government. If the government is going to be paying for that airfare anyways – and essentially it isn't a gift to that person because that person has to get from A to B one way or another – it seems to me that as long as it is part of our duties, part of what we're trying to do, then the gift doesn't actually come to us. All it is is a tax saving for the people of Alberta. There's no benefit there.

Ms Dafoe: I'd just like to clarify one thing about the difference between what has to be disclosed and what doesn't have to be disclosed. Section 7(2) is an exception to the rule that says that thou shalt not accept gifts. It doesn't say anything about disclosure. In fact, if you look at section 12(e), it says that disclosure statements to the Ethics Commissioner “shall include a list of all fees, gifts and benefits approved for retention under section 7(2)(b).” So disclosure is a slightly different issue than acceptance of the gifts in the first place, and I just want to make sure that we don't get those two issues mixed up with each other.

Dr. B. Miller: Well, yeah, that's helpful. I don't know why we want a special statement about air travel. Why wouldn't that be just covered already under 7(1) and 7(2)? I mean, if you take a flight that's obviously somebody trying to influence you, if the president of Amway calls me up and says, “Do you want to go to Grand Rapids?” I would say no.

The Chair: Wait a minute. We're talking about: for the purposes of fulfilling members' duties to the province. We're not talking about vacation travel or something here. We're talking about the incidents involving surveying of the flood or the rail spill out at Wabamun Lake.

Dr. B. Miller: Well, then, under 7(1) you wouldn't be in breach. You're doing your duty.

The Chair: Well, that's the point right now. I mean, we're wondering whether or not this ought to be a special category other than the \$200 or seeking the permission of the commissioner. I guess that's the issue.

Mr. Martin: Well, the point I was making: it's not so much that we're saving the government money or not. That's not the issue. It's the perception, to go back to what the Ethics Commissioner was talking about, of people getting flights. Federally they've run into this problem a lot of times. They say that it's government business, but it's sort of debatable, and that's what we're trying to get away

from. That's why I was saying, "Let's not be specific," that there should be some means of touching base with the Ethics Commissioner.

I recognize the fact of what you said, that there could be an emergency or even a special case that does pass the smell test and that they tell the Ethics Commissioner after the fact, and he says: well, that's fine. Right? But there should be something in there that indicates that because when we say that we're fulfilling our duties, every politician that's ever been caught doing something will say that they're fulfilling their duties, using it in the broadest context, and that's what we want to get away from.

Again, I come back to: why don't we just say that there's consultation with the Ethics Commissioner and leave it broad like that? Then the person knows: after the fact I'll get a hold of him, or if I've got something coming up ahead, I should check with him.

Ms DeLong: I guess the way I'm looking at it is that sort of the question mark around it should be whether or not it's fulfilling duties. It shouldn't be whether it's a gift or not because it's not a gift to you in any way if you are truly fulfilling your duties. So I would say, you know, that if there's any question about whether it actually is fulfilling duties, then he should consult with the Ethics Commissioner because that's sort of where the grey area is there.

Mr. Martin: Well, we're only talking about private flights, so it wouldn't be a big thing to check before or after, you know. That's not going to happen very often.

Mr. Hamilton: I think what you're grappling with as a minister or whoever is that in going to a conference in California, they're going to stop over in Vegas in a private plane and that the people who own the plane probably do business with the government. Those are the questions you ask. If you give us the power, we say: you can't do that. It's not black and white.

The Chair: Well, can we try and bring this to a resolution then?

Mr. Lukaszuk: I agree with the Ethics Commissioner, but the difference is that whether you do it proactively or retroactively, the outcome is still the same. A wise member will call the commissioner on his own initiative prior to doing that, get advice, and accordingly not board a craft or board a craft. But if a member chooses not to seek that advice in advance and boards a craft, he will have to die by his sword. That's all there is to it. You know, I'm not sure if this act is designed to be a foolproof prevention for members making mistakes, but if you make a mistake, you still have to disclose it and then reap the consequences.

Mr. Martin: If we have 11 as it now stands, you would never know because it says, "to be exempt from disclosure." So you could take planes all over the world if you don't have to disclose them unless somebody catches you.

Mr. Lukaszuk: No, no. You must disclose, but you should not have to seek permission.

Mr. Martin: But I'm saying that what 11 says is, "to be exempt from disclosure."

Mr. Shariff: So if we maintain the status quo, then the disclosure prevails as is. Right? If we maintain the status quo, then the disclosure rule applies.

The Chair: Anything over \$400. It has to be under \$400, or you would have to seek the permission of the Ethics Commissioner.

Mr. Elsalhy: Mr. Chairman, I move that we ignore recommendation 11 and just move on.

The Chair: Delete it?

Mr. Elsalhy: Delete it, yes.

Ms DeLong: So in other words, if this is not in here, then what is our situation in terms of a member taking a private flight? I mean, where is our situation? If this is definitely, you know, a duty to the province . . .

The Chair: You're in breach unless you obtained permission. Under the status quo right now if you look at section 7(1), it says that you breach the act if you accept any "fee, gift or other benefit that is connected directly or indirectly with the performance of [your] office," and then subsection (2) says: except if it's less than \$200 in a calendar year from the same source or the Ethics Commissioner gives approval.

Ms DeLong: Okay, but you haven't accepted anything if it's part of your duty and you catch a ride with somebody. It's the province that's actually getting the benefit – it's not the person – if you're trying to get from A to B and you get a free flight, you know.

Mr. Elsalhy: But do you have any problem disclosing it? That's the question. Nothing is stopping you from doing it. It's basically disclosing it or not.

9:30

The Chair: Mr. Hamilton, do you want to reply to that concern?

Mr. Hamilton: Well, it's difficult. I think that it should read that any member that's going on a private plane has to come and see the commissioner, and if the commissioner has made a mistake, it's his fault, not the member's.

Mr. Shariff: Would it help to have a provision in the act that deals with any matters that are over \$400 requiring consultation as a broader thing?

The Chair: But it already does.

Mr. Shariff: So then these flights would be part of that, wouldn't they?

The Chair: Yes, it is.

Mr. Hamilton: But that's different. You don't mix them.

The Chair: Let me just back up here. The status quo, again to restate it, is that you're in breach of the act unless it falls into those two categories under subsection (2) there: if it's an incident of protocol, social obligation, and it's less than presently \$200 per year, or you apply to the Ethics Commissioner as soon as practicable after the gift is received and obtain the Ethics Commissioner's approval for its retention. In the case of a flight you've already taken it, so that becomes problematic.

Just backing up, then, the mischief that we were trying to address here was the issue of taking flights which were connected with one's

official business, and those were the examples of the oil spill or the flooding, where you might catch a ride on the CN helicopter which was going out to survey the flood. I don't know what a helicopter flight is worth, but maybe it's worth more than \$200. I don't know.

Mr. Hamilton: Can't you just have two things? The gift when you get a painting for going to a thing in your constituency is different to me than the airplane. Private airplane to me is unique. I wouldn't see tying that to the \$400. It's going to be more than that, way more than that, and who are they flying with?

Mr. Lukaszuk: Maybe the commissioner can share something with me. First of all, to be on the record, I think that those flights should be disclosed except that I don't believe they should be disclosed proactively; I think they should be disclosed retroactively. As a wise member I would seek advice prior, but nor should I have to be forced to seek advice.

However, what is it about flights that makes them so special? Is it some prestige that's attached to them? What about bus rides or limousine rides or hovercrafts? Is it something that if one flies over an oil spill in an airplane, he has gained some kind of a benefit? Frankly, I don't like flying, and I would rather be driven around Wabamun Lake than flown over Wabamun Lake. Why are we specifying this thing as if it was some kind of a benefit to a member to have his behind hauled from points A to B in the air as opposed to on the ground?

Ms South: To resolve that, you might just deal with travel costs that are sponsored by persons other than the Crown.

The reason why we specifically mentioned travel under the gifts section was because normally when members receive an offer of travel, it is connected directly or indirectly with the performance of their responsibilities, which would not be acceptable under section 7(1). It's not normally social obligation or protocol because it is normally attending a meeting. So it's not properly covered by (2). The commissioner has over the years made an exception for those kinds of things, and we just think another exception dealing specifically with travel is needed for the act.

The Chair: Okay. We have a motion on the floor by Mr. Elsalhy to delete this provision altogether. This is on reflection.

Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. I'd like to speak to that. My apologies for being late: some mix-ups with the times. Nonetheless, I hope I've gotten the gist of the discussion here and I can add something of value.

First of all, I'm going to give a little comment because I have to tell you honestly that I am offended by any language in the current act or anything proposed that doesn't treat members of this Assembly as people of the highest integrity. Maybe I'm naive, but I believe that to have gone through the process to get here, you should be an example of someone in our society of very high standards of integrity. So I make my comments under that premise.

I guess I'm speaking to the motion, but I think we can do something to amend what's proposed here rather than necessarily throwing it out. Back to Mr. Lukaszuk's point, I believe that it would be helpful to have a provision where there's an onus on an individual to report to the Ethics Commissioner within two weeks or some reasonable period. I mean, if I'm travelling in Europe and I'm away for three weeks and I can't do that, I shouldn't be spanked for not reporting in two weeks.

Again to Mr. Lukaszuk's point, the idea that travelling by air is

such a prestigious something, like handing me a bag of diamonds: it's transportation, people. It's transportation. It's point A to point B. If it happens to make sense that I'm offered a ride on the Syncrude jet to go up to Syncrude to get a better appreciation of the oil sands in terms of how I respond to policy for the continuing development of that particular resource because it happened to be timely, I shouldn't be penalized for that, or there shouldn't be any mechanism that would set me up to be penalized for that.

So my suggestion would be that we have something where, again, back to the integrity of the member, it is, in the words here, fulfilling the member's duties. I believe that if that situation occurred, I would be fulfilling my duties as a member of this Assembly. If we had a provision where I should disclose that within two weeks or some other reasonable period to the Ethics Commissioner and I fail to do that, then deal with me accordingly. But I really think we're getting just too carried away on this one.

The Chair: Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chair. I only suggested to delete recommendation 11 because I was concerned that we're weakening the act. Ms South explained that travel and being on a flight is not covered under subsection (1), so 7(1), so I retract my motion. I like Mr. Lukaszuk's idea to strengthen the act. We're here to strengthen it, not to weaken it.

Thank you.

The Chair: So, Mr. Lukaszuk, back to you. Do you want to propose some wording with respect to advice from the Ethics Commissioner?

Mr. Lukaszuk: Well, recommendation 11 states right now: "The Act should be amended to permit air flights on private carriers to be exempt from disclosure." That aspect of it I disagree with. I think members ought to disclose their flights on aircrafts proactively or retroactively, subject to their own choosing, but in addition to that, I would not use the word "aircraft." I would just use the word "transportation" because there's nothing unusual about that mode of transportation. It happens to be just one of many. What about train rides, you know? What about Greyhound?

The Chair: I think what you're suggesting is that there be a new subsection added to section 7 which would state that a member does not breach the act in the event that they accept transportation for the purposes of fulfilling a member's duties to the province even if it's on a private carrier.

9:40

Mr. Lukaszuk: That's right.

The Chair: Am I on track there?

Mr. Lukaszuk: Bang on.

The Chair: Great.

Mr. Elsalhy: With the recommendation that they must disclose.

Ms DeLong: But they should disclose.

The Chair: Provided that disclosure is made to the Ethics Commissioner.

Mr. Hamilton: Prior.

The Chair: Prior to accepting the same.

Some Hon. Members: No.

Mr. Lukaszuk: You can disclose it any time you wish, as long as you disclose it, as long as the Ethics Commissioner knows. If you disclose it and you did something wrong, he'll get you for it. If you didn't disclose it . . .

The Chair: Well, the difficulty is that in the case of something like that, if there was no requirement for advance notice, you can't give it back. I mean, it's something that has already happened. If it was a painting and you sought approval under subsection 7(2), right now you only have to report it after the fact, and you either obtain "the Ethics Commissioner's approval for its retention" or take "steps that the Ethics Commissioner directs with respect to the disposition of the fee, gift or benefit." So that's the conundrum here that we need to deal with. I don't think you can deal with this in a vacuum and say, "I'm going to report it" or "It's okay; it's not an offence, but I have to report it afterwards," because then it has no teeth.

Mr. Lukaszuk: Well, it does if the Ethics Commissioner requires you to reimburse whoever the carrier was for the value of the transportation. Let's say you accept that Greyhound trip to Wabamun Lake without prior approval and disclose it later on. The Ethics Commissioner will tell you that that was not the proper thing to do and ask you to reimburse whoever the carrier was at a reasonable cash value of whatever it would have cost you if you were to pay for it in the first place.

Mr. Hamilton: I want to use the word "naive," but I won't. What we're talking about: you can go to the airport, and you have to stand in line, and you have to empty your pockets and go through that whole hassle to get on an airplane today. Now a person comes along with a company, and a member or a minister is going to the same conference. He sends his car over. He drives it right up there. You get in there. They have drinks. They have everything. You know, that's reality. That's how people can get things from people in government. I'm here to stop that. The only way you're going to stop it is to have teeth in it. They have to come and say, "Well, who are you going with, and where are you going to go, and are you going to golf courses on the way back?" I mean, that's what happens. It's not related to getting on the bus, the Greyhound or the Red Arrow. It's a different thing.

Mr. Rogers: Mr. Chairman, in light of Mr. Hamilton's comments should we take this back to air and deal with air alone? Again, one point I would like to stress: folks, you know, this is not a business. I mean, sometimes people say that we should run government like a business. This is not a business. But, folks, time is money. Time is value. Time is the greatest asset we have, and once you've lost it, it's gone forever. I still believe that to be effective as a member of this Assembly you have to make the best possible use of a scarce resource; that is, time.

If part of this process allows us to be more effective in doing our job, you know, hopping on something private versus going and lining up and emptying the pockets and the whole works, as Mr. Hamilton reminded us, I think that's just smart use of your time on behalf of the people of this province. I think we're smart enough people sitting around this table that we can write a provision that recognizes and deals with the possibility for conflict, which is what this is all about, and yet is realistic enough in terms of the way that you have to operate in this world today and make good use of your

time on behalf of the people. Frankly, when I do that, I make no apologies for that.

