Legislative Assembly of Alberta

The 29th Legislature
First Session

Select Special Ethics and Accountability Committee

Office of the Chief Electoral Officer
Office of the Ethics Commissioner
Office of the Public Interest Commissioner

Thursday, October 22, 2015
10 a.m.

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First Session

Select Special Ethics and Accountability Committee

Gray, Christina, Edmonton-Mill Woods (ND), Chair
Payne, Brandy, Calgary-Acadia (ND), Deputy Chair

Anderson, Wayne, Highwood (W)
Clark, Greg, Calgary-Elbow (AP)
Cortes-Vargas, Estefania, Strathcona-Sherwood Park (ND)
Cyr, Scott J., Bonnyville-Cold Lake (W)
Jansen, Sandra, Calgary-North West (PC)
Loyola, Rod, Edmonton-Ellerslie (ND)
McLean, Stephanie V., Calgary-Varsity (ND)
Miller, Barb, Red Deer-South (ND)
Miranda, Ricardo, Calgary-Cross (ND)
Nielsen, Christian E., Edmonton-Decore (ND)
Nixon, Jason, Rimbey-Rocky Mountain House-Sundre (W)
Renaud, Marie F., St. Albert (ND)
Starke, Dr. Richard, Vermilion-Lloydminster (PC)
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Office of the Chief Electoral Officer Participants

Glen Resler	Chief Electoral Officer
Keila Johnston	Director, Information Technology and Geomatics
Kevin Lee	Director, Election Finances
Fiona Vance	Legal Counsel
Drew Westwater	Deputy Chief Electoral Officer

Office of the Ethics Commissioner Participants

Marguerite Trussler, QC	Ethics Commissioner
Lana Robins	General Counsel and Lobbyist Registrar
Kent Ziegler	Chief Administrative Officer

Office of the Public Interest Commissioner Participants

Peter Hourihan	Ombudsman, Public Interest Commissioner
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10 a.m. Thursday, October 22, 2015

[Ms Gray in the chair]

The Chair: Good morning, everyone. I'd like to call this meeting to order. I'd like to welcome the members and staff in attendance for this meeting of the Select Special Ethics and Accountability Committee. My name is Christina Gray, and I'm the MLA for Edmonton-Mill Woods and chair of the committee.

I'm going to ask the members and those joining the committee at the table to introduce themselves for the record – and then I'll address the members on the phone – beginning with, to my right, the deputy chair and birthday girl.

Ms Payne: Brandy Payne, MLA for Calgary-Acadia.

Mr. Nielsen: Hi. Chris Nielsen, MLA for Edmonton-Decore.

Ms Miller: Barb Miller, MLA, Red Deer-South.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Ms McLean: Stephanie McLean, MLA for Calgary-Varsity.

Miranda: Ricardo Miranda, MLA for Calgary-Cross.

Mr. Loyola: Rod Loyola, Edmonton-Ellerslie.

Ms Renaud: Marie Renaud, St. Albert.

Mr. Nixon: Jason Nixon, Rimbey-Rocky Mountain House-Sundre.

Mr. van Dijken: Glenn van Dijken from Barrhead-Morinville-Westlock.

Ms Jansen: Sandra Jansen, Calgary-North West.

Mr. Clark: Greg Clark, Calgary-Elbow.

Mr. Cyr: Scott Cyr, MLA for Bonnyville-Cold Lake.

Mr. Reynolds: Rob Reynolds, Law Clerk and director of interparliamentary relations.

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

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

Ms Rempel: Jody Rempel, committee clerk.

The Chair: Thank you.

And on the phones.

Mr. W. Anderson: Good morning. Wayne Anderson, Highwood.

The Chair: Good morning.

A few housekeeping items to address before we turn to the business at hand. A reminder that the microphone consoles are operated by *Hansard* staff, so there's no need for our members to touch them. Please keep your cellphones, iPhones, BlackBerrys off the table as they might interfere with the audiofeed. Audio of the committee proceedings is streamed live on the Internet and recorded by *Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

Up next we have the approval of the agenda. Does anyone have any changes to make to our agenda for today?

Seeing none, I would ask that a member please move that the agenda for the October 22, 2015, meeting of the Select Special Ethics and Accountability Committee be adopted as distributed. Ms Miller. All in favour? Opposed? The motion is carried.

Next we have the minutes from our last meeting. Are there any errors or omissions to note?

Seeing none, if I could have a member move that the minutes of the September 29, 2015, meeting of the Select Special Ethics and Accountability Committee be adopted as circulated. Mr. Clark. All in favour? Opposed? The motion is carried.

We are on to the bulk of our day today, which will be our background briefings. Members will recall that at our last meeting we invited the legislative officers responsible for administering the four acts within our mandate to join us today and provide us with background briefings, beginning with the office of the Ethics Commissioner. To discuss the Conflicts of Interest Act, we have Ms Trussler and her team. I'd like to invite you to join us at the table. If you would please introduce yourselves for the record. You will have 30 minutes for your presentation, and I invite you to begin whenever you are ready.

Office of the Ethics Commissioner

Ms Trussler: Thank you. I am Marguerite Trussler, and I'm the Ethics Commissioner.

Mr. Ziegler: I am Kent Ziegler. I'm the chief administrative officer.

Ms Robins: I am Lana Robins. I'm the lobbyist registrar and general counsel.

Ms Trussler: I'll start into our presentation right away. Just to give you a little bit of a history of the office, I am the fourth Ethics Commissioner. The first one was a parliamentarian, Robert Clark, then there was Don Hamilton, then Neil Wilkinson, and then myself. I should add that I am the first Ethics Commissioner that has any legal background or adjudicative experience.

The Conflicts of Interest Act was first enacted in 1991, and it's subject to statutory review every five years. The act has been amended eight times since enactment, and the last amendments were in December of 2014.

If I can just tell you who we are. As I said, I'm the Ethics Commissioner. We have a small but mighty office in that there are only four of us in the office and we do all the work that's necessary in the office.