The Chair: I see the issue as being whether or not we ought to seek and obtain the Ethics Commissioner's prior approval before obtaining some sort of transportation benefit or whatever. Am I correctly ascertaining where the dividing line is here? Can we have a suggestion then? Coming back to Mr. Lukaszuk's suggestion, I think that the suggestion was that a member does not breach the act when they accept transportation for the purposes of fulfilling members' duties to the province provided that they seek and obtain the Ethics Commissioner's prior approval for the same.

Some Hon. Members: No.

The Chair: Okay. Let's talk about: do we want to have a proviso in there that prior approval be obtained?

Some Hon. Members: No.

Ms DeLong: It seems to me that where we're getting into this grey area is when a flight is for more than the duties, where the flight is essentially, as he was saying – you know, you're going to go golfing, and you might stop off here and stop off there. The grey area has to do with whether or not it's purely for duties. I guess that generally we've got to disclose whenever we're into a grey area. Somehow I think that we've got to capture that.

Mr. Lukaszuk: Mr. Chairman, I think we're all on the same page. I know Mr. Elsalhy is. I think that on this side we're all on the same page relevant to the fact that every member has to disclose to the Ethics Commissioner any mode of transportation that he or she has received even though it's in the duties of fulfilling their obligations as a member of the Legislature.

Where we are in disagreement is the request for the commissioner to have a preapproval. The concerns I have with that are dual. The first concern is that it's simply impractical. I imagine the Ethics Commissioner's office is not open 24/7. I imagine the Ethics Commissioner takes vacations. The running, the governance of the province doesn't. If you have a Leader of the Opposition, Premier, minister, MLA out there who wants to take a flight in the course of his duties and it happens to be a flight by a private carrier, it's impractical to be able to seek a preapproval from the Ethics Commissioner. Many things happen simply on a minute-to-minute basis. Opportunities arise, requirements arise, and you have to react to them. Number one.

Number two, I think this act should not disallow members from making mistakes. If a member does something that's contrary to what is ethical and then discloses it, which he has to by legislation, and it turns out he did the wrong thing, he ought to be punished for it: (a) there's a whole set of remedies as to what the commissioner can do to a member, plus (b) the commissioner could request the member to reimburse whoever the carrier was for the cash value of the trip.

Mr. Hamilton: You can't do that.

Mr. Lukaszuk: Well, then maybe you should.

Mr. Hamilton: You can't. It used to be that you could fly in a private jet, and the government would pay for that. The feds came along and said: you can't do that because you're not a registered carrier. So you can't do that.

I mean, we're here most of the time, and I think if a minister is going to go on a trip, he's probably going to know it two or three days in advance. If that doesn't work, he still goes, but he comes and tells us afterwards. The preference would be before.

9:50

The Chair: Okay. I think we might be getting close to a resolution here because, as Mr. Martin had mentioned earlier and Mr. Elsalhy has indicated, perhaps a compromise would be that prior approval would be sought where practicable, and that in the case of an emergency disclosure would be made after the fact. Mr. Lukaszuk, would that satisfy your concerns about the inappropriateness of the prior approval?

Mr. Lukaszuk: Pretty close. I wouldn't call it emergency. Whenever practicable, like any prudent MLA would, you would seek preapproval because it's the only smart thing to do. You'd better get a preapproval and not find yourself in a situation where you've breached. Whenever practicable one ought to consult the Ethics Commissioner. Obviously, when not practicable he won't. He will do it retroactively and advise the commissioner. With the word "emergency" you're getting into a whole new area of what constitutes emergency.

Mr. Rogers: I agree. Mr. Chairman, I'd make the motion something to that effect, that the provision be that "where practical, the member would notify the Ethics Commissioner prior, and if it's not practical, this would be disclosed following," and again I suggest, "a period of two weeks," or if it has to be beyond that, something with explanation. That would cover both points.

Mr. Shariff: Sorry to throw this monkey wrench again. The motion that's on the floor I have some real practical difficulties about because of the rewording from flights to modes of transportation. Let me share with you a couple of examples. Let's say the opposition party wants to go around, study the risks of avian flu in a mode of transportation which is basically a car, not a flight. It's provided. Are we then trying to really hamper the workings of an MLA on a day-to-day basis? I'm hearing the Ethics Commissioner's concern pertaining to travel particularly on a flight basis.

Mr. Hamilton: Private.

Mr. Shariff: Private flights. But what Thomas has put on the table is modes of transportation, which would be anything: Greyhound, train, bus, whatever. So, folks, before we move with that resolution, let's think this through, the practical implications.

Furthermore, I think the issue is probably more complicated when the private craft are used for travel outside the province. I'm not so sure if the issue is within the province.

Mr. Hamilton: It's both.

Mr. Shariff: It is both. Okay.

I would suggest, then, that if aircraft is the problem, let's deal with the aircraft issue and not any little taxi or drive or ride that we take in the city or within the province. Really, I can think of umpteen little situations where somebody has given me a ride to a different place to show me what an alcohol drug abuse centre is, what a shelter place is.

Mr. Rogers: An industrial park.

Mr. Shariff: Yeah. And I don't want to be phoning you for an exemption every little trip I take, and I don't think that's your intent either.

Mr. Hamilton: No.

The Chair: Further discussion?

Mr. Shariff: Thomas, I'm just seeking your approval because you have a motion on the floor. Oh. It's Moe's motion?

Mr. Rogers: He retracted his.

Mr. Shariff: Moe has retracted his.

Mrs. Sawchuk: But with the consent.

Mr. Shariff: With the consent of all the members. Agreed? Okay. Was that the last motion on the table? We're just trying to reword something that encompasses the discussion we've had.

Okay, we have a draft recommendation, but it will have to be reworded in the technical language. Some of you legal beagles will help us. The gist of what we are trying to cover is as follows, and if members agree, then I'll move that motion.

A member does not breach the act if they accept a flight on a private carrier for the purpose of fulfilling the member's duties to the province provided, where practicable, they seek and obtain the Ethics Commissioner's prior approval and provided that disclosure of the same is made in any event.

Does it clear the points? Okay. The clarity is that the member will not breach the act if they accept a flight on a private carrier for the purpose of fulfilling their duties. Wherever practical, they will seek the Ethics Commissioner's prior approval. Furthermore, that trip is disclosed through our regular disclosure process. Those are all the themes that we have discussed so far.

Mr. Martin: It sounds like I hadn't left.

Mr. Shariff: Yeah, you're right.

The Chair: Any discussion on that motion? I think it goes some way to resolving the concerns.

Mr. Lukaszuk: It does go some way, but I still have that question. What is it about airplanes and not other modalities of transportation? Why do we pick that one mode of transportation and say that you have all those regulations, yet I can get Blue Sky Limos, a stretch bus which has leather couches, drinks, and all the champagne that the commissioner refers to, and be given a ride to Fort McMurray and have a much better time than on any airplane and not have to disclose that? What is it about airplanes?

The Chair: Ms DeLong.

Ms DeLong: Yes. The difference is: if the commissioner disapproves of it – okay? – you can pay them back whereas with airfare you cannot pay them back. Legally it's a problem out there that you cannot pay them back whereas with the stretch limo, yes, you can. So, you know, that's why we do need something when it comes to airfare.

The Chair: Okay. Are we ready for the question?

Mr. Shariff: Are those points, then, agreeable to everybody? Then I can move the motion?

The Chair: Okay. All in favour?

Hon. Members: Agreed.

The Chair: Anyone opposed? That's unanimous. Thank you.

Mr. Shariff: Before you go further, can we just revisit number 9?

The Chair: Sure. Why don't we take a . . .

Mr. Shariff: No, before we take a break.

The Chair: All right.

Mr. Shariff: I just want to revisit a decision that we already made, which was on number 9. You know, it's important for clarification because we may need to reinsert that one word. Remember, we took out the words "fees and benefits," and for gifts we say: noncash gifts. But there are situations within our political system where, let's say, your association would subsidize a certain portion of your registration cost for a convention. That is a benefit because you do the fundraising and it ends as a subsidy. As long as that covers nongifts, I'm fine in terms of a meaning or interpretation. If not, then maybe we should revisit and reinsert the word "benefits." I'm not talking about any cash payments to any members but a benefit.

10:00

Mr. Martin: Well, we'll let the Conservatives argue over this because it doesn't apply to the NDP.

Ms DeLong: What? Yours are free?

Mr. Martin: No. You pay and you pay and you pay.

Ms DeLong: It seems to me that that's a ticket. It's a ticket to an event, isn't it? Is it a ticket to an event?

The Chair: Do you want to take fundraising out then?

Mr. Shariff: No. I went along with those words because there was a concern about the words "fees" and "benefits" being translated into cash fees or benefits. But then I'm looking at the act. The act is also dealing with those words – gifts, fees, and benefits – in many different ways. It's putting some limits of, you know, a dollar value to it. I just wanted a clarification so that we are not doing something that'll kind of require revisiting down the road.

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

Ms Dafoe: The term "benefits" can be quite a broad term, so if you're specifically focused on subsidies for tickets, we could say "tickets or portions of tickets" or "tickets or subsidies of tickets" and specifically tie it to the tickets themselves.

Mr. Shariff: Well, you know what? If the act is dealing with those words in so many different places . . .

The Chair: The problem is that benefit could be very broadly construed, as Ms Dafoe was pointing out. Let's not try and kill a mosquito with an axe here. If we're talking specifically about

registration fees, why don't we just say that then? A registration for an annual general meeting, for a convention, policy conference, or whatever. Why don't we just say registration fee for a meeting or conference? Okay? Do you want to adopt that suggestion?

Mr. Shariff: You know what? I'm not seeing any problem in the word "benefits." I see a problem with the word "fees." But with benefits – I mean, if an association chooses to benefit its membership by sending them to a hockey game or . . .

The Chair: A fishing trip is a benefit.

Mr. Shariff: Well, yeah. If it's a team-building exercise, that the party association wants to go on a fishing trip to build the camaraderie and team within the group, I hope that we're not exempting or not preventing that from occurring.

Mr. Reynolds: Mr. Chair, all I would say is that already I haven't been able to find comparable legislation across Canada that creates the exemption you've just created for the tickets, et cetera, you know. So that seems to me to be an exception from what's generally accepted throughout Canada.

I mean, the mischief that you were trying to solve by including this provision, as I understood, referred to tickets to fundraising things. Now, you know, conference registrations, yes, and then you're talking about additional benefits, which would include fishing trips, et cetera, or perhaps travel to Hawaii. That's where I think you're actually getting into problems that would legitimately raise a spectre of a conflict of interest. I mean, at what point does the exception become, as the chair said, so broad that it really dwarfs what the purpose of the legislation was?

You can deal with it, I would imagine, in so many ways through the Ethics Commissioner's advice.

The Chair: Mr. Shariff, the ball is in your court.

Mr. Shariff: Well, we've already voted on it, but I just wanted to bring it up again so that there's clarity on this.

You know what? If I get a benefit from my association, I'll be biased towards voting Conservative, and that's a good thing.

The Chair: Is there any appetite to revisit that number 9 then? Should we leave well enough alone?

There is no motion on the floor, is there?

Mr. Shariff: There's no motion. No.

The Chair: Okay. So let's take a five-minute coffee break, and then we'll reconvene.

[The committee adjourned from 10:06 a.m. to 10:18 a.m.]

The Chair: Okay. We'll call the meeting back to order.

The next question I think is recommendation 12, which talks about disqualifying offices. The draft recommendation was that "the Schedule for the Act, which contains a list of disqualifying offices, should be moved into a Regulation." I think the rationale that was originally proposed was that there were a number of them that were no longer in existence, the names had changed, et cetera, and that it would be more practicable to move it into a regulation.

I think, Mr. Reynolds, you wished to comment on that, the draft recommendation 12, about the regulation.

Mr. Reynolds: Well, just one concern that members might want to consider is that, generally speaking, under the Conflicts of Interest Act there's not a lot left to regulation because, of course, regulation means that it's the Lieutenant Governor in Council, which is cabinet, that makes the decision, the determination. Typically in something that affects all members, you usually try and steer away from some sort of executive pronouncement. I'm not saying that there's anything wrong with it. It's just unusual. I mean, there are various other avenues that can be taken. In British Columbia, for instance, with the Lieutenant Governor's approval the commissioner can make a regulation. I'm not sure if that's the perfect way because that ends up essentially being an order in council anyway.

One thing the committee might want to consider is putting out a schedule of disqualifying offices in the act and having it subject to amendment – this would be unusual – by an order in council or having a provision whereby the order in council had to be vetted or circulated to members immediately after passing. All I'm saying is that basically if you want to have it as a regulation, that's fine. It's just unusual in the context of other acts to have this delegated to the executive branch.

The Chair: I guess that we should ask the members of the opposition if they have any comments in light of Mr. Reynolds' remarks.

Mr. Martin: Not being paranoid or anything, but I see a lot of bills come through the Legislature that are in the regulations. I like what Mr. Reynolds said, the idea of perhaps listing them and then having some access, that if it was totally redundant or whatever, they could do it, rather than just saying that it's in the regulations. As a general principle we've sort of argued that in the Legislature, that there's not enough in the bill and too much in the regulations. It's a different purpose here, but as a general principle I don't think that's a good one.

The Chair: As I said, I think the mischief behind this recommendation was that there were bodies that were no longer in existence, names changed and obsolete, and rather than having to come back to the Legislature every time we wanted to add another body to the disqualifying offices, it was just more practicable.

Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chair. In my short experience as an MLA here, wouldn't something like the miscellaneous statutes be an avenue where we can do this? One line in a one-page bill that is approved matter of factly. That's a solution for it. Miscellaneous statutes can incorporate something like this.

Mr. Reynolds: Yes, it certainly could. Once again, I guess that runs into the problem that you have anyway that, you know, it might take a little longer to get done. It could take a year. The other thing is that with the miscellaneous statutes the convention is that it's agreeable to the opposition parties before it goes ahead. Who's to say that someone might say: well, I object to that. It's fine. Yes, you can do it by miscellaneous statutes, in which case you wouldn't do it by regulation. Another avenue is to have the Committee on Leg. Offices review the regulation prior to it going to the Lieutenant Governor in Council, which is a committee of all members.

The Chair: Mr. Shariff, do you wish to make a motion?

Mr. Shariff: You know what? I think the move is intended to be practical, to apply to new titles that are coming to or leaving office, so I'm moving that

we adopt recommendation 12 as is.

The Chair: Discussion?

Dr. B. Miller: I just wonder if there is any problem with 12 and 13 going together. If you're going to have criteria for determining what the agencies are in the act but you don't list the actual offices in the act, is that a problem?

The Chair: I think the idea was to provide some general guidelines for the types of disqualifying offices. I think that was the object of the recommendations from the commissioner's office that had been circulated. We have a fairly long list of types of disqualifying offices here that is being proposed on page 5.

10:25

Mr. Lukaszuk: I wouldn't mind hearing more from the opposition. Mr. Martin said that they have a tendency of arguing in the Legislature that bills are being transferred from legislation to regulations. I wonder: would you feel equally uncomfortable about this one if, for a sense of practicality, it would be amended to allow orders in council to make those minor amendments?

Mr. Martin: Well, I'm not going to prolong the debate about it. I think it's relatively – how can I put it?

Mr. Lukaszuk: Innocuous?

Mr. Martin: Innocuous. There's not much cabinet can do with this. I was just talking more in general principles, that we seem to be shifting more and more. This one I'm not particularly worried about, but it's just a general principle that worries me.

The Chair: Can we call the question, then, on recommendation 12? All agreed? Anyone opposed? One. That's carried.

The next one is 13, which is the recommendation that "criteria be determined for the agencies that should be identified for inclusion in the list of disqualifying offices." I'm not sure what sort of detail. I mean, I think the recommendations that we have before us provide a fairly long list, and I'm not sure that we'd want to incorporate that whole thing into the act.

Maybe we could have the Ethics Commissioner's office first give us their comments. It was given to the Ethics Commissioner's office to give us some recommendations, and we have them.

Mr. Hamilton: You have this?

The Chair: Yeah.

Mr. Hamilton: I don't know who set it up, but the securities were under there, and then somebody took it out, I gather. Isn't that right?

The Chair: Are you referring to the Alberta Securities Commission?

Mr. Hamilton: Yeah, securities. It wouldn't be a bad idea that we would have jurisdiction over them. On the other hand, the EUB does come to us.

The Chair: Well, has there ever been an instance of any sitting member sitting on either of those boards?

Mr. Hamilton: Well, I don't think so.

Mr. Shariff: No. I don't know of anybody.

Ms DeLong: In terms of the recommendations, I'm wondering. It seems to me that when it came to – where is it? – not the police but the police appeals. I thought I saw it in here.

An Hon. Member: Law Enforcement Review Board?

Ms DeLong: Yeah. I don't know whether it is appropriate to have somebody from the government on that or not. I don't know how you'd look at that. I mean, in some ways, you know, we want to have somebody there.

Mr. Martin: Which page are you talking about?

Ms DeLong: Where is it here? I'm on page 5.

Mr. Martin: Yeah. Which board?

Ms DeLong: Or maybe it was on here. Maybe it was on that earlier list. There it is. Law enforcement appeal board. So I'm sort of wondering: why would that be off limits, you know, in terms of guidelines?

Ms South: I'm not certain why it is on the existing schedule other than it is, I believe, a quasi-judicial body.

Ms DeLong: It is, yeah.

Ms South: One thing that I would point out is number 2 on page 5. There is an exception where "a Member does not breach the Act if the appointment is authorized by an enactment." So if it was felt that it was important that an MLA be on a specific board or agency or commission, that legislation governing that specific body is amended to specifically say that an MLA may be a member of that.

Ms DeLong: Okay.

Ms South: As it does exist: I think that on page 4 there are pieces of legislation that already do specifically state what MLAs may be part of, and those are the agricultural institute, the energy institute, and the forestry institute.

Ms DeLong: Okay. Also, we've got an MLA on the AADAC board.

The Chair: Well, I think there's a distinction that can be drawn here if we're going through the criteria that have been developed and provided by the Ethics Commissioner's office. Clearly, quasi-judicial bodies or administrative tribunals are currently contained in the schedule. I think we would all agree that those are inappropriate bodies on which to have sitting members, but I wonder if there are some more general criteria that we could add to the quasi-judicial and the administrative tribunals category without getting into a long list of things to put in there. I wonder: are there any shortcuts other than going through this long list of things and dealing with them one by one?

Ms South: The list that is on page 5 was really developed based on sort of categorizing the longer list that is in the schedule. And 1 to 8 seem to be fairly clear on what members may not want to have membership on; 9 to 14, the comment is made there that we need the direction from members as to whether or not those kinds of offices ought to be continued as disqualifying offices. I don't know, and I don't know that anyone does, what criteria were used in the first place to put them on the list.

For example, there are the boards of the regional health authorities. If you want to have those seen to be arm's length from government, then you may want to continue to have them on the list. If it is deemed important for members to be part of it, then you may want to take all of those boards off. We need the direction of the committee.

The Chair: So would it be the Ethics Commissioner's position, then, that in the recommendations on page 5 we would list all of those particular categories which are down there within the body of the act?

Ms Dafoe: My recommendation – and Mr. Reynolds may disagree; I'm not sure – would be that rather than putting a list like this in the act, just put it together as a sort of a guiding policy from the committee so that those that are looking at amending and updating the schedule will have some sort of clue as to what's supposed to be in there and what's not. It would also be helpful for new boards that are created, for the creators of the legislation to be able to look at this, a list of criteria, and say: should this be a disqualifying office or should it not?

The Chair: As a matter of policy.

Ms Dafoe: As a matter of policy as opposed to putting it in the act. It is kind of touchy-feely, you know. It's not black and white, at least the way I see it now, particularly when you get into what's listed in 9 through 14. There may be very good reasons why one entity that seems to be similar to another is on as a disqualifying office whereas the other one isn't.

10:35

The Chair: Well, I think the recommendation is that the criteria would not be incorporated into the act and that it would be set out as a matter of policy. I think we can deal with it on that basis. I don't know whether we want to get into the details of that policy. Probably not.

Mr. Shariff: Who would set this policy?

The Chair: It's in regulation. I guess it's government.

Mr. Shariff: So I just have, then, one suggestion. We've already dealt with number 12, to move it under regulation. So why don't we have a system or mechanism in place that would say that whoever, whether it's the Executive Council, will be developing that schedule of disqualifying offices shall do so in consultation with the Ethics Commissioner?

The Chair: Or upon the recommendation of the Ethics Commissioner.

Mr. Hamilton: And with the health boards.

Mr. Shariff: No, no. In order to develop that list of disqualifying offices, the Executive Council will develop that in consultation with the Ethics Commissioner.

Ms DeLong: When I look at this list, I see some things here where essentially no one should be allowed to sort of move over into that area because it would definitely be a conflict of interest. Okay? Boards of financial institutions: I see that as, you know, something that we should definitely stay away from because of actual conflict

of interest. I see judges of the Provincial Court of Alberta because of, you know, mixing the two levels of government.

But then I see other things that are essentially more governance issues. For instance, when it comes to the boards of health regions or children's services, it seems to me that this is sort of a policy situation: how much of an arm's-length relationship does the government choose to have with these boards?

So I'm sort of looking at it that there are some that definitely would be in the conflict-of-interest areas and others that are more in the policy-type area.

The Chair: Well, those which are iterated right now are the offices which are already set out in the existing schedule. I think the idea was to try and capture what some of the criteria are. How did they end up in the existing list?

I can see one problem with item 14 given the Alberta Centennial Medal Act, which specifically delegated the duties of recognition to Members of the Legislative Assembly, for example. I don't know whether we'd want to go with number 14 as it presently exists in a broad sense there.

Mr. Martin: Well, I would totally disagree about the health authorities. They used to be elected. They were taken away. Some people think that that relationship is too cozy to government. Then to put MLAs on there I think would certainly defeat the purpose of what they're set up for.

I certainly agree with you on 14. I think that makes a lot of sense that MLAs are not involved in that as elected representatives of the people.

I think we should just not spend a lot of time on this. I would move that we take off item 14 and do it as guidelines and not put it in the act, that this be there as part of what the Ethics Commissioner deals with.

The Chair: Okay. So we have a motion, then, that the recommendations on page 5 . . .

Mr. Martin: Minus 14.

The Chair: . . . less number 14, would be recommended as policy guidelines.

Ms DeLong: I still see that the boards should not be listed in here because I don't see it as an ethics question. Okay? I see it as a governance question in terms of whether you actually want an arm's-length relationship or you want to have something in between that's not quite arm's length. So I see it very much as a governance question and not as an ethics question when it comes to those boards.

Mr. Martin: Let's have a vote.

Mr. Shariff: Well, before we vote, the recommendation that you are suggesting is that these be adopted as guidelines?

Mr. Martin: Yeah.

Mr. Shariff: Is that what you have in mind?

Mr. Martin: Yeah. Policy guidelines of the Ethics Commissioner.

The Chair: It's not incorporated in the act. So it's not something that's black and white; they're general principles.

Mr. Shariff: I can see Alana's point in one situation; for example, when the public school board in Calgary was dissolved. For the interim purpose, let's say, if there was a need to kind of have some MLA involvement until . . .

Mr. Martin: But they didn't have an MLA doing it. I mean, it was Cornish that did it.

Mr. Shariff: That's right. Yeah. But if it's within the guidelines and if the Ethics Commissioner is involved, I have no problem with it.

Mr. Martin: I would point out item 2 again, that Karen talked about. There are exceptions in there as part of the guidelines.

Mr. Shariff: Could we add to it: or the approval of the Ethics Commissioner?

The Chair: Ms DeLong.

Ms DeLong: Yes. My question is – and maybe, Karen, you can help me with this. How is being appointed to a board of, say, child and family services a conflict of interest?

Ms South: It is currently a breach of the act to be a member of the board of a child and family services authority.

Ms DeLong: But in terms of ethics though: why? I just don't get that one.

Ms South: I'm assuming that they are intended to be operated without interference.

Mr. Martin: Like the local health board, Capital health or whatever, the Calgary region: it's supposed to be that they make decisions that don't necessarily always agree with the government. At least that's in theory what's supposed to happen.

Mr. Shariff: Give them the money. Let them make the mistakes.

Ms DeLong: Yeah. And who gets blamed?

Mr. Shariff: Yeah. Take the blame though.

The Chair: They operate as quasi-independent entities. I guess that's the theory.
Are we ready for the question then?

Mr. Rogers: Sure. The question is, Mr. Chairman? Just to be clear.

The Chair: The motion put by Mr. Martin was that we not incorporate the guidelines into the act but, rather, that we make the recommendation that there be policy guidelines given for the establishment of disqualifying offices, which would follow the recommendations on page 5 with the exception of number 14.

Mr. Rogers: Do we spell out that it's Executive Council with the Ethics Commissioner? Is that implied, or does that need . . .?

Mr. Shariff: This will be the guidelines.

The Chair: This is a recommendation, remember.

Mr. Rogers: Okay. I can live with that.

Mr. Shariff: Question.

The Chair: Okay. All in favour? Anyone opposed? One. That's carried.

Mr. Elsalhy.

Mr. Elsalhy: Yes. Can I just ask you a question of clarification on the act itself, not on the recommendations that were discussed? On page 9 of the act, which is section 6(1), it says:

A Member breaches this Act if the Member . . .

(b) becomes at any time while a Member . . .

(ii) the holder of any of the offices set out in the Schedule,

which is fine. Then if you go down to subsection (3), it basically exempts ministers. So I'm just wondering if legal counsel can offer some clarification there.

10:45

The Chair: Well, recommendation 1 of the Ethics Commissioner on page 5 of his recommendations was that we continue that exception.

Mr. Elsalhy: Yes, but why are they special? That's the question.

The Chair: Maybe ask the Ethics Commissioner.

Mr. Elsalhy: If we're clearly saying that if a member becomes a member or a chair of one of those boards or agencies as per the schedule – and I'm not arguing how the schedule will be arrived at – why are we saying that the ministers are an exception?

Mr. Martin: I'm just guessing that maybe something, an emergency, happens and the minister fills in till they get somebody else. I don't know. That may be a reason.

Mr. Shariff: Like the school board situation.

Mr. Martin: Yeah.

Mr. Elsalhy: So do we need to tighten it up? That's the question then. Do we need to say: only in cases of dire emergencies?

Mr. Shariff: You know, these boards fall under certain ministries, and those ministers are responsible for it, like it or not.

Mr. Rogers: So it's an extension of his role or her role. I would see that in that temporary capacity. So I don't see any reason. I think it would be counterproductive if we prohibited that. I can see where this made very good sense, and it still does.

Mr. Elsalhy: Let's assume, for example, a ministry like Restructuring and Government Efficiency. They have 1,300 employees. Can they not find one of those employees to fill that vacancy? The minister doesn't have to do it himself, being an MLA. The minister is an MLA as well.

Mr. Rogers: Right.

Ms DeLong: Remember that we're going to be covering the upper levels of the civil servants. What we're talking about here isn't just MLAs.

Mr. Elsalhy: No. This is only MLAs.

Ms DeLong: Is this only MLAs?

The Chair: This is the members, yeah.

Mr. Rogers: Mr. Chairman, I would see that role in that potential situation there – all the minister is doing is just as a caretaker, you know, a board chair, if that's the case, for an interim period. The work is still going to be done by the bureaucrats, be they out of the ministry or out of that particular body. I don't see where this is a problem, frankly.

Mr. Martin: Let's use an example, maybe not a good one from the government's perspective, the Labour Relations Board. Let's say that they had to fire them quickly and somebody has to still be responsible. The minister is responsible, but I think any minister is not going to want that hot potato very long. They'd have somebody in very quickly, I would think.

Mr. Elsalhy: I guess what I'm really saying here is that subsection (3) doesn't stipulate that it's only on an interim basis. It opens it, you know. He could be appointed to that agency or that board for the term of his membership as an MLA. So he could be here for 12 years, and he's on that board for 12 years.

Ms DeLong: But why is that an ethical problem? I don't get that.