Just to tell you the relevant legislation: the Conflicts of Interest Act; the Lobbyists Act; the Public Service Act, certain sections of it; the Alberta public service code of conduct; and the code of conduct for staff in the Premier's and ministers' offices. For the purposes of your review you will not be looking at the Lobbyists Act because it has a statutory review that's supposed to start next September, but the other two pieces of legislation and the two codes of conduct will have to be considered by you.

Now, who is subject to our mandate? It's the 87 members of the Legislative Assembly, 56 political staff, and at the moment 43 designated office holders, and those are deputy ministers, other senior government officials, and chairs and CEOs of ABCs. We also have, although it's not relevant to what you're doing, 542 registered lobbyist user accounts.

Just to give you a brief summary of the act, sections 2 to 5 are really the financial enhancement sections. They deal basically with corruption, influence peddling, and use of insider information. They're pretty standard clauses in almost all conflict-of-interest legislation.

Section 6 is the employment section, and it basically prohibits MLAs from having employment with the Canadian government or an appointment to a salaried office with the Canadian government while they're an MLA. It prohibits employment with the provincial government while an MLA. There's section 6(2), which has caught a few MLAs from more than one party, where the minute you become an MLA, you're deemed to no longer be a provincial government employee.

Section 7 is the gift section, and it's basically a section that says that there are absolutely no gifts if they're given because you're an MLA. The important part there is that if you're an MLA and it comes from a friend or a good acquaintance, then it's not caught by the act. Gifts also include invitations. It's pretty much a blanket prohibition. The exceptions, though, are if they come from your political party, constituency association, a charitable organization, or a federal, provincial, territorial, or municipal government. Then there's also an exception for incidents of protocol and social obligation – I think there's a question of how you interpret social obligation or protocol – and there are some restrictions under incidents of protocol and social obligation. That part of the section is working quite well. I would only have one major recommendation with respect to that section.

Sections 8 and 9 deal with contracts with the Crown. It prohibits borrowing money from AFSC and from ATB. The wording in these sections is very complex, and it's pretty hard to understand the wording. It goes on for several pages. It could stand some simplification.

Sections 11 to 13 are the disclosure requirements. Those are the annual disclosures, which you now have all done, so you understand what is in those sections.

Sections 14 and 17 are the public disclosure statements. It used to be, in the past, that once a year we would send public disclosure statements to the Clerk of the Legislative Assembly, and they'd be available for the press to read. We now do it differently. We actually put them online on our website once you've had your meeting. It's not a once-a-year thing six months after your meeting; it happens as soon as you have your meeting.

10:10

Sections 15 and 16 are the direct associates reports. You should probably understand those. You've all had to fill them out.

Section 19 is reimbursement for certain compliance costs. So if you are a minister and you have to have a blind trust, the cost of that is reimbursed.

Sections 20 to 23 are basically the restrictions on holdings, employment of the Executive Council and opposition leader. They're pretty stringent in that if you have publicly traded securities, they have to be in a blind trust. The exception, of course, is if they're already held in a mutual fund. As well, members of the Executive Council can't have employment of any sort, which includes having rental property, which is sometimes a bit of a problem.

Section 23.1 is the postemployment provisions for ministers. That section is really problematic because of the way it's worded. There are some sections in there where I don't even know what they mean, and that's something that really seriously has to be looked at. It was changed to go from six months to 12 months last December, and it creates fairly stringent postemployment restrictions vis-à-vis the government.

Sections 23.2 to 23.8 are new sections. For the first time last December it included political staff from the Premier's office and the ministers' offices. They have to do disclosure. They have postemployment restrictions. Actually, it's working quite well except for one small aspect.

Sections 24 to 29 are the sections that give me the power to do investigations. I don't have the power to initiate the investigations; there has to be a complaint, and it can come from an MLA. In Alberta, unlike a lot of other provinces, I can investigate complaints from the general public, and we do get complaints from time to time from the general public. Those sections basically say how we do the investigations and how we report them. Our report goes to the Speaker, and the Speaker tables it in the House.

Section 30 is the penalties for breach. While I can recommend a penalty, it's up to you as the Members of the Legislative Assembly to determine what the ultimate penalty should be.

Now, sections 33 to 42 are basically the administrative operations of our office. It's the appointment of the Ethics Commissioner, the duties of the Ethics Commissioner.

Sections 43 and 44 are the sections that give you protection from discipline under the act if you've actually received advice from our office.

Section 45 is our general protection section. That means that it protects us from being sued by the general public, because there are lots of people out there that just like to bring actions against everyone.

Sections 46 and 47 are the sections that deal with, again, administrative things, our annual report, which we file with the Speaker, and also with records management.

Now, in the Public Service Act is where the provisions are for the designated office holders, and you'll need to consider those as well. Right now those are deputy ministers, other senior officials, and some of the chairs of the agencies, boards, and commissions. That's part 2 of the Public Service Act, section 25.1, and there are some fairly significant problems with those sections.

There were a lot of major changes last December – and I think you should know where the changes have come from – in the Alberta Accountability Act. Those were the addition of political staff, as I mentioned, to financial disclosure reporting, the extension of the postemployment period and restrictions for political staff – it's now 12 months – and the addition of blind trust requirements for deputy ministers and some of the other designated office holders but not the chairs and CEOs of the ABCs. It also added direct associate reporting for political staff and designated office holders, and there are some problems with those sections.

It established administrative penalties for noncompliance. I have to say that I have not yet imposed any penalties, but I have found that when people violate and I send them a letter threatening penalties if it isn't in by a certain date, then it gets just as good a result as actually imposing the penalties, because I do have to report those penalties to the Speaker.

Now, one of the things we've done in our office in the last year since I became Ethics Commissioner is that we've done a complete redesign of our website to make it more user friendly, and we've of course added to it the public disclosure. We've updated all our forms and updated all our brochures. We've enabled the electronic financial disclosure. One thing that was made pretty clear to me when I was hired was that some people wanted to be able to download the form and fill it out and e-mail it to us. We aren't able to do total electronic filing because of security. We couldn't guarantee the security of your information if it was done that way. As we've said, we've already done the disclosure statements online.