Mr. Elsalhy: What I'm asking is: if we're doing this for all MLAs, why are we exempting 23 ministers?

Mr. Shariff: We already voted on 13. Yeah, we voted. This is just a clarification.

The Chair: Okay.

So do you want to make a motion, or shall we move on to recommendation 14?

Mr. Elsalhy: Well, basically, if I do make a motion, Mr. Chair, I would say that we allow the ministers – I'm not arguing with it – but only on an interim basis.

The Chair: So this is an additional, supplementary recommendation then.

Mr. Elsalhy: Yes.

The Chair: Discussion?

Mr. Elsalhy: I'm not in disagreement with the other members, but I just want that extra assurance that it's only temporary, that it's not something that they can continue to hold or be on that board for longer than what's needed if they're responding to an emergency basically.

Mr. Rogers: I don't think it's necessary, Mr. Chairman. I think, again, that the nature of the beast is that it would just be something – I think Mr. Martin gave a really good example. I might have picked another one.

The Chair: Well, I think the Ethics Commissioner clearly is content to leave the exception in there as it is now, provided that they receive no remuneration other than their reimbursed travel expenses.

Mr. Elsalhy: Yeah, but the issue is interference again. It's not whether they're being compensated for it. I think it's interference.

Mr. Shariff: You know, Mo, it's not interference. The minister has a responsibility within that ministry to deliver a certain program. I can't think of a situation today where any minister is on any of these boards. But if a minister feels the need to be involved to kind of put that board organization back on track for whatever reason, I don't think we should interfere with or disallow them from doing that. They would be able to influence it anyhow.

Mr. Elsalhy: Fine, but only temporarily, not for years and years. I have an example actually. Let's say that the hon. Minister of Finance decides to actually dissolve the board of the Securities Commission and takes it over, so she'll be running the place. Fine. Now, the thing is that she can do this temporarily to get the house in order basically, but she shouldn't continue to do this for fear of interference.

Dr. B. Miller: I sympathize with Mo's point. You know, I was trying to think of an example, too, and I guess the one that comes to my mind is that we just had an amendment to the Police Act about the Law Enforcement Review Board, and the Solicitor General is responsible for all that. You know, we talked about the kind of natural justice that should apply to discussions on that board, and one of them is that a person has a right to be heard but also to be treated fairly and impartially. I have a problem with the Solicitor General being on that board or even chairing that board, especially as they deal with complaints about the police. I think that it would be inappropriate for the Solicitor General to be on that board. So that's an example I have a problem with.

Mr. Martin: Well, I think it's there for an emergency. I think that any minister that wanted to hang on a board would pay a political price, and they wouldn't have the time. So I see it as an emergency thing. To me it's just self-evident that they wouldn't want to continue.

The Chair: Are you ready for the question? We have a motion, then, to change the status quo to provide that
ministers would be allowed to take over a membership or chair of a board on a temporary basis only.
Can we have a show of hands? All in favour? Opposed? It's defeated.

Okay. We'll move on to number 14, which is the contracts with the Crown section, which reads:

Section 8(1)(e), which refers to prohibitions concerning a Member or a person directly associated with the Member from entering into "a contract under which the Alberta Opportunity Company lends money," should be deleted from the Act as the Alberta Opportunity Company no longer exists.

I don't think this is controversial. Agreed?

Hon. Members: Agreed.

The Chair: Okay. Recommendation 15. This is the one where we kind of got bogged down in definitions. The recommendation was that

section 8 should be amended such that a Member is not in breach of a contract that is otherwise prohibited by the section if the contract is a trivial or insignificant one.

Comments?

Mr. Shariff: I guess the issue of being trivial would be determined by the Ethics Commissioner, and if it's determined that way, then I see no problem with this.

The Chair: All agreed? Anyone wish to make comments?

All in favour of recommendation 15 as worded? Anyone opposed? It's carried.

Recommendation 16:

Section 8 should be amended to enable the Ethics Commissioner to approve a Member's renegotiation or renewal of an ATB Financial mortgage.

So this is only for existing ones, presumably, when the member is elected, Mr. Hamilton. It'll allow them to keep their mortgage.

10:55

Mr. Hamilton: They can, and if they have a loan, they can keep it, but they can't increase it.

The Chair: Any discussion on this point? Is everyone agreed with recommendation 16?

Mr. Shariff: I do agree, but I just have a question, and it really doesn't pertain to this. Let's vote, and then I have a question.

The Chair: All in favour? Anyone opposed? So that's carried.

Mr. Shariff: I just have a question with this matter. We have already voted, and I agree with it. Why this distinction with Alberta Treasury Branches? I mean, if I wanted to give my business to them as opposed to the regular bank on a mortgage, let them make money from me. Let them get profit from my mortgage.

The Chair: Well, I think that if you read your history, there were some instances in the distant past where certain improprieties were suggested.

Okay. Moving on, then, to recommendation 17, which is that "the Act should be amended to enable the Ethics Commissioner to recommend that a Member be compensated for the costs of transferring a mortgage from ATB Financial to another financial institution." Any discussion?

Mr. Martin: Well, if we made that last one, why would he need to?

Mr. Rogers: Well, this is to move it. The other one said that you could renegotiate to keep it.

The Chair: Well, I think that Mr. Hamilton inferred that if you wanted to increase the amount of the mortgage, you can't do it.

Mr. Martin: Then when it runs out, you can't renegotiate it at ATB, right?

Mr. Hamilton: No, but he wants to move to another bank.

Mr. Martin: I guess what I'm asking is: why would he have to if we passed the other one? He can finish out his term.

Ms DeLong: I would actually prefer that we get rid of 16 and just put 17 in there because in that way if you're covered for your costs of moving your mortgage, then you're just totally away, and there is no question of ethics at all, no problem at all. We've gotten rid of the problem if a person can get some sort of compensation for the costs of transferring.

The Chair: Then he shouldn't have one at all.

Ms DeLong: That's right. Yeah.

Mr. Lukaszuk: But it can't be the member's choice. If the Ethics Commissioner allows me to carry on with a mortgage with ATB that I had prior to election and I choose not to and I switch and find myself a much more favourable rate of mortgage or a worse rate of mortgage, why should the taxpayer be on the hook for reimbursing me for any losses if I'm doing it of my own will? A member should be reimbursed for any costs incurred if he is forced to change his transactions.

Mr. Martin: That was my point.

Mr. Rogers: Mr. Chairman, I like 16 because it allows the option of staying, and I'll tell you why. Most of us are connected to a partner, and that partner has been banking with ATB since he or she was a little girl – you know, I'm just being overly dramatic here – and insists: "To heck with you. Even though I agreed that you could run for this office and gain it, why should I have to uproot everything I've done?" and there's good reason.

Mr. Lukaszuk: File for divorce.

Mr. Rogers: Well, there you go.

I think that keeping 16 and 17 recognizes that we're not all here as individuals, that we have other connections, partners in many cases.

The Chair: Mr. Lukaszuk, do you want to make a motion then?

Mr. Lukaszuk: The one I just voiced?

The Chair: On the disposition of 16 and 17.

Mr. Lukaszuk: Are you saying that it become grounds for a divorce if a spouse has ATB? No.

I believe that the section should read that if a member is forced to change his banking from ATB to that of another institution and costs are incurred as a result, then he should be reimbursed, but by no means should costs be reimbursed if he's doing it of his own will.

The Chair: So you're suggesting an amendment to the wording of 17.

Mr. Lukaszuk: That's right. Otherwise, you know, you're opening up a Pandora's box, where members could actually start negotiating mortgages more or less favourable and have the costs covered.

The Chair: Well, the recommendation as it is right now just enables the Ethics Commissioner to recommend compensation. Presumably he wouldn't do that if it was just a capricious change of lenders. Am I right?

Mr. Reynolds, you have a comment?

Mr. Reynolds: I'm just wondering who the commissioner is making the recommendation to. Recommend to whom that the member be compensated? To the Assembly? To ATB? You know, the only recommendations in the act that exist now are recommendations that the commissioner contains in a report. If it's meant to be reimbursement, you can look at section 19 of the act, that talks about reimbursement to members "for costs associated with the completion of their disclosure statements and the establishment and administration of their blind trusts." I mean, if that's what it's trying to get at, then that's one thing, but with respect to recommending, as I said, I don't know who he would recommend this to. What body would then pay for it?

The Chair: Mr. Martin.

Mr. Martin: Yeah. I think we can get rid of 17, period, because we've got 16. Nobody is forced into doing it now. It solves the problem that he's talking about. I don't think we need 17.

Ms Dafoe: The way 16 is worded, as I read it, it gives the Ethics Commissioner the authority to make the approval, but it doesn't require that the Ethics Commissioner make the approval. Conceivably as it's worded now, the Ethics Commissioner can say: no, you can't renegotiate.

The Chair: Okay. We've got a motion. Do you want to speak to that motion, Mr. Rogers?

Mr. Rogers: Mr. Chairman, unless I'm wrong, I think both 16 and 17 are on the premise that as members we are prohibited from dealing with the ATB. That's the premise that I'm under right now. Number 16 allows the Ethics Commissioner to make an exemption or to facilitate a member keeping an ATB mortgage. That's what 16 does. We've agreed to that.

Number 17 recognizes that without 16 I have to find the Royal Bank or the credit union or somebody else to take over my mortgage, which then allows – and we need some extra wording – that the Assembly or somebody is going to pay the costs of my penalty of \$16,000 to dump my ATB mortgage and take it to the Royal Bank.

Mr. Martin: But you don't have to now.

Mr. Lukaszuk: That's assuming that he allows you to stay.

Mr. Rogers: Right. That's my point: 16 allows you to stay if you already have one. We were told, as part of our package of signing on, that we can't deal with the ATB.

The Chair: Can't take on a new one.

Mr. Rogers: Exactly. Number 16 allows an exemption to that. Number 17 recognizes that you have to move and that somebody is going to pick up that tab. So what's the problem?

Mr. Shariff: Who is that somebody going to be?

Mr. Rogers: Well, we need to specify that. It's the Assembly. It's the people of Alberta in some format.

Mr. Lukaszuk: We just have to recognize that the commissioner does have the authority not to grandfather you in and not to allow you to stay with the ATB account. You know, a mortgage is a simple example, but if you had someone who was involved in business, who had a multitude of loans and guarantees and stocks and others invested through ATB and all of a sudden that person became the Minister of Finance, then the Ethics Commissioner may say: in your case I'm not allowing you to stay with ATB. Should, then, that person be reimbursed for those costs? You know, in our Election Act having an ATB account does not disqualify you from running for office. If that was the case, then you wouldn't have the problem.

11:05

Mr. Martin: I accept that. That seems reasonable.

The Chair: Do you withdraw the motion then, Mr. Martin?

Mr. Martin: Yeah.

The Chair: So are we content, then, with recommendation 17 as presently worded?

Mr. Rogers: It needs to be cleaned up, Mr. Chairman, about who pays: that the government, the province of Alberta recommend to the Assembly, what have you. We just need the appropriate language in there that says that the people of Alberta are going to pay for my costs.

The Chair: Mr. Reynolds, you've got a suggestion there to remedy the conundrum?

Mr. Reynolds: Well, frankly, I would just roll that in with section 19, about reimbursement for costs. Just state that they shall be reimbursed. Although I must say that I'm not sure what the costs of a renewal or a negotiation would be if your mortgage had come to an end at ATB.

Mr. Rogers: Well, it's not at an end though.

The Chair: Interest rates might have gone up, for example.

Mr. Rogers: Yeah. In the middle of a term. I used to sell real estate, deal with it all the time. In the middle of a term you could face penalties anywhere from a few hundred dollars to a few thousand. So assuming that this would be in the middle of a term of an obligation.

Mr. Martin: Yeah. If it runs out, you shouldn't go back there.

Mr. Reynolds: Unless, of course, you wanted the commissioner to have to recommend that to the Assembly.

Mr. Shariff: Well, Rob, currently in looking at that same section, number 19, who is the Ethics Commissioner recommending to? It doesn't clarify therein.

Mr. Reynolds: He doesn't recommend to anybody under section 19.

The Chair: I think Mr. Reynolds was suggesting that it just say that the member be compensated.

Mr. Reynolds: Well, is it compensated or reimbursed?

The Chair: We'll leave it to the drafters of the legislation, that are accepting our recommendations, to work out the details.

Before we move on, can we just clarify for the record that recommendation 17 would be worded that

the Act should be amended to enable a Member to be compensated for the costs of transferring a mortgage from ATB Financial to another financial institution where required to do so by the Ethics Commissioner.

Is that agreeable? All in favour? Anyone opposed? That's carried.

Okay. Recommendation 18. This is the one that deals with:

The Act should be amended so that a Member does not breach the Act by

- having a minor overdraft on a chequing account,
- increasing a line of credit, or
- increasing a credit card limit.

Can somebody speak to that?

Mr. Elsalhy: Which section of the act are we referring to?

Ms South: This is all within section 8, and that should specify that it's with ATB Financial.

The Chair: That's all related to ATB Financial?

Ms South: To ATB. Whenever any of those circumstances occur, the financial institution deems it to be a loan if there's an overdraft.

The Chair: So you could have a deposit account, which is not problematic, and then if you overdraw the chequing account, presumably that's what the mischief is aimed at.

Ms DeLong: I don't understand why we would want to put this in. I mean, if you increase your line of credit by \$200,000, that sounds to me like a major problem, if you actually increase it. Essentially, it's an enormous loan that you could get. So I don't know why we're looking at putting this in here.

Mr. Martin: What they really want to do is get us out of banking with ATB because it's owned by the government. That's what the bottom line is.

Ms DeLong: Right. Yeah.

Mr. Shariff: So, Karen, this is only for dealing with ATB. If you did the same thing with another bank . . .

Ms South: It doesn't involve our office.

Mr. Shariff: It doesn't involve your office. Okay. Well, if we don't want people to be dealing with ATB, we shouldn't be allowing this.

The Chair: Ms DeLong, do you want to make a recommendation that this recommendation be decreased or limited in its scope somewhat by deleting the provisions relating to lines of credit or credit cards? Is that your suggestion? In other words, the overdraft on a chequing account would be okay but not increasing the credit provisions.

Ms DeLong: How much of an overdraft? I really don't know why we're even putting this in here.

The Chair: Do you want to revisit the whole issue?

Ms DeLong: My understanding is that, hey, we're allowing mortgages with ATB.

The Chair: Only if they were pre-existing at the time you got elected.

Ms DeLong: Yes. Okay. But, I mean, in terms of working with ATB and allowing lines of credit, we're just opening an enormous trap door to fall down.

Mr. Rogers: Well, Mr. Chairman, again – and you just touched on it – I'm wondering if 16 in its current form may be not quite adequate. I just raise that because when we're dealing with individuals – now, it's a discussion we should have. I know we've dealt with it already, but please hear me out.

If we agree that we're trying to recognize that maybe in certain parts of the province, in the north or the far south, where the ATB is pretty much the bank, we're making some small adjustments to allow some individuals to continue to bank with the ATB – and I use

the word “bank” because it then goes a little bit beyond a mortgage; a lot of us have small personal lines of credit and a chequing account where you can overdraw a thousand bucks and what have you – the question I raise: do we need to do something a little bit more comprehensive with 16, or do we just make it blunt and say, “You can keep a mortgage; everything else must move”? I think that’s a discussion worth having. If there is a hardship potentially for some individuals, should we be accommodating that under 16, where it’s all one complete package instead of just the mortgage? I see where this provision in 18 on its own is a little awkward, frankly, if it’s not combined with 16.

Mr. Shariff: Mr. Chairman, I’m given to understand that there are certain communities in Alberta where the only lending institution in their neighbourhood is the Treasury Branch, so for us to kind of blanketly say, “No, you can’t deal with that one institution in your neighbourhood,” would probably be wrong. But I think we can build in some safeguards with having the Ethics Commissioner involved in some of those decisions rather than exemptions completely.

Mr. Rogers: Hence my suggestion of combining it all under 16.

Mr. Shariff: If it can be done, sure.

The Chair: We’re not necessarily dictating, Mr. Rogers, how these recommendations are accomplished in terms of regulation.

Mr. Rogers: I realize that. That’s why I’m wondering if the language under 16 could be tweaked to take this into account, and then we wouldn’t need 18. That’s where I’m going.

The Chair: It’s part of the same issue, I think.

Mr. Martin.

Mr. Martin: Yeah. Well, this is all fairly recent. Back when I was here before, nobody could. It was pretty clear at one time if you had a mortgage because I had members in my caucus that had to get out of ATB immediately. So this is I think a compromise, and I would suggest that we have to be a little careful. I understand that in some rural areas, you know, the ATB may be the major institution. If we’re talking about a conflict of interest and we still have a line of credit and I’m the local MLA and he’s the local ATB bank manager and I go in and say, “It’d be nice if I had a little more line of credit here,” that potential is there. I think that’s why they wanted the ATB out to begin with.

I think that we should be still going on that, that you should not be dealing with ATB for those reasons and not make an excuse about it. Now, mortgages and the things that we’ve talked about I understand: in the middle of it, let them finish. But it used to be very clear. For members, if you were elected and you were at ATB, you got rid of it right away. It didn’t create that much of a hardship at the time.

11:15

The Chair: Well, Ms DeLong, I think that’s the same point that you were trying to make: why are we allowing this exception if you can only have an existing mortgage and renew it? Do you want to make a suggestion in that regard?

Ms DeLong: I’d say that we just drop 18 altogether.

The Chair: Discussion on that proposal?

Mr. Shariff: You know what? I’m going back to an argument that was brought forward by George Rogers earlier on. If your spouse or yourself are using that one institution in your neighbourhood and you have used them for your line of credit or credit card and that’s the only institution in the neighbourhood, I’m not so sure if you want to deny those people to be connected with their neighbourhood. As long as it’s reasonable and, you know, there’s some safeguard to it.

Mr. Hamilton: Well, a constituency must have a bank, a Treasury Branch in your area, maybe not in your town but in a town that you’re representing down the road. Surely there isn’t a constituency that doesn’t have a Treasury Branch.

Mr. Shariff: I’m saying those people who already were using the Treasury Branch for their mortgage, for their business loans, for their credit cards.

Mr. Hamilton: Yeah. We’re talking about an MLA, right?

Mr. Shariff: Right. Yeah.

Mr. Hamilton: And they move around in his area. There’s got to be a bank there. I mean, I don’t find that good enough.

Mr. Shariff: So you are of the opinion that they should not be allowed, or they should be exempted as it’s recommended here?

Mr. Hamilton: I agree with: if you have a loan, you can keep it, but you can’t increase it. If you have a mortgage, you can keep it, but you can’t increase it.

Mr. Shariff: But it’s in opposition to what’s in here then?

Mr. Hamilton: Well, that’s my view.

Mr. Shariff: Okay.

The Chair: I think the motion is to delete 18 altogether. Mr. Elsalhy, you wanted to comment?

Mr. Elsalhy: Thank you, Mr. Chair. Very briefly, I was just going to build on what the Ethics Commissioner said. People are not banking in branches anymore most of the time. They’re doing it by phone. They’re doing it on the Internet. You write a cheque, and you never see that cheque again. You know, you don’t have to be physically at your local neighbourhood branch anymore.

Plus the fact that if you’re worried about rural Alberta, you know, look at any constituency. They don’t only have the ATB. They probably have one or more branches of some of the other institutions, like TD or CIBC or Royal Bank. [interjection] Well, I know. But if you consider Leduc-Beaumont-Devon as a rural community, they have three towns right there. So, you know, surely one or the other has some sort of an alternative lending institution.

People don’t need to be at their physical branch anymore. We’re thinking about a line of credit or a credit card: the statement only comes once a month. Surely you can drive for about 15 or 20 minutes to see your bank manager if you need to do that. Otherwise, I do most of my banking without even stepping into a bank now. The only time I step into a bank is once every four years when I negotiate my mortgage extension. That’s it.

The Chair: Okay. Let’s call the question on whether we delete it. Then if the motion is defeated, we’ll come back and revisit the

wording or the nuances of it. So, first of all, is there support to delete the draft recommendation 18? All in favour? That's carried.

Mr. Shariff: I'm not voting on this one. I can't decide.

The Chair: Okay. One abstention.

Mrs. Sawchuk: You can't abstain in committee, Mr. Chairman.

The Chair: Mr. Reynolds, do you want to comment on the legality of Mr. Shariff's abstention from the vote?

Mr. Reynolds: I didn't notice it, Mr. Chair.

The Chair: He purported to abstain from voting, which I don't think is allowed under our rules of procedure.

Mr. Reynolds: Well, it wasn't a recorded vote, was it? I mean, in the sense that it was just a voice vote.

The Chair: The motion was carried in any event.

Okay. We'll move on to recommendation 19. We had quite a thorough discussion regarding this one. This one states:

The Act should be amended so that whether or not a Member intends to vote in a manner that would advance the private interest . . .

That doesn't read quite correctly, does it?

. . . a Member is prohibited from participating in discussions when the Member knows that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor child or improperly further the private interest of any other person.

Mr. Lukaszuk: I had a question to the Ethics Commissioner last time when we discussed this in a cursory manner, but I don't think I ever received an answer. I asked him: why is it that any member who may be involved in any business activity out there has to excuse himself from debate and voting with the only exception of farmers? They can vote and debate on matters that directly benefit them. As far as I recall, the Ethics Commissioner's reply was to the effect that, well, that's just the way it is.

Mr. Hamilton: That isn't what I said.

Mr. Lukaszuk: Well, it's historically been that way.

Mr. Hamilton: I said that it's a double standard.

Mr. Lukaszuk: So my question, then, to the Ethics Commissioner is: why is your office allowing a double standard? Why aren't we enforcing it?

Mr. Rogers: It's in the legislation.

Mr. Lukaszuk: It's in the legislation? Okay.

Mr. Hamilton: Of course, if you can get all your members to agree to that, I would agree to it too.

Mr. Lukaszuk: What would your recommendation be on this one?

Mr. Hamilton: In my last year I'll tell you.

Mr. Lukaszuk: Tell me now.

Mr. Hamilton: I mean, you know it. You know it.

Mr. Rogers: It's a double standard. I think that's clear.

Mr. Lukaszuk: Okay. So should we, then, amend the legislation so that no matter what genre of business you're in, if you're in proceedings where you end up voting on a matter that can personally affect you, you should be excusing yourself?

The Chair: Well, do you mean personally affect you in a general sense where it . . .

Mr. Lukaszuk: Financially benefits you.

The Chair: Yeah. Where it's a direct financial benefit.

Mr. Lukaszuk: Well, I'll give you an example. While being elected, I had a company that was still incorporated and somewhat active dealing with the Workers' Compensation Board. I don't mind disclosing that because it's public record. I remember I had a discussion with the Ethics Commissioner saying that you are in clear conflict because the WCB is a creature of a provincial statute, and since I was dealing with the WCB, I had a clear conflict. So I had to dissolve my business and relinquish any revenue from that business henceforth. If I didn't, I would have to excuse myself from any vote or any debate in the House that had to do with anything relevant to the WCB and probably safety and everything else.

Mr. Shariff: But if you're a farmer, you would be okay.

Mr. Lukaszuk: Well, that's right. Apparently, if you're a farmer, you're okay.

Mr. Hamilton: Mr. Chair, we're going through this process, and we want to get some things through. If you take on what the member here is trying to do, it's just going to mess the whole thing up. We won't get a registry, or we won't do some of the other things that I would hope to get. I think we should keep our eye on that ball.

11:25

The Chair: I think there's a typographical error in recommendation 19. I think that it was intended that the second line there would read: "manner that would advance their private interest," not "the private interest." So with that change.

Mr. Reynolds: I'm just wondering. It says, "The Act should be amended." I'm honestly not clear how this recommendation changes what's in 2(1) of the act right now, which reads:

A Member breaches this Act 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, a person directly associated with the Member or the Member's minor child.

The Chair: Well, I think that the nub of it is in the last phrase.

Mr. Reynolds: "Any other person"?

The Chair: Where it starts: "Or improperly."

Mr. Reynolds: Okay. So that would be "or improperly further . . ." Okay. Right. I forgot the previous discussion. Yes, there we are. I was focusing on "whether or not a Member intends to vote in a manner." I think that that part is already covered in the act right now.

The Chair: We could shorten this up by saying that the act should be amended so that a member should not improperly further the private interest of any other person.

Mr. Reynolds: Yes. That looks like the amendment that would be made.

The Chair: I think that was the intention.

Mr. Reynolds: Yeah.

Mr. Rogers: Mr. Chairman, can somebody help me to find the provision where farmers are excluded from this?

Mr. Reynolds: They aren't.

Mr. Rogers: They're not. Okay. So then we're fine.

Mr. Reynolds: Mr. Hamilton is obviously the one to speak to this, but I believe what he's referring to is the application of the act in determining what constitutes either a private interest or that the member doesn't share an interest different than a broad class. I'm sorry; I can't remember the section, but essentially that's the issue. I think he was talking about the application of it.

Sorry, Mr. Hamilton. I didn't mean to speak for you.

Mr. Hamilton: No. That's right, quite right.

Mr. Lukaszuk: Then I have a question. I was led to believe that there was a section in the current act that exempts farmers, but if there isn't a section in this act, then it's the interpretation of the Ethics Commissioner that allows it to happen. Am I correct?

Mr. Hamilton: No. I think you should go to your caucus and put that to them, not me.

Mr. Lukaszuk: I realize that this would not be a popular recommendation, but the Ethics Commissioner is not in the caucus. You're independent of government.

Mr. Hamilton: What would you have me do?

Mr. Lukaszuk: I'm not in a position to tell you what to do. You can tell me what to do.

The Chair: Well, the act presently provides that if you have reasonable grounds to believe that you are going to be directly affected, you must withdraw from the meeting and report it to the Ethics Commissioner. I guess that doesn't occur now. I think that's what Mr. Hamilton is saying. It's seen as a practical exception to the rule.

Mr. Lukaszuk: And I'm simply asking why.

The Chair: Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chair. I have two minor questions. The first one: is the key word in this paragraph the word "improperly"? Is this where the discussion is going, or are we talking in the general context with the bigger paragraph?

The Chair: We're talking really, I think, about the last phrase there,

that the act should be amended so that a member, you know, may not "improperly further the private interest of any other person."

Mr. Elsalhy: Yeah. This way, I can live with this. If we are looking at the bigger paragraph, then come this next spring, you know, when we're talking about the third way and we're revisiting things like the Health Professions Act and so on and one of the recommendations that the minister is considering is to grant prescribing rights to people like pharmacists and registered nurses and ophthalmologists and people like that, I would have to abstain, and I can probably add to the discussion. I don't have to maybe participate in the decision, but at least the discussion, you know, is crucial for me, to bring forward some of the things that maybe other people have overlooked. I just wanted to make sure that this doesn't apply to bill debate or things like that.

Ms South: It does.

Mr. Elsalhy: It does but not in the general context. We're thinking about improperly advancing somebody's interest. I mean, there's no hiding that pharmacists stand to gain by gaining prescribing rights. The minister is going there. Caucus is going there. Cabinet is going there. But, you know, maybe I can add to that discussion something positive, something constructive.

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

Mr. Reynolds: Well, no. Once again, this would be Mr. Hamilton.

I think that this would be an issue where members usually seek out the advice of the Ethics Commissioner prior to the debate occurring because it gets back to what you discussed in the preamble, that people come to the Assembly with different backgrounds and could bring their expertise to bear. It's not that you know something about the area; it really gets into if you're getting a direct, you know, financial interest or a direct interest from it. But that would be up to the Ethics Commissioner to decide. Just because the topic touches on something you might be associated with, I would think that Mr. Hamilton doesn't disqualify you automatically.

The Chair: Any further discussion then? Are we ready to vote on this number 19, which we've agreed, I think, could be shortened up.

Mr. Elsalhy: How does it read now?