We've reviewed all our paper files and dealt with them according to our records retention policies. Let me tell you what that means. When the election was on and it was quite quiet in our office, I decided I was going to clean out the file room, and I don't think it had ever been cleaned out. They had taken files from filing cabinets and put them onto shelves and labelled them with a piece of masking tape: this comes from drawer 3C. We had no idea what

was in the filing room, so we spent a fair amount of time cleaning out and organizing all our files using our records retention policy. I think we sent 43 boxes to the shredders, and we've got everything cleaned out and neatly organized. I used to walk into that room and I would feel very uneasy, and now we all know where everything is. We kept stuff. Some stuff we didn't have to keep, because we thought it had historical value. But it makes our operation more functional, and we can find things a lot faster now.

At the moment we're also overhauling the lobbyist database. We're redesigning processes for streamlining the database for efficiency and for enforcement because we found that a lot of lobbyists were registering the one time. They're supposed to renew their registration every six months, and many of them weren't, so we're now putting some enforcement in just to make sure that they're all in compliance with it.

The one thing I probably should mention to you, although I think a lot of you know about it, is the security in our office in the sense that we have your personal information. We have camera security. We also have a separate lock on the file room. The cleaning staff is not allowed in there unless we are on-site. It's locked in the evening. We do everything possible to keep everything that you send to us confidential, and the three of us and our administrative staff are very well aware of the necessity of confidentiality for any conversations we have with you and any information that we receive from you.

Now, I know that's not half an hour, but that's really just a basic overview of the act. I could give you some areas where I think there are some problems with the act if you'd like me to go into that. One is in the gifts area. Probably 60 to 70 per cent of the questions we get relate to gifts from lobbyists, and that does create some pretty serious problems. The second one is the definition of private interest. It's very hard to know what a private interest is, and I've had a couple of discussions with people in the last three or four months about the difficulties in interpreting it. Some of the other jurisdictions such as Ottawa actually define what it is and what it isn't. We just define it in the negative. The other thing is that the class of people that are covered by it is very narrow in Alberta. It's much wider in other jurisdictions, so that's an area that I think needs looking at.

10:20

The cooling-off periods for ministers and staff are very convoluted. It's very hard to understand, and that could easily be simplified.

The other thing that I'm told is coming but we haven't seen yet is that there is a list of probably 12 ABCs where their CEO and the chair of their board should be doing financial disclosure. They're ones that I feel are at risk because of the financial involvement they have, because of the investments they make in the market, all those sorts of things. I think that's pretty important. Some of them, I know, have pretty good internal disclosure. What I found when I was at the Alberta Gaming and Liquor Commission was that everybody disclosed to me, but then whom did I disclose to? I did my own disclosure, and I don't think that's a healthy way to do it, so really something does need to be done with them, with probably 12 to 15 of the ABCs to be added.

Then there's a problem where you need an overall alignment of the acts and the codes because some of the provisions for ministers and the deputy ministers are different than for their political staff, which creates problems. There needs to be an alignment of the provisions, particularly with respect to gifts amongst those three. Sometimes ministers need to take political staff with them and sometimes they want to just send a deputy to certain things, and it is creating some problems, so it would be much better to have the alignment.

Those are the five major areas where I think that there are problems. There are lots of other minor things. I've sent over to you about a 30-page brief with 30 recommendations, but these are the areas that I think are the most important.

Thank you.

The Chair: Thank you very much for the presentation.

We have time for questions if there are any questions for our Ethics Commissioner. Fantastic.

Well, thank you very much. That was very informative, and it was great to have that overview.

Mr. Reynolds: If members don't have a question, I just have a technical background question, Commissioner. I was just wondering how you see this review under the motion passed by the Assembly and the stipulated five-year review operating in the sense that you'll have another review of your legislation in three years. I'm just wondering how you would consider what changes at this time versus what would be considered three years from now.

Ms Trussler: We really haven't given it a lot of thought. We had major changes last December, and a lot of them were good changes. This review seemed to me to be an opportunity to look at the policy aspects of the act as well as some of the administrative problems that arose from the changes that were done quite quickly last December. We didn't have a lot of thought – well, we didn't have a lot of time to really think them through. I had only been in the position for six months, so I hadn't had total experience in dealing with the act. I really think that this is probably more of a policy review. But the more we can get done to fix the act now, to make it more workable and make it meet the expectations of Albertans, which I hear quite a bit of, then I think the better. Maybe the review that's in 2017-2018 will not have to be such a substantial review.

Mr. Reynolds: Thank you.

The Chair: Any other questions for the Ethics Commissioner?

I think we'll take the opportunity to digest what you've presented to us today. When we are discussing in a more fulsome fashion the Conflicts of Interest Act, I look forward to having you back.

Ms Trussler: Good. Thank you for inviting us today.

The Chair: Thank you so much. We really appreciate that.

Now, our next presentation is scheduled to begin at 11, and we may have members of the public or others who will be tuning in then for that presentation, so I'd like to suggest that we break for a recess and come back at 11 o'clock for the second presentation. Okay. That's what we'll do. We'll be back at 11 for the next presentation.

[The committee adjourned from 10:25 a.m. to 11 a.m.]

The Chair: Welcome back from our recess.

Up next we have the Public Interest Commissioner and his team to discuss with us the Public Interest Disclosure (Whistleblower Protection) Act. As a courtesy to our presenters and any on audio who may have just joined us, I'm just going to ask the members to quickly introduce themselves again.

I'm Christina Gray, the MLA for Edmonton-Mill Woods.

Ms Payne: Brandy Payne, MLA for Calgary-Acadia.

Mr. Nielsen: Chris Nielsen, MLA, Edmonton-Decore.

Ms Miller: Barb Miller, MLA, Red Deer-South.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Miranda: Ricardo Miranda, MLA for Calgary-Cross.

Mr. Loyola: Rod Loyola, MLA for Edmonton-Ellerslie.

Ms Renaud: Marie Renaud, St. Albert.

Mr. Nixon: Jason Nixon, Rimbey-Rocky Mountain House-Sundre.

Mr. van Dijken: Glenn van Dijken, Barrhead-Morinville-Westlock.