The Chair: Well, okay. If I can phrase it in response to Mr. Reynolds comments there, I think what we're doing is adding to the existing provision, which says that you are prohibited from participating in discussions when you know the decision might further a private interest of yourself as the member, a person directly associated with the member or your minor child. The suggestion is that the act should be amended so that a member shall not "improperly further the private interest of any other person," with the emphasis on the word "improperly". That's the essence of the recommendation that we have in front of us.

Are we agreed?

Ms DeLong: No. I still don't know what "improperly further the private interest of any other person" means. The impropriety has to do with the relationship; it doesn't have to do with the private interests. It's . . .

Mr. Rogers: Societal.

Ms DeLong: Yeah. And to me it's just totally wide open. It could be used to drag people through the mud for just anything.

Mr. Martin: We've gone and had this discussion.

Ms DeLong: Yeah. We've gone through it a hundred times. Yeah. And I still don't see a resolution to it.

The Chair: I think the conundrum that we were dealing with last time was that we were saying that rather than try to make a list of friends, cousins, brothers, spouse, you know, siblings, we would simply put the emphasis on the impropriety of the thing, and we'd leave it to the discretion of the Ethics Commissioner, presumably, to determine when that was an inappropriate use of an interest.

Ms DeLong: Well, okay. Then I have a question. How would the commissioner figure out whether it was improper without doing an investigation? If he does an investigation, then it immediately becomes a public problem. I mean, will there be investigations to see whether this is improper?

The Chair: Well, I think it falls within the general . . .

Ms DeLong: A public investigation. You know, will he have to publish the results of whether something improperly furthered the private interests of any other person?

11:35

Mr. Shariff: Alana, in this act there are so many sections that are left to the discretion of the member to interpret and a lot of decisions that are left to the discretion of the Ethics Commissioner. If we are going to define every single decision, this act will be 5,000 pages long. So, really, I can't see a practical way of defining "improper." I think there is some subjectivity that we will have to allow in our recommendations.

The Chair: Are we ready for the question then?

Ms DeLong: I still don't really have the answer. Karen, can you answer this? If someone alleged that a member had improperly furthered the private interests of another person, how would you proceed?

Ms South: Based on the request for investigation and assuming that the matter fell within the jurisdiction of the act, the commissioner would likely initiate the investigation. If the commissioner found that there were no grounds for the allegation or that it was made in bad faith, the commissioner has the right to discontinue the investigation. But if the commissioner completes the investigation, the commissioner will then report his findings to the Assembly and either find that, yes, there was a breach of the act or that, no, there was not.

Ms DeLong: Okay.

The Chair: Well, you've got the definition under section 3 right now. I mean, all we're doing is adding a small additional phrase to section 3.

So let's vote. All in favour of that modified resolution? Anyone opposed? That's carried.

I think that this is an appropriate time to break to get some lunch. I think the idea was that we would come back and have a working lunch and continue until 1 o'clock or so. Shall we take 10 minutes, then, to get our lunch, and then we can come back in here?

[The committee adjourned from 11:37 a.m. to 11:46 a.m.]

The Chair: Okay. Can we move on? Can we recommence? Recommendation 20 I think is fairly noncontroversial. It states that the Act should be amended to allow Cabinet Ministers to engage in employment or in the practice of a profession to maintain their professional or occupational qualifications during their time as Cabinet Ministers, notwithstanding section 21(1)(a). All agreed?

Hon. Members: Agreed.

The Chair: Anyone opposed?

Mr. Shariff: Members are allowed to continue. That's right.

The Chair: Yes. There's no restriction on that.

Okay. That is carried. Recommendation 20 as presently worded is carried.

The next recommendation is – we haven't got a recommendation on blind trusts. I guess we have some additional information on the blind trusts.

Ms Dafoe, do you want to speak to this chart which you've provided?

Ms Dafoe: There are actually two things that should have been provided to the committee last time. One is the legal-sized chart that Karen is holding up – thank you, Karen – and the other is an excerpt from the annual report of the federal Ethics Commissioner from 2004-2005, specifically appendix 5, which sets out the recusal process for the Prime Minister. There were some questions at the last meeting about what were recusal rules and how they were used in the federal scheme.

Before I get into too much detail on those, I think, if I can, Mr. Chair, I'll take a moment or two just to take a quick run-through on the difference between blind trusts and blind management trusts just to make sure that the committee is clear on what they are. In case you don't have enough information in writing in front of you, there's also information paper 7, that holds additional information.

Basically, the fundamentals are that blind trusts, which are allowed for in Alberta's act right now, allow a minister to engage the services of an arm's-length trustee to look after investment of securities. Normally a minister under the act can't hold publicly traded securities. He can only do so if he or she does so by way of a blind trust. The Ethics Commissioner's website contains a sample blind trust agreement for the ministers to refer to if they choose to.

Basically, trustees make all the investment decisions concerning the management of the securities without any direction or control by a minister. Blind trusts are fairly common across the country. You can see, if you take a look at this legal-sized chart that I've provided, that the third column notes whether there are blind trust provisions, and a good number of the jurisdictions across the country have blind trust provisions, as does Alberta.

Blind management trusts are a sort of variation on blind trusts where assets are placed in the hands of a manager who is at arm's length from the member. The manager actually is empowered to exercise all rights and privileges with respect to the assets, again without any input from the member or minister. So this would be a situation where a member or minister has a business that they're running. A minister is not able to continue with that business in accordance with the act so needs to turn it over. He doesn't want to close down the business. He wants to keep it going but can't do so, so he sets up a blind management trust. The idea behind them is to

distance the member from his or her interests in a private corporation so that the minister can go on conducting their ministerial duties. Again, it prevents the minister from having to either close down their business or divest himself or herself of the business interest during the period of time when that minister is, in fact, a minister.

Now, the recusal process is a third option. It's a little bit different from blind trusts and blind management trusts. Often it's used when the establishment of blind trusts or management trusts is either inappropriate or inadequate. A good case in point is the federal Prime Minister with the Canada Steamship Lines interests. While those interests were passed along to his sons formally, there was a decision made by the federal Ethics Commissioner that there needed to be a further sort of safeguard process to ensure that whenever shipbuilding, marine transportation policy, or St. Lawrence Seaway related issues came up, the Prime Minister wasn't involved, to make absolutely certain that there was no perception of any kind of bias or conflict.

So recusal rules were set out by the Ethics Commissioner specifically tailored for the Prime Minister's situation, and that would be the case with any kind of recusal rules. It would be a policy or a program that's set up, determined by the relevant Ethics Commissioner and determined for a particular individual's situation, and it's for situations where the regular rules with respect to blind trusts or blind management trusts just aren't seen to be adequate.

So that's pretty much all I wanted to say on the matter, I think, except that the chart outlines for you how the jurisdictions across Canada deal with blind trusts and blind management trusts. Basically, in my review the feds are the jurisdiction that deals with recusal, and there are not a lot of other recusal rules out there that I'm aware of.

Mr. Shariff: What is our recommendation?

Ms Dafoe: Well, at the last meeting the recommendation was that the technical team come back with more information about what's going on in other jurisdictions, so I don't believe that a recommendation was made.

Mr. Martin: I'm just trying to get a handle on the two: blind trusts and blind management trusts. Is it that one or the other can be a little more proactive in buying and selling stocks, that sort of thing? What's the difference? I really don't see the difference there.

Ms Dafoe: Blind trusts deal specifically with publicly traded securities only, so it's like a person is just looking after your investments. Blind management trust is more. The person steps into your shoes as a manager or director of a business and makes business decisions.

Mr. Martin: Okay. Thank you.

The Chair: Well, it appears that in the table there's a fairly wide range of applications across the country. In four or five of the jurisdictions a minister cannot hold or trade in any securities or stocks or futures or commodities unless the Ethics Commissioner is satisfied that conflicts don't exist. In others there's no restrictions on such trading.

Mr. Hamilton, do you want to comment on the existing situation with respect to the application of blind trusts and whether or not you perceive there's any loopholes or difficulties in the way that it's applied right now?

Mr. Hamilton: In the two years I've been here, I haven't done very

much with that. Not many members have them. Some have. The question in my mind is always: how blind is it, and how is it set up?

11:55

The Chair: It would have to be somebody who was truly independent from the individual and didn't have a close relationship.

Mr. Hamilton: But could it be a son.

The Chair: The information flow, of course, would necessarily have to be the thing that's being guarded against.

Mr. Martin: We now have a blind trust, not a blind management trust, in our act, right? That's correct. It seems to me that perhaps the more relevant issue is a blind management trust because how much influence in most public stocks in the Toronto Stock Exchange is the individual minister going to have? In terms of that, I don't think there's much. I think the things that people would be more worried about would be if there was a particular business that could have some access by decisions made by cabinet. So it may be – again, I'm just guessing – that from our perspective it might be a blind management trust that would be more relevant rather than the blind trust.

Mr. Rogers: Mr. Chairman, again, if we don't seem to have a need to fix anything, to change anything – I mean, I realize that a big part of what we're doing here is being proactive as well. Unless we can foresee a problem or we have some examples that we need to do some work to address, do we need to change anything?

Dr. B. Miller: That was our discussion last time. Section 21 does cover management issues and raises the issue of conflict between a private interest and a minister. I don't know what you could add in the way of management trust.

The Chair: You think it's covered off pretty well in section 21.

Dr. B. Miller: I think it is.

Ms DeLong: I'm thinking that it might be useful for the Ethics Commissioner to be able to set a list of recusals because of people continuing to work in their profession, which is one of the things we just did, right? "The Act should be amended to allow Cabinet Ministers to engage in employment or in the practice of a profession." It seems that we are allowing some people to carry on a business. So it seems to me that it might be useful for the Ethics Commissioner to be able to work out with a member or a minister a list of recusals.

The Chair: Mr. Hamilton, any comments?

Mr. Hamilton: What's the question again?

Ms DeLong: Well, we do have people engaged in businesses, members continuing to engage in business and continuing to carry on their professions. It might be useful for you, sort of, as part of your work to work out with the member or the minister a list of recusals. Because we are sort of in this grey area, it might be a useful thing for you to be able to do.

Mr. Hamilton: The grey? What do you mean?

Ms DeLong: Well, the grey area is when you have somebody who

is carrying on their profession, when you have somebody who still owns a business or whose sons own a business.

The Chair: Are you talking about a minister?

Ms DeLong: Yes, a minister or even a member. It might be useful to be able to sit down with that person and work out a list of recusals.

The Chair: Well, a minister cannot carry on a business, period. The only exception which we're recommending is that for the purposes of keeping up their professional qualifications and so on, we would allow a specific exception to the ministers. There has never been any restriction on private members carrying on outside activities provided that they comply with the requirements of the conflicts act, which says that they should not participate in decisions which affect their own interests. We've got to be clear on that, that we're really talking about ministers here.

Mr. Hamilton: And the members have to come to us. We're not going to go out getting people to come to us. You know, come and see us. We say: "We're here. If you have a question, come and talk to us."

The Chair: Well, I'm not hearing a lot of desire to change the status quo here.

Mr. Martin: Maybe I'd ask a question of the legal beagles over there. The blind trust we have; the blind management trust we don't. Bruce has said that probably we don't need it because of section 21, I believe it was. Would there be any advantage at all, or is it covered and we don't have to change it? Would the blind management trust add anything to the act?

Ms Dafoe: If I may, what I see a blind management trust adding to the mix is that it would give a minister an opportunity to continue carrying on a business indirectly that he or she has, whereas now they are not able to do that. They would have to close down their business.

Mr. Shariff: Does the business include a farm?

Dr. B. Miller: I guess I need some clarification because I thought there was an exception. I mean, a minister is in breach of the act if he carries on a business.

Ms Dafoe: Unless the business is a farm.

Dr. B. Miller: Well, then he can come to the Ethics Commissioner and disclose the material facts. If the Ethics Commissioner is satisfied that there's not a real conflict of interest here, then it may be an exception. Why do we need something separate on a management trust if that exception is allowed?

Ms Dafoe: You're right, Dr. Miller. I should have added that part in. The finish to that sentence is: he can't carry on a business if it creates or appears to create a conflict of interest. So if there's no conflict of interest seen, then there's no need to shut down the business.

The Chair: I think we're prepared, then, to move on unless somebody has a motion regarding this. Is the committee, then, content to leave the provision regarding blind trusts to the discretion of the Ethics Commissioner, as they presently are?

Hon. Members: Agreed.

12:05

The Chair: Okay. We'll move on. The next recommendation is 14. I guess that's part of that discussion as well, isn't it? On 13 and 14 is there anything further? Okay.

Moving on, then, to recommendation 21. This is the recommendation that

the Act should be amended to require Members to disclose to the Ethics Commissioner any involvement in litigation and any maintenance enforcement orders, within 30 days of the Member becoming aware of it.

Any questions, comments on the wording? All in favour?

Hon. Members: Agreed.

The Chair: Anyone opposed? That's carried.

Recommendation 22:

The Act should be amended to require Members to disclose to the Ethics Commissioner any Alberta government program which confers a benefit that has been accessed by the Member, the Member's direct associate, or minor child, unless the benefit is of general application to the citizenry at large.

Hon. Members: Agreed.

The Chair: Everyone agreed? Comments?

Ms DeLong: What does it mean by citizenry at large? Does that mean everybody?

Mr. Shariff: It's universal.

An Hon. Member: Or farmers?

Ms DeLong: Universal or farmers? Is that what it means? It's universal.

The Chair: I think the point is a good one. I think you could interpret that as being a class of citizens, not every citizen. The resource rebate, I guess, would be something that would apply to everyone, but what if the resource rebate had only been available to children under the age of 18? Does it fall within that class as a community of people?

Mr. Shariff: If every child under 18 receives it, then it's universal.

Mr. Rogers: The general public could be a term. This is fine for me, but it could go general public if that's clearer.

The Chair: Is that precise enough then?

Mr. Shariff: To me this is quite clear.

The Chair: It is somewhat ambiguous, I think.

Mr. Shariff: Because you're a lawyer.

The Chair: If the committee is content, we'll proceed.

Mr. Elsalhy: Can we put the period next to the words "general application" and leave it there?

The Chair: It certainly doesn't make it more confusing by deleting the last.

Mr. Shariff: Okay. Let's do that. General application, period.

The Chair: Okay. The motion, then, is to delete the words "to the citizenry at large."

Mr. Elsalhy: Yes.

Mr. Shariff: Unless, Mr. Chairman, you feel that we need to have another legal opinion.

Mr. Elsalhy: No lawyer would ever admit that.

Ms DeLong: I still don't know what we mean by general application. Does that mean that it's only available to Métis? Is that general application?

Mr. Shariff: I think, Alana, the way I read this is that let's say we did BSE. It would generally apply to people who have cattle. If we did the resource rebate, it applies to anybody who was an Albertan on September 1, 2005. That's general application. I mean, there are no specifics.

Ms DeLong: They're both general application?

Mr. Shariff: They're both because they apply to anybody who fits within those criteria. So whether it's – I don't know. What other benefit? I can't think of another benefit.

Ms DeLong: Okay. Just a minute though.

Mr. Shariff: Seniors' benefits is another classic one. It only applies to seniors but to all seniors.

Ms DeLong: Okay. Well, supposing that it only applies to pharmacists: is that a general application?

The Chair: Yes.

Mr. Elsalhy: Yes, because in that class I am one of many.

The Chair: One of a class.

Ms DeLong: So you don't have to disclose?

The Chair: No.

Mr. Elsalhy: Flood relief; for example, if your basement was affected and everybody on your block got it, then you're not special.

Ms DeLong: Okay.

The Chair: If you should apply for some sort of special government program and you receive it, it's different from, for example, Mr. Groeneveld, who happens to be a member of this committee, receiving BSE compensation because he's a farmer. He doesn't have to report that. Mr. Hamilton doesn't want to know that he's received that because every other farmer in the province got it. If it was a pharmacist, he doesn't want to know that Mr. Elsalhy got it because every other pharmacist got it.

Mr. Shariff: Although the Provincial Treasurer will disclose it.

The Chair: The point is that we want to know when somebody has

made special application or gotten a special benefit. I think that's the mischief, isn't it, Mr. Hamilton? Am I correct there?

Mr. Hamilton: Yeah.

Ms DeLong: Okay.

Mr. Shariff: Alana, just for your information, if the government of Alberta issues any cheque to any member or to our direct associate, that is disclosed in the Provincial Treasurer's filing to the Legislature. So every single cheque that's written to us is disclosed.

The Chair: Okay. Are we in favour, then, of the recommendation as amended by Mr. Elsalhy's motion?

Hon. Members: Agreed.

The Chair: Anyone opposed? That's carried.

Recommendation 23:

The Act should be amended to exempt from the public disclosure statements:

- and change the value for any assets, liabilities, or interests from less than \$1,000 to having a value less than \$10,000.

I'll have to go back and look at my transcript on that. I don't remember exactly what the discussion was on that point.

Ms DeLong: Does that mean that every time I spend over a thousand bucks on my credit card I have to report it?

Mr. Shariff: Yeah. You haven't been?

The Chair:

- and change the value for any source of income from less than \$1,000 to less than \$5,000 per year.

Mr. Hamilton, I think that these were your recommendations.

Ms South: We had recommended that the amounts be increased, and the committee had determined these values.

The Chair: Good. Are we all agreed, then, on recommendation 23 as presently worded?

Ms DeLong: What section are we on? What's the current wording?

Dr. B. Miller: It's 14(4), page 16 of the act.

The Chair: Further discussion?

Okay. Let's move on. I'll call the question. All in favour?

Hon. Members: Agreed.

The Chair: Opposed? Carried.

Recommendation 24 is that

section 14(4)(d) of the Act should be amended to replace the words "things used personally" with [the expanded definition] "personal property used for transportation, household, educational, recreational, social or aesthetic purposes."

Mr. Shariff: Why did we do this?

Dr. B. Miller: Because "things used personally" was too ambiguous.

The Chair: That could be a 40-foot yacht if you use it personally.

Mr. Shariff: Why does the public need to know what I bought?

Mr. Elsalhy: To see if there's a pattern developing.

Mr. Shariff: I don't know why. Disclosure is not the issue; it's public disclosure that I'm questioning.

The Chair: We're just trying to make it clearer. I guess we're trying to make the definition more practical. This is for exclusion. You don't have to report these things. Under 14(4) these are the exclusions.

Mr. Shariff: Yeah. That's right.

The Chair: So we're broadening the definition.

Mr. Shariff: So I'm excluded for . . .

The Chair: You don't have to disclose these things.

Mr. Shariff: Yeah, but you're replacing "things used personally" with some specifics.

12:15

Ms DeLong: So are there other personal things that we haven't included that should be included?

Mr. Shariff: I don't know what I use for my pleasure.

The Chair: All in favour of the wording as presently constituted? Are we agreed? Anyone opposed? Okay. It's carried.

Recommendation 25 is that the "employment restrictions described in Section 21 of the Act should not be amended to include any other Members, including leaders of other opposition parties." That's really not a recommendation, is it? It's a nonrecommendation. So we can just delete that, I think. Put it in our schedule of nonrecommendations.

Mr. Reynolds: It displays the brilliant thinking of the committee nonetheless and the thought process they went through.

The Chair: Yeah. It's worth saying the things that we have considered and decided not to proceed on, but I think the way to do that is not to incorporate them in the body of the recommendations but perhaps to put them in a schedule. We did ask some questions in the discussion guide to which we have responded in the negative. I think it behooves us to let the public and the people that made submissions know that we've considered them, and we've decided not to proceed.

Mr. Reynolds: Yes.

Mr. Martin: Some of them may be coming to this meeting.

The Chair: Yeah.

Let's move on to recommendation 26, moving on at great speed. This states that

The Act should be amended to prohibit a Minister and the Leader of the Official Opposition from:

- soliciting funds on behalf of any charitable organization of which he or she is a director or a . . .

Member? No. Officer? I don't know where we got "Minister" in there.

Ms Dafoe: It's likely officer.

The Chair: Director or an officer, I believe. Shall we put that in? Or

- acting as a director of a non-profit organization if that group solicits funding from the government.

Mr. Shariff: Director or officer again?

The Chair: Yes.

With the amendment deleting the words "a Minister" and substituting the word "officer," are we agreed then?

Before we vote, Mr. Shariff.

Mr. Shariff: Yeah. I think, Mr. Chairman, that first sentence: the act should be amended to prohibit a minister and the Leader of the Official Opposition or leader of any other political party.

The Chair: We discussed it before and decided it wasn't necessary.

Mr. Shariff: It wasn't necessary? So what's the rationale of the Leader of the Opposition then?

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

Mr. Martin: Well, I guess, theoretically, the Leader of the Official Opposition is potentially the next Premier or at least is the most likely one to be the next Premier, so I expect that that's the rationale. I don't know.

Mr. Elsalhy: Also, in the act I think many provisions refer to the Official Opposition Leader at par with cabinet ministers.

Mr. Martin: Yeah. The same ranking is there for the leader.

Mr. Elsalhy: Even financially.

Mr. Martin: Financially, yeah.

Ms DeLong: Now, maybe there are things going on behind the scenes that I'm not aware of, but generally I don't know of anything that's provided to the Official Opposition that generally tends to be applied to at least the leader of the third party. I mean, I just don't understand where we're coming from here.

Mr. Martin: Well, no. They are not the same status. The leader of the third party doesn't have cabinet minister status. Only the Leader of the Official Opposition does.

Mr. Elsalhy: For the purpose of this act.

Mr. Martin: Yeah, for that act.

The Leader of the Official Opposition is treated the same way as a cabinet minister, remuneration and everything else and, I guess, elected status and restrictions and the rest of it, you know, all the way through the act. I think that's a good point. I gather the reason is that ultimately that person could be the Premier, you know.

Mr. Shariff: A government in waiting.

Mr. Martin: Yeah, a government in waiting. I don't know what the reason was before.

The Chair: Are we prepared, then, to vote on recommendation 26 as amended?

Hon. Members: Agreed.

The Chair: All agreed. Anyone opposed? That's carried.

Recommendation 27 states that

Section 31(1)(c) of the Act should be amended to state that former Cabinet Ministers shall not make representations to government during the cooling-off period:

- on their own behalf or on another person's behalf with respect to a government contract or benefit, or
- regarding a transaction to which the government is a part and in which he or she was previously involved as a Minister.

Any discussions? All in favour?

Hon. Members: Agreed.

The Chair: Anyone opposed? Recommendation 27 is approved as presently worded.

Recommendation 28. This is to extend the cooling-off period from six months. There are no cabinet ministers at the table. Discussion regarding the extension of the cooling-off period for former cabinet ministers to 12 months? Agreed?

Some Hon. Members: Agreed.

The Chair: Anyone opposed? That's carried.

Ms DeLong: I'm opposed.

Mr. Shariff: She's opposed, but the motion is carried.

The Chair: Recommendation 29 is that

Section 31(3) of the Act should be amended to change the [word] "or" between (a) and (b) to an "and" to describe the two circumstances under which a former Cabinet Minister might seek an exemption to obtain government employment during the cooling-off period.

That's section 31 if you want to refer to section 31(3) of the act.

We had a long discussion on this, and unless there is some quarreling with the wording there, I think we'll call for the question on it.

Ms DeLong: I don't see why we need to change the "or" to an "and." I mean, if there is an activity or a contract that the Ethics Commissioner says is exempt, then it should be exempt. If there is a contract or a benefit that is totally open and is, you know, awarded and approved in an open competition, then I don't think that we need to have the Ethics Commissioner wade in on it. I just don't see why we have to change the "or" to an "and."

Mr. Shariff: I think we had a long, long discussion on this, and we did come to that understanding to have it changed from "or" to "and." I don't know if you were there at that meeting, Alana.

Ms DeLong: Yeah.

The Chair: If I can try to recapture some of the essence of the discussion, I think that the comments that were made were that it could be seen as some sort of impropriety, that the appearances of it would lead one – you know, the public – to believe that those circumstances were not proper. I think that it was seen that the Ethics Commissioner should have the right to vet those particular

circumstances in any event regardless of whether you fell within the parameters of subsection (a).

Mr. Hamilton, do you have any comments?

12:25

Mr. Hamilton: No. I think it's fine.

The Chair: Are we prepared, then, to vote?

Some Hon. Members: Agreed.

The Chair: All agreed? Anyone opposed?

Ms DeLong: Opposed.

The Chair: One opposed.

Recommendation 30, moving right along, is:

Section 31(5) should be amended to allow a Provincial Court judge to impose one or both of the following penalties on a former Cabinet Minister:

- a requirement that a former Cabinet Minister make restitution or compensation to any party who has suffered a loss, or to the Crown for any pecuniary gain which the former Cabinet Minister has realized in any transaction to which the violation relates
- a fine that can be imposed on a former Cabinet Minister who contravenes Part 6 of the Act and who at the time of the contravention is not a Member of the Legislative Assembly, and [further] that there be an increase to the amount of the maximum fine from \$20,000 to \$50,000.

Discussion.

Mr. Shariff: We've agreed. There was lengthy discussion on this one.

The Chair: Okay. Are we all in favour of the wording, then, of recommendation 30 as presented? All in favour?

Hon. Members: Agreed.

The Chair: Anyone opposed? One opposed.

Recommendation 31:

The Act should be amended to empower the Ethics Commissioner to:

- conduct an investigation into dealings with government by former Ministers up to the end of the former Minister's cooling-off period
- require a former Minister to comply with an authorized investigation by the Ethics Commissioner.

I think the conundrum that was presented to us by the Ethics Commissioner the last time around was that presently there is no power to do anything in terms of an investigation or to require any co-operation with an investigation once the member has left office. Is that right, Mr. Hamilton?

Mr. Hamilton: Yeah.

The Chair: Further, the recommendation provides that the Ethics Commissioner ought to have new powers to

- provide information to the authorities if he or she believes that there has been criminal activity

and also authorizes the Ethics Commissioner to

- initiate his or her own investigations under the Act.

Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. I don't have any problems with what's proposed here. The only thing, though: I wonder if we're not missing a trigger in terms of the Ethics Commissioner starting this investigation based on a complaint, an allegation, something in writing, what have you. It seems that that part is missing. I'm just thinking: why would the Ethics Commissioner just on his own decide to start something? Do we not need that that says that John Doe of 55 Jasper Avenue has filed a written complaint? I think we need something that's a trigger.

Mr. Hamilton: We get lots of letters, and we can't act on them.

Mr. Rogers: My point is this: something would make you decide that you would proceed, be that one letter, two letters, what have you, the fact that you have something of substance that you then act on. I think we need something of that nature in here.

The Chair: It could be an *Edmonton Journal* article.

Mr. Rogers: Well, I would hope not.

Mr. Shariff: George, under the present act if he gets information, there's nothing he can do about it. So we are empowering the Ethics Commissioner to initiate his own investigation.

Mr. Rogers: Based on something.

Mr. Shariff: That's right. That's what it will be. He wouldn't do a frivolous investigation, would he?

Mr. Rogers: Well, I'm wondering what he thinks that he might use to do that then. If he could help me.

Mr. Hamilton: Well, if we get a letter from somebody and we think it's worthy, we start to see if it is worthy for us to go on. How else are you going to do it? We don't want to get a committee to decide.

Mr. Rogers: No. I would leave it to your discretion. But, again, I still think it should be based on something, not just because you think, well, Mr. Elsalhy – I don't know – his hair is a little curlier than normal today. I'm being facetious. But, you know, what's that trigger?

Mr. Martin: Well, what often happens, I think, is that people are in a certain position, and often even we as opposition politicians – perhaps you do – get calls about a certain thing that's going on, but people are afraid to come out. They don't want to write a letter because they feel that it'll come back to them. Or you may get anonymous e-mails. It looks like there's something there, but people aren't prepared to stick their necks out. That happens often.

The Ethics Commissioner can decide – there may be something here; there are enough people, and I'm getting these calls – to look at it. I think he should have that right to do it because it's not always that easy for people to put their names and write letters because of their employment or whatever.

Mr. Rogers: My point, Mr. Chairman, is that if I am that member under investigation or the subject of a proposed investigation, should I not have the right to say: "Mr. Commissioner, on what basis are you investigating me? Is it because you've heard something on 630 CHED this morning, or is it because my hair is too curly?" You know, that's all I'm getting at.