Dr. Starke: Good morning. Richard Starke, MLA, Vermilion-Lloydminster.

Ms Jansen: Sandra Jansen, Calgary-North West.

Mr. Clark: Greg Clark, MLA for Calgary-Elbow.

Mr. Cyr: Scott Cyr, MLA, Bonnyville-Cold Lake.

Mr. Reynolds: Rob Reynolds, Law Clerk, Legislative Assembly. Good morning.

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

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

Ms Rempel: Jody Rempel, committee clerk.

The Chair: Thank you very much.

I'll turn the floor over to Mr. Hourihan. If you'd like to introduce yourselves, then please proceed. You have 30 minutes for a presentation.

Office of the Public Interest Commissioner

Mr. Hourihan: Okay. Thank you for that. I'm Peter Hourihan. I'm the Public Interest Commissioner and the Ombudsman. The two people with me: on my left is our counsel, Sandy Hermiston, and on my right is the director of our operations for the public interest side of the fence, Ted Miles.

The Public Interest Disclosure (Whistleblower Protection) Act was enacted on June 1, 2013, and it created the seventh office of the Legislature. It was the seventh jurisdiction in Canada to enact such legislation. Now there are nine.

The Ombudsman and the Public Interest Commissioner are two separate offices, and I wear two separate hats. Our operational work is completely separate, and we share the services of our administration, our finance, our information technology, communications, et cetera. The Public Interest Commissioner's office has eight full-time positions. There are six operational personnel, and the other two positions are pro-rated and shared with the Ombudsman's office. We have offices in Calgary and in Edmonton, shared again with the Ombudsman.

I'm going to try to provide a good overview of the act to you, its purposes and its importance. I'll describe the act, who the act applies to, and the concepts of wrongdoing and reprisals. I'll discuss the disclosure requirements and options available internally and externally, the investigational process, and the reporting upon the conclusion of an investigation. I'll provide references to the act as I go through it, and I will make a few comments concerning any major issues that I've observed since the act came into force, in 2013. I'll also provide a small history of the development of the act.

Before I begin, I will provide a little bit of that very quick history with respect to the reading of the bill in the Legislative Assembly in 2012. When the bill was introduced in the Legislative Assembly, it indicated that it was progressive legislation and would contribute to an open and transparent government. During the debates in the reading of the bill this was met with significant opposition. Most pointedly, the bill was seen to be too restrictive and the commissioner's powers too broad. Opposition parties argued that a whistle-blower should be able to disclose anywhere to anyone whereas the government argued that it ought to be specific and, further, that the definition of whistle-blowing should be broadened to include breaches of a code of conduct and that policies or directives on harassment ought to be included. There was also a concern that the bill did not include the private sector nor did it include compensation as a remedy. The bill was passed without amendments.

I'd like to start now by just noting the common title of the act. It's commonly known as the whistle-blower or whistle-blowing act. The term resonates with people in a way that's not captured with the term "public interest disclosure." At the same time it's a term which can stigmatize a situation or a person. The term is not defined in the act; in fact, the term is used only once, and that's in the title of the act. A commonly accepted definition of whistle-blowing is: the disclosure by employees, former or current, of illegal, immoral, or otherwise illegitimate practices of their employers to persons or organizations that may be able to effect action. This is a broader definition than the act contemplates. However, it provides a good perspective of a common view of what whistle-blowing entails. Many of the components of this definition may be found in our legislation.

The definition of disclosure, found in section 1(f) of the act, refers to "a disclosure of wrongdoing made in good faith by an employee." Section 1(g) of the act defines "employee" as including past employees who suffered a reprisal and were terminated as a result. I'm going to discuss reprisals specifically later. Now, our definition of wrongdoing isn't quite as broad as all illegal, immoral, or illegitimate practices, but I'm going to provide some details on this a little bit later.

The legislation mandates internal reporting. However, there are exceptions which permit people to report directly to my office, as I will also discuss.

The general purpose of the legislation is to create accountable organizations by contributing to the diligence, integrity, and responsibility of an organization. This is accomplished by a clear system of reporting wrongdoings coupled with the protection of employees from reprisals. The purposes of the act are stated within the act at section 2(2), and they are significant and important.

(a) to facilitate the disclosure and investigation of significant and serious matters . . . that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,

(b) to protect employees who make those disclosures,

(c) to manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals,

(d) to promote public confidence in the administration of [the entities included within the legislation].

In common terms, the act applies to the public sector. Specifically, it applies to government departments, offices of the Legislature, and public entities. Public entities are defined in the act as well, in section 1(k), and referred to in the regulation, in schedule 1, and these include agencies, boards, and commissions, Crown corporations, and other entities. In the education sector they include provincial corporations as per the Financial Administration Act, district and regional public and separate school boards, the regional authority of a francophone education region, registered and

accredited private schools, and chartered schools. Within the health sector they include regional health authorities, Alberta Health Services, Calgary Laboratory Services, Capital Care Group Inc., Carewest, Covenant Health, and the Lamont Health Care Centre.

There are a couple of areas that are notable that the act does not apply to. It does not apply to any contracted or delegated services of government. This, too, was contested during debate. Further, it does not include municipalities. However, there is an option for municipalities to opt into the legislation. We've had approximately a half-dozen municipalities inquire with us. However, none have opted in at this point.

Next I'll turn to: what's a wrongdoing? Wrongdoing is described in section 3, and it's restricted to the contravention of a statute, either federal or provincial; an act or omission that creates a substantial and specific danger to the life, health, or safety of individuals or the environment; gross mismanagement of public funds or a public asset; and directing or counselling an individual to commit a wrongdoing, as I've mentioned.

It's important to note that there's a significant distinction between something that's a wrongdoing and something that is simply wrong. There's a difference between mismanagement and gross mismanagement. Many people believe that any wrong is a wrongdoing and that the words are interchangeable, but this is not the case within our act. Wrongdoing is specifically restricted in the act and does not include matters such as minor policy violations, verbal abuse, unfair decisions, or mismanagement. These are not contemplated by the act at all. The focus is only on very marked departures from the challenges of daily management and execution.

This is a significantly grey area, and it's on a continuum. Take bullying or harassment, for example. It's certainly undesirable behaviour. However, it's likely best managed internally through proper, well-functioning human resource policies and practices. Left unmanaged, however, it could escalate into the realm of wrongdoing, especially if there's intent or wilful blindness.

The act contemplates employees bringing forward any matters of disclosure internally, at least in the first instance. As a result, there's a statutory requirement for the chief officers of all public entities to establish and maintain written procedures for the purpose of investigating and managing disclosures. A chief officer, for clarity, is the deputy minister in the case of the departments, the department head in the case of an office of the Legislature, or the prescribed individual in the case of public entities. The chief officer may also designate or identify a designated officer under section 7 to manage the matters. The designated officer should be a senior official within the entity. The term "senior official" is not defined and can include anyone who could fulfill the role realistically. I have had no situations arise to this point where I felt that the wrong person was designated. If none is designated, however, the responsibility remains the chief officer's. Chief officers are also required to promote awareness of the act and prepare an annual report.

11:10

Section 5 of our act lays out the minimum requirements of these required written procedures. These include receiving and reviewing disclosures, including timelines, and referring matters to our office in a timely manner. It requires the entity to ensure that procedural fairness and natural justice are provided, that the confidentiality of the information collected is maintained, and that the identity of the individuals involved is protected. Further, procedures addressing the reporting of outcomes or follow-up in respect of corrective action, discipline, and that sort of thing: the act permits our office to review those procedures that are prepared. If not in place or not satisfactory, I'm required to notify the chief officer and the affected employees and inform them that until the procedures are satisfactory, any matters of disclosure must be made directly to my office.

I'm also required to advise the chief officer that procedures must be established and then submitted to me for review. In this vein we've been working with the public-sector entities. This has been a struggle in some instances; however, we continue to make positive strides in achieving compliance. For the most part, the various authorities have worked diligently to get policies in place and ensure that they are consistent throughout their internal policies as well as conforming to the act.

A key role that every chief officer owns is a requirement in section 6 to ensure that information about the act and the procedures is widely communicated to the employees of the entity. Over the past two years we've emphasized this many times; however, we've had limited success. It's very common during presentations or other interactions with the public-sector employees to have employees come to us and advise that they're completely unaware of the legislation in place. There seems to be a notion that a simple e-mail to employees or a posting of the policies to the website suffices as widely communicated. I take issue with this notion, and we will be continuing to focus some of our efforts to close that gap over the following months. I will add that our office also seeks opportunities to provide presentations and awareness to employees across our various jurisdictions, and we encourage those authorities to work with us and independent of us to ensure that employees are made aware and kept aware of the important legislation.

I mentioned that the act contemplates internal disclosures in the first instance. This is alluded to in sections 9 and 10 of our act. Section 9 gives employees the ability to report wrongdoings to the designated officer and the ability to report the matter to my office, indicating that the designated officer has been advised. Section 9 does not indicate that an employee must report to the designated officer but, rather, that he may. This has however been interpreted by some authorities that the employee must report to the designated officer and that any other disclosure would not trigger the jurisdiction of this act. I do not agree.

Section 10, however, provides some situations where disclosure can be made directly to me. These include situations where there are no procedures in place internally, where no investigation takes place internally, where the prescribed timelines have not been met, where the employee is not satisfied with the outcome of the internal investigation, where the matter involves the designated or the chief officer, or if the employee reasonably believes that the matter is an imminent risk and there's insufficient time to disclose to the designated officer, or where an employee made the disclosure in accordance with the internal procedures in section 5 but cannot complete them because a reprisal was taken against him or her. The intent is for employees to report internally first. Often when we get calls from employees who have questions, we will refer them to the designated officer where appropriate. Of course, if it's something that we should look into, we will.

If the matter is one involving imminent risk to individuals or the environment, under section 10(2) we direct the matter to the appropriate law enforcement agency or the chief medical officer of health or to the public entity responsible for the area. There's also a provision in section 10(3), which enables disclosures to our office in situations where a public-sector entity has made a decision that was otherwise final or where no appeal is available to the person or where the decision cannot otherwise be questioned. In those situations they can still disclose to us.

The act sets out the requirements for disclosure to be in writing and to include the requisite information, which are set out in section 13. Once a disclosure has been made, there are some strict timelines within our regulations. Acknowledgement of the receipt of the

complaint must be completed within five days, the determination on whether or not to investigate needs to be done within 10 days of receipt of the disclosure, and an investigation must be concluded within a total of 110 business days. Now, a chief officer on their own accord can extend this time by up to 30 days, or they can do so longer if they get my concurrence under section 5 of the regulation. I can also extend the time for our investigations if I need to. These timelines have been quite difficult when dealing with matters involving our office. We experience delays in receiving the information requested or as government entities consult with their counsel. We are attempting to provide awareness and education in order to shift this; however, our results have not been completely successful to this point. Some of the delay could be attributed merely to people and entities becoming familiar with their act and the role that they play and that sort of thing. However, there may be other reasons for it that I can't determine just yet.

In a number of matters it's been due to the information getting bottlenecked in the government authority process. Most commonly, the organizations want information to flow through their legal counsel, and this has caused sufficient delays as the jurisdiction or approach is challenged. It's a problem area for us currently, and we are working at education, awareness, and conversation to try and alleviate these roadblocks.

In the act sections 11 through 15 deal further with disclosures. Section 11 requires a discloser to report to their designated officer as soon as practicable after they have reported directly to us.

Section 12 deals with complaints made against myself as Ombudsman or Public Interest Commissioner, which authorizes the Auditor General to take over my role in those situations.

Section 13 deals with the form of disclosure. It just says that it has to be in writing, it must include the name of the wrongdoer, the date of the wrongdoing, whether the matter was reported to the designated officer under section 5, and any other additional necessary information.

Section 14 allows a designated officer to consult with the chief officer. Sometimes we get questions about whether or not they ought to be talking, but there's that capability here.