The Chair: Well, no. At some point natural justice kicks in, and they have to disclose the complaint and the nature of the complaint and any substantiation of that complaint, I would assume.

Mr. Martin: I'm sure that he has to talk to the member.

The Chair: Mr. Reynolds, am I correct in that assumption?

Ms DeLong: Where are we in the legislation?

Mr. Rogers: He has nothing like this right now.

Mr. Shariff: Yeah. This is creating some further authority for him.

The Chair: That's in the provision on the powers.

Mr. Elsalhy: Yeah. We had it in the discussion guide, and then we made that recommendation.

The Chair: It was in the discussion guide, yeah.

Ms DeLong: Somewhere in here it must say about investigations. Where does that . . .

Ms Dafoe: Part 5, starting at section 24.

Mr. Rogers: Section 25.

Ms DeLong: "Investigation and inquiry." It seems to me it's right there already.

Mr. Rogers: It says: "on giving the Member . . . reasonable notice."

The Chair: It has to be initiated by a written complaint now. The Ethics Commissioner has asked us to include a provision enabling him to commence investigations on his own. That was what was agreed at the previous meeting.

Ms DeLong: Okay. In other words, there won't be a request, but there could be a letter that makes allegations but doesn't actually ask for a . . .

Mr. Shariff: Alana, an example could be that the Ethics Commissioner is dealing with a member in that annual disclosure statement, and as part of that disclosure some additional information comes to light pertaining to a third party, a third person, a third member. Currently the Ethics Commissioner can do nothing with that piece of information. This will empower the Ethics Commissioner to at least do a preliminary investigation, and if it warrants, he'll proceed with it further. If not, it'll be abandoned.

Ms DeLong: Okay.

The Chair: Any further discussion? Ready for the question? All in favour of recommendation 31 as presently worded?

Hon. Members: Agreed.

The Chair: Anyone opposed? That's carried.

Recommendation 32 is that "the Act should be amended to provide that no investigation or prosecution of a former Minister may be undertaken after two years have passed since the former Minister left office." This is to put a limitation on any actions.

12:35

Mr. Reynolds: Just for clarification, maybe this is just a blatant glimpse of the obvious, but of course it means prosecution under this act.

The Chair: That's a good suggestion. Should we agree then? Is the committee agreed that we would put "under this act"?

Mr. Shariff: No investigation under this act. Right?

Mr. Martin: May I ask a question? We may have dealt with it. This is talking about ministers, but clearly MLAs fall under the act too. Did we deal with the time frame on that? I can't remember.

Mr. Shariff: Private members don't have a cooling-off period.

The Chair: Yeah, that was the difference. We can only deal with members while they're members of the House.

Mr. Martin: Yeah. That was the discussion.

The Chair: Okay. Should we call the question then, as amended with the addition of the words "under this act" after the word "undertaken"?

Hon. Members: Agreed.

The Chair: Anyone opposed? Carried unanimously. Recommendation 33:

The Act should be amended to include a provision for restitution similar in wording to the Government of British Columbia's Members' Conflict of Interest Act, which states . . .

as worded there.

There are a number of notes below this regarding some points that may want to be discussed. We'll open it up for discussion.

Mr. Martin: Well, I guess the first question I would ask is: if we're basing it on British Columbia's act, as I understand that we are, how do they handle it in terms of the note on the bottom?

Mr. Reynolds: Yes. This relates to another issue, a related issue about voidability of contracts. There was a note passed out prior to the previous meeting about that. The two issues are related in the sense that there's restitution provided for in the British Columbia act. There's also a provision dealing with voidability of contracts that are entered into in violation of a section of the act. They're related because they both deal with, essentially, going to court.

The chair doesn't believe so, is that it? There is a briefing note. I will cut it out. I will just say, looking at the chair's hand signals there, that essentially the voidability of contracts issue is a bit difficult. At the end of the day it allows the government to go to court to void a contract if someone has benefited from a contract that's entered into as a result of something that happened where a member participated in a discussion that he or she should have absented himself or herself from.

It seems quite removed. I can't see, necessarily, how the act would benefit from this addition about the voidability of contracts. It seems like a very remote possibility. I think that the Crown or a party who is injured already has the ability to go to court to try and set aside the contract if there was something improper about it anyway.

That relates to restitution in the sense that they're usually tied together. With respect to restitution the provision is as it says in 33,

that someone who improperly got a financial gain or was deprived of something could get restitution. That was what the committee agreed to, I believe, last time.

The Chair: Are you suggesting that that other provision is probably somewhat superfluous because of the potential to seek remedies outside the act then?

Mr. Reynolds: I would say yes. Also, if you have the restitution provision, I'm not sure that the voidability of contracts issue arises all that much, and you're not precluded, I would suggest, at common law or in equity from going to court anyway. We were unable to find any instance of the B.C. or Manitoba provisions having ever been relied upon.

Was that fast enough, Mr. Chairman?

The Chair: Any other comments?

Ms DeLong: So we're not going to go forward with 33 then?

The Chair: Presently with its limitation on restitutionary remedies instead of voidability of contracts and so on.

Ms DeLong: Sorry. I'm lost.

The Chair: Everything above the word "note" there. We're not dealing with the voidability of contracts.

Okay. Are we ready for the question?

Ms DeLong: No. I'm sorry. I don't really understand.

The Chair: This simply allows anyone who has been negatively affected in a financial sense by an improper transaction to seek the remedy in the court, and I think we should probably stipulate Provincial Court there.

Mr. Reynolds: Sorry. In some of the restitution remedies wouldn't they be equitable remedies? The Provincial Court might have problems: quantum meruit. I just wanted to throw in some Latin there.

Ms DeLong: What I'm reading here is that number 33 says that we should add a provision for restitution. Okay. Then in small print it says that we don't have to do that because you can go to court and do it anyway. So I don't get why we're doing anything.

The Chair: We're just suggesting that we put in a provision similar to the B.C. provision, and that's what the B.C. provision states.

Ms DeLong: Oh. Okay. I've got it.

The Chair: We're not going to get into the nuances of trying to draft the legislation. We're just saying: look, here's something that's an example, and we think that there should be something along those lines.

Are we then ready for the question? All in favour? Anyone opposed?

Ms DeLong: I'm sorry. I still don't totally understand this. If we do not have this in there – okay? – what is the situation?

The Chair: For example, you failed to declare your conflict of interest on a contract or something in accordance with what the act

already says under section 2. If we didn't do that and somebody was wronged, they would have no way to be recompensed under the legislation. This provides a remedy.

Ms DeLong: But don't they already have that remedy? How could they not have that remedy?

The Chair: There might be nothing improper in law with the contract. The impropriety arises out of the provisions of the act.

Mr. Reynolds: I'm sorry. I think the confusion might relate to the second point I was raising. After the quotation it talks about voidability of contracts, which is a related but different issue. That's what I said I'm not sure you really need because that deals with where you have a contract and something has happened, and you can go to court and void it, which I said you probably could anyway.

What we're talking about in the proposal, I think, in 33, about restitution is that it's better to have something in the act that gives someone a specific statutory provision that they can go to court and get restitution, which means compensation for that that they've lost. So that's what the recommendation is, not to go forward with a recommendation concerning voidability of contracts. They're different but related.

Mr. Shariff: Would the two-year rule apply here as well? If it was a minister, would the two-year rule apply?

Mr. Reynolds: Well, I would imagine that it would be subject to the general limitation of actions requirements, which, generally speaking, would be two years, maximum 10 but generally two.

The Chair: Okay. I think we've agreed on that.

Let's move on, then, to recommendation 34. This is the one that deals with policy officials, as they're referred to in the Tupper report.

The Committee urges the government to introduce new legislation to govern Public Servants, which entrenches all restrictions reflected in the Conflicts of Interest Act, including the cooling-off period, and make it mandatory upon policy officials (as defined in the Tupper Report), down to the level of director.

Discussion?

12:45

Mr. Shariff: We've had lengthy, lengthy discussions on this subject.

The Chair: We did have some additional information about the numbers of individuals involved in that, and maybe, Mrs. Sawchuk, I could get that. I've received the following information in response to an inquiry that I made. There are 91 senior officials, which encompasses deputy ministers, chairs, or members of some boards, and if we included executive managers – there are 430 of them – that includes 99 EM 2 positions and 331 EM 1 positions, which are executive directors. So what we're talking about is 91 for the deputy ministers, chairs, and members of boards. I don't know whether the definition of director is something that we want to discuss.

Ms Croll: Well, I can speak to that. When you say down to the level of director, if that includes director, then you're probably picking up another maybe 300 or 400, but if it's above that level, then this is the correct number, although some of the description of policy officials where you talk about other groups that exercise significant influence over policy, contracting out, procuring goods and services, that could include another group of people as well that may not be captured simply in these levels.

The Chair: So you think the appropriate level, then, would be above the level of director.

Ms Croll: Well, those are the numbers here. It comes down to what the motion was, if it is to include directors or if it's above the director level.

The Chair: We do have that ethics policy which applies to those individuals, in any event. Is that correct, Mr. Hamilton?

Mr. Hamilton: Permanent boards and deputy ministers.

Ms Croll: The disclosure to the Ethics Commissioner currently is just for the 91. It's just for that top group: the deputy ministers and the senior officials. These other groups that are listed here, the 430 executive managers, are not part of the group that currently discloses to the Ethics Commissioner. They are covered simply under the regulation, under the Public Service Act.

The Chair: That would include the assistant deputy ministers?

Ms Croll: Correct. Most of the assistant deputy ministers are in that EM 2 classification, and they are not included in the current financial disclosure provisions that go to the Ethics Commissioner. That's an additional disclosure for those 91 people that are not included in the code for public servants. It's actually kind of an historical disclosure that was done by policy.

The Chair: Mr. Hamilton, do you have any comments on how broad we want to cast this? It's really your administration that needs to deal with this. I think the idea was that it would be senior policy officials that we're dealing with here. I mean, we don't want to get into the broader public service and get into thousands of individuals. Do you or Karen have any thoughts on that, about what you'd like to see in terms of the act? The director, from what I'm hearing then – that's pretty broad.

Ms Croll: Well, the EAs to the ministers are technically not public servants, so they're not included under our code of conduct anyway. So they're not included in this particular list. That's a different group. You would have to count them. There are probably 20-some of them. I'm not exactly sure. But that would be a smaller number than if you were to include public servants at the director level, depending on the nature of the work. That's another few hundred people for sure.

Mr. Hamilton: I think it's important for those people to be in and not the deputies. I don't think we need the deputies.

The Chair: You're saying down to a deputy minister or assistant deputy minister level.

Mr. Hamilton: Yes. Just the deputy.

The Chair: That would be the cutoff?

Mr. Hamilton: Yeah. That's what I would say.

Ms Croll: So that would be the 91.

Mr. Rogers: That's above the level of director.

Ms Croll: That's way above. That's the 91. That's the group that currently reports.

The Chair: That's the senior officials, which encompasses deputy ministers, chairs, members of some boards. Right?

Ms Croll: Correct. There's a schedule where it includes the deputy ministers, that most people would be familiar with, but then it has a list of others that chair significant boards and agencies, and, you know, there are a lot more of them. They're considered to be for most purposes, particularly for the purpose of disclosure, in the same grouping as the deputy ministers, and they're subject to the financial disclosure provisions to the Ethics Commissioner already, as are the deputy ministers. But it's very contained to that particular group.

Mr. Shariff: Mr. Chairman, just looking at the time and looking at our mandate, we were dealing with the Conflicts of Interest Act, that applied to elected officials, and we had an extensive discussion on this subject matter. We say that we will make this recommendation, but it's not the mandate of this committee to go into defining what the details of that act will be. So I suggest that we vote on the recommendation and leave it for the next committee or whatever process is established to deal with the conflict of interest for public servants.

The Chair: I agree with you, but right now we're making a recommendation which maybe goes a little bit further than what the intention of the committee was at the last meeting in terms of the wording.

Mr. Martin: I agree. We should be a little clearer than we have been. I think we all agree that executive assistants and people in ministers' offices and that should be covered. If we don't say that somehow or give that as a recommendation, that could get lost.

The Chair: I'm sensing that we want to discuss this at some further length, and I'm thinking that it's less than 10 to 1. We were going to quit at 1. Is this an appropriate place to adjourn, and then we can take it up at the next meeting?

Mr. Rogers: I'm just wondering, Mr. Chairman. It seems that if we change the wording to "above the level of director," we've captured that 91, and we're finished with this item, and then we move on after that.

Ms Croll: You've captured more than the 91. You've captured the 430 executive managers as well.

Mr. Rogers: Sure. That's what I'm saying. But if we change the wording to "above the level of director."

The Chair: No. The point is that that still takes in . . .

Ms Croll: Over 500 people.

Mr. Martin: Well, is there a word or a phrase to cover the 91 plus the executive assistants and that group?

Ms Croll: "Senior officials" captures the 91 for sure because we know who they are, and they are a separate category that's easily defined.

Mr. Shariff: They already make the disclosure today.

Ms Croll: Correct.

Ms DeLong: I guess what I would like to see covered are those that are involved in "contracting out, procuring goods and services, and the discretionary allocation of public funds." I think that those are ones that we have to capture somehow. Just talking in terms of director level doesn't really do that. So maybe we should go to a longer discussion.

Mr. Hamilton: How many ADMs are there?

Ms Croll: ADMs are the EM 2s, and there are 99.

12:55

Mr. Hamilton: So what would be the total there?

Ms Croll: Ninety-nine plus 91 plus your EAs so – what? – probably 300 people.

The Chair: Two hundred.

Ms Croll: Yeah. You're well over 200. You're probably closer to 300 with the EAs in there.

Ms DeLong: Can I have another question?

The Chair: I think I will accept a motion to adjourn. I think we need to discuss this maybe some more and to bring these others. Ray, the points that you want to make are not included.

Mr. Martin: Well, we've got to come back anyhow.

The Chair: I'll take a motion.

Mr. Shariff: Well, then, I move that we adjourn until the next meeting.

The Chair: All in favour?

Hon. Members: Agreed.

The Chair: Carried.

[The committee adjourned at 12:56 p.m.]