Section 15 authorizes the collection of personal information or individually identifying health information by a designated officer or chief officer as necessary to perform the duties of the act.

Now, if we turn to our investigations, I note that under section 16 the purpose of the investigation is to bring the disclosure or complaint of reprisal to the attention of the department or the entity, to recommend corrective measures, and to promote confidence in the administration of departments and public entities. Indeed, I'm authorized under section 17 to take any steps I consider appropriate to resolve the matter. Further, we do review policies and procedures to ensure compliance of the various authorities, and under section 8 of the regulation I authorize exemptions. I'm going to talk about exemptions a little bit later as well. To reiterate, the overarching goal here is to promote confidence in the administration of government.

Our investigations are guided by the parameters of section 18. They're meant to be informal where possible and to respect the rights to procedural fairness and natural justice regardless of if it concerns the discloser, the alleged committer of a wrongdoing, or any of the witnesses. During the investigation I'm authorized to require any person to provide oral or written responses to questions, to produce any records, or to provide any other information. This includes personal information and individually identifying health information or financial information. I may inspect, examine, make copies of, or temporarily move records, provided I leave receipt or provide copies, and I must return them when we're done with them.

In this respect we do get challenged by entities, most often legal counsel, who feel it's their responsibility to determine the relevance or the release of information. We are seeking opportunities to better inform chief officers that this is not the responsibility or the authority of legal counsel or the department and that the authority rests with me to determine relevance. These discussions have led to significant delays in a few of our investigations.

Section 19 authorizes me to decline to investigate under certain circumstances. These include where the subject would more appropriately be dealt with under another act or authority, if the matter can be properly dealt with internally at the government entity or government department level, where a collective agreement could deal with the matter, if the disclosure relates to a decision resulting from a balanced and informed decision-making process or public policy on an operational issue, where there are insufficient details to conduct an investigation, or for any other valid reason. I can also decline to investigate something that's more than two years old. When I do decline to investigate or discontinue, I must provide a written decision and the requisite reasons behind that decision.

I also note that during the investigations our office can investigate any wrongdoing we come across during a wrongdoing investigation. If this involves an offence, I must report the matter to a law enforcement agency and to the Minister of Justice and Solicitor General and suspend our investigation.

11:20

Finally, in respect of investigations I may accept anonymous complaints or complaints from nonemployees and investigate them or refer them to the appropriate authority. In this regard, anonymous complaints can be difficult. There's no person to provide information to, and there can often be insufficient details and information gaps. It's noteworthy to acknowledge, however, that if we receive a large proportion of anonymous complaints, it might be indicative of the reluctance to complain, which is often a real concern of whistle-blowers. So we track those numbers and those incidents to try and come to an understanding. We also try and enable somebody to remain anonymous to everybody but us, and that seems to work quite well. They're not so opposed to letting us know who they are as long as we can keep that identity confidential.

I would like to say, too, that there are benefits to our investigating matters of whistle-blowing. Specifically, our investigations are independent, unbiased, and confidential, and we're not subject to the Freedom of Information and Protection of Privacy Act.

All employees swear an oath of confidentiality, and it's very highly maintained, inclusive of all our information technology and that sort of thing. For this reason, we do not provide information we receive to all parties involved in our investigations, which is sometimes questioned. It's contested informally often. The public-sector entity often seeks to obtain the complaint as provided originally by the complainant, or the complainant will request the authority's specific response and total response. We examine the requests on a case-by-case basis, and we provide what we feel is necessary under the circumstances and nothing more. Often it's to protect identities, to protect situations, or other people within the process of the investigation.

Further, we do offer protection from reprisal albeit after the fact. This is triggered when someone seeks information or lodges a complaint. The protection is quite similar to that offered with an insurance policy or in criminal law insofar as the protection kicks in after the event occurs. That can be problematic for people that are concerned about the protection that the act does have in that regard.

After an investigation is completed, I must prepare a written report under section 22 with my findings and the reasons for the

findings. I must also provide any recommendations I consider appropriate. I can compel the affected entity to report back with what action they followed or propose to follow. Further, I must provide a copy of the report to the chief officer, and I must notify the discloser. In the event that the chief officer is the subject of the complaint, then the report goes to Executive Council, in the case of a department, or to the ministry responsible for the public entity involved. I note here that there is no requirement to provide a copy to the wrongdoer.

Now, this act is similar to the Ombudsman Act, where my power is limited to a recommendation. I can access and have the powers of persuasion and publicity, but not more. In this vein, we have committed to provide publicity where possible to ensure transparency and accountability. We examine each case on its own merits to make this determination and find a balance with publicity and confidentiality as required.

If the department or authority does not comply with my recommendations or does not co-operate, section 22 sets out the protocols for myself as commissioner and for a report to go to the chief officer of Executive Council if it involves a department, the minister in the case of a public entity, the Speaker in the case of an office of the Legislature, or the Premier in the case of a minister or chief officer of Executive Council.

Now, specifically to turn to reprisals, section 24 of the act states that no one can take a reprisal against an employee where they made a disclosure, sought advice about a disclosure, or co-operated in an investigation. A reprisal includes a dismissal, a layoff, a suspension, a demotion, a transfer, the discontinuation or elimination of jobs, change of job locations, reduced wages, basically any measure that is going to adversely affect an employee. It can be hard to draw the nexus between the two, but that's the extent of showing reprisal.

Employees who wish to lodge such a complaint can do so directly to my office. These matters are investigated in the exact same fashion as our disclosures. The same timelines are required to be met, and the reporting is the same. The penalty for reprising against someone is $25,000 for a first offence and $100,000 subsequently.

Actually, in that vein, I'm going to jump ahead to part 7 of our act, which deals with all offences and penalties. Section 46 prohibits people from withholding information or making false statements. Section 47 prohibits obstruction in respect of investigations, and 48 prohibits the destruction, falsifying, or concealing of any document or thing. Then section 49 sets out the penalties, which, as they are with reprisals, are $25,000 for the first offence and $100,000 for any subsequent offence.

In terms of a prosecution there is a two-year limitation, per section 50. Part 7 also protects designated officers, chief officers, and my office from prosecution or civil action in respect of anything done or omitted in the exercise of the powers within the act. It also protects anyone who complies with the requirements of the act, with the exception, of course, of cases of bad faith. Section 52 also protects our office insofar as proceedings of our office cannot be reviewed, with the exception of a question of jurisdiction.

Now, those are the main features of the act as it pertains to investigations, complaints, and reporting.

I'm going to just turn to a few general provisions of our act that are pertinent for your review. Under section 29 there are a number of matters that cannot be disclosed: deliberations of Executive Council, matters of solicitor-client privilege, and, in the case of imminent disclosures, information subject to a restriction that's created by an act or personal information or identifying health information. I note that the personal information or individually identifying health information can be disclosed if the designated officer, chief officer, or myself feel it's in the public interest to disclose.

Now, I said that I'd speak later to exemptions. Under section 31 I'm authorized to exempt anyone or any entity, information, or thing from the act in whole or in part. The regulation expands on this somewhat, specifying exemptions from portions of the act because of the size of the public entity, the nature of the wrongdoing, or the reprisal of the persons involved. Any exemptions granted require me to provide written reasons for the exemption. I must also make this information publicly available.

Now, this was a hotly debated topic during the debates in the Legislature and publicly afterwards, questioning if this should be a power granted to the commissioner. I can advise you that my interpretation of the act and regulation would preclude me from exempting any person or entity without significant reasons.

I have permitted a number of partial exemptions to the very small public entities that exist which have very few employees to the extent that they're not required to develop the internal policies and procedures normally required under section 5 and the relating sections that relate to the naming of a designated officer and such. Otherwise, however, the act applies fully to these entities. The difference really is only that in the cases of those organizations any issues of whistle-blowing or a reprisal by one of their employees or managers, whatever, the complainant comes directly to our office, and we investigate the matter as opposed to requiring the small entities to do so.

The act under sections 32 and 33 requires annual reporting by the government entities included in the act as well as from offices. This includes the number of disclosures received, how many are acted upon or how many are not acted upon, the number of investigations commenced, a description of the wrongdoings found, and any recommendations or corrective measures found. As the commissioner I am also required to report on general inquiries received, the number of reprisals received and acted upon, and any systemic problems or other recommendations that I have seen fit to put into place.

Now, in terms of referrals section 34 enables any committee of the Legislative Assembly or the Lieutenant Governor to refer matters to our office for investigation and report. It's noteworthy here to advise that I do not have the authority to investigate matters on my own determination, as is the case within the Ombudsman Act. I can only act on the receipt of a specific complaint or, as I mentioned, if a committee or the Lieutenant Governor refers matters to my office.

I'm just going to go back now to part 6 of the act, which deals with my office, and just cover off a couple of areas there. Of course, in that part it says that the Public Interest Commissioner is an officer of the Legislature, that the appointment that I have is a five-year term with reappointment permitted although the commissioner may resign at any time, that only the Lieutenant Governor can remove me for cause or incapacity or on the recommendation of the Legislative Assembly.

Before I finish, I'll just give you a couple of statistics and examples that we have. We've been in place, as I said earlier, from June 1, 2013, to September 30 – these statistics are covered off. In that period of time we've opened 412 files. We've received 35 disclosures, 18 of which have been investigated. Thirteen reprisal complaints have been received. Of those, 11 have been or are being investigated at this time.

I'll just give you a couple of examples of some findings of wrongdoing that we've had. I found gross mismanagement concerning the manipulation of some procurement contracts within the Department of Innovation and Advanced Education and Alberta Innovates: Technology Futures. This is an extremely important area that goes to the backbone of government contracting and the need to ensure that the policies, procedures, and practices are clear and

well defined and strictly adhered to. I found a contravention of the Health Professions Act concerning the management of a health program for the youth within a health authority. Conduct of the professionals involved in these matters must ensure the policies and laws are closely managed and adhered to at all times.

11:30

I did mention earlier, too, that there are situations where although I did not find gross mismanagement, I did make an observation back to the authority to ensure they better manage the shortcomings identified. An example here is where I found that the policies and the lack of a project charter resulted in an allegation of gross mismanagement in the procurement and deployment of computers within AHS. This enabled the entity to fix any shortcomings and ensure better actions in the future and to minimize the potential for later gross mismanagement.

That completes my technical briefing. I, or we, are available for any questions you have.

The Chair: Thank you very much for the presentation.

I'd like to open the floor for questions. Mr. Clark.

Mr. Clark: Thank you. Mr. Commissioner, I really appreciate your bringing us up to speed on the act. I've certainly learned something. I've several questions for you. I note a significant difference – and I don't know if you were here for Commissioner Trussler's presentation or if you've seen what she has presented to us. She presented to us several recommendations for what improvements she would like to see to the act. Although you've provided some commentary through your presentation, I'm just interested if you would be willing to provide us with similar recommendations or if, in fact, there's some constraint that prevents you from doing so that we're not aware of.

Mr. Hourihan: No. I can and I'm certainly happy to provide those or some of those, whatever is the case. I didn't include them at this point in time, and my reasoning was that I understood that you're going to be doing a review of jurisdictions and those sorts of things, and I thought that would be saved for a later time. But I can certainly identify some of those recommendations. As you said, I did allude to some during the presentation. There are a number of areas where we, we being our office, or I think that changes would improve the act. There are other areas where, I suppose, the jury is still out, but there has been debate out in the public or out in different environments that would suggest that something should be looked at. That certainly would be there for you as a committee to consider.

Just as an example, with some of the ones we looked at, one question we have is: should the jurisdiction of my office be expanded to include government contract service providers? My perspective is that it should be. They should be included. There are a number of areas out there where we do not have jurisdiction with those types of things, which are, for all intents and purposes, government activities that are not getting treated the same as the dedicated government activities by mere nature of the beast, and that is that they are privately contracted.

Another one is: should the act be revised to allow employees to make disclosures directly to the commissioner, myself, rather than internally without limitation or, further, to the public or to anywhere that they want? There was debate, as I said, at the time: should it be opened up to allow people to disclose anywhere or with commissioner discretion?

Should the ability of the commissioner to require further information be bolstered by some stronger language in the act? We have conversations with folks – and they're generally legal counsel because that's who this stuff goes to – saying: well, there are things in there that say "may," and our interpretation is that I can look at anything that I want to look at and that I can order and demand those kinds of things. There are questions about that, so clearer wording or a more abrupt wording may be helpful, or not, depending on how you feel.

Another one is: should I be empowered to initiate an investigation on my own motion or on my own initiative? As I said near the end of my presentation, I can do it based only on an investigation, or I can do it based on the referral of a committee or the Lieutenant Governor. I think it would be beneficial if I could do an own motion, similar to the Ombudsman Act, where I can look at it. Sometimes it confuses the public when a significant situation hits, you know, the media or hits the public quite broadly and an office like mine is sitting back and not looking into it.

It would be convenient and effective if I had the ability to do it on my own motion. I certainly wouldn't do it based on a whim or those sorts of things. We certainly would have a process that we'd go through in the Ombudsman Act as to when I initiate an own motion, but then it's based on something that's not complaint specific. That can also be helpful if there are situations where we want to look into something but people are extremely nervous to come forward. We know that that's the reason. It enables us to go there without attaching the stigma to one individual.

Should the timelines for initiation of investigations on the part of the commissioner be simplified to remove some overlap? There is some overlap: that we've got to acknowledge within five days, that we've got to decide on when to investigate within 10 and complete within 110, and then there are the extensions. The real hard step in there is that when a complaint is received, it's easy to acknowledge within five days. It can be extremely difficult to determine whether or not we're going to investigate within 10 days because of the information we have to gather to determine to investigate. As you may appreciate, sometimes just between calls with the whistle-blower to get their comfort level, it takes more than that long to get there.

There's no records management requirement within the legislation, and we think that there should be.

There's no included privilege provision, as in section 25 of the Ombudsman Act, that provides a privilege position in the act, and we think that there should be one of those.

Should the act be amended to better clarify the appointment of an acting commissioner? At this point there's no real clarification there. So if you need an acting commissioner at the time, if that could be clarified, that would be helpful.

Section 23 of the act. We looked at that, wondering, concerned whether or not it should be amended to clarify what the alternative bodies are expected to do with the report from the commissioner.

Those are some of them. We've got other ones that I certainly can get a full list of to you, things that have been debated or discussed around the country or around the globe, for that matter. One is: should there be a compensation consideration within an act like this, compensation to whistle-blowers who come forward? Should there be, as in some jurisdictions, the opportunity to go to an arbitration board upon the conclusion of a commissioner's investigation, those kinds of things? Like I said, that's the list we have. There have been a number of things that I could access that I didn't bring with me today.

Mr. Clark: Thank you. I'm glad I asked.

Just a couple more if that's all right, Madam Chair. I apologize. I didn't see it on the slide deck that we were presented, but we have it in our package, the statistics. It may have come up, and I just missed it as I wrote down my question. There it is, so it was there. I'm curious. In that period of time of two years plus, from June 1,

2013, to September 30, 2015, of the 412 files that were opened, less than 10 per cent received disclosure. So let's just stop at that point. Is that the number of cases that were either accepted or had proceeded? There were only 35: is that what that means?

Mr. Hourihan: Yes, in short. It's dropping a little bit. In terms of when people call us and have concerns or questions, oftentimes it's questions about: "What direction should I take from this point? I'm not familiar with the act. Where should I go with this?" In a number of those within the 412 there are questions and concerns about asking for advice that we have to report on and receiving information. So we open a file in each of those situations for a variety of reasons: to gather statistics, to see how nervous people are to come forward. Some of the reasons might be to see how nervous people are to come forward. Are they going to come forward later so that we can go back and look at the information or not? So a lot of those are in that area.

Some of those would be sent back to the designated officer at the department level or at the public entity level, those kinds of inquiries and requests for information. Of the ones that do come forward, sometimes they will provide a scenario, quite often a human resource type of situation. For example: "There's conflict in the office. People aren't getting along, and the manager doesn't seem to be doing anything about that. Is that something I should come to you with?" We would direct them back to their internal process. So those kinds of things we get in there. Of the ones that became full disclosures, that's the number, 35, that were received, that the people were willing to come forward with after conversations or reporting with us.

Mr. Clark: Do you keep statistics on how many of those, the difference between the 412 and the 35, you decided not to investigate and how many were simply dropped?

Mr. Hourihan: Do you want to answer that, Ted?

Mr. Miles: Well, I can try. We don't drop any cases. Oftentimes we will refer them back to the designated officer, as Peter had mentioned. In other circumstances upon receipt of the disclosure we undertake a fairly extensive jurisdictional assessment to ensure that we have jurisdiction over the specific matter that they're doing, and we lose jurisdiction through that assessment period. If that helps.

11:40

Mr. Clark: All right. I guess I'll ask two more questions, and then I'll let some of my colleagues ask questions. Of those 412 files that were opened and complaints you've received, do you have any benchmark data for other jurisdictions, either interprovincially in Canada or from other jurisdictions, on how that compares in terms of just a gross number of files opened relative to other jurisdictions?

Mr. Hourihan: Yes, and I can get better information to you than what I'm going to give to you orally right now. We do track that. We do converse with all of the entities across the country on this. I can tell you that we've been in existence for two years, and we're significantly busier than other jurisdictions that have been around for much longer. Now, that's not in and of itself necessarily indicative of too much, but it does suggest that people are prepared to come forward. We find that a lot of it is with the education and awareness of the act as presented to employees. I think that, on the one hand, we're better off there than some others have been because of their inability to do that in the early years of their enactment whereas we've done it right from the very beginning. However, that said, there's a lot more that's required of that awareness and education.

Go ahead.

Mr. Miles: I was going to say that I do have some stored in my mind, Mr. Clark, that I can share. The federal Public Sector Integrity Commissioner's office is the federal body that looks after whistle-blowing across the country. I recently read a publication of theirs where they suggested that 25 per cent of the complaints or the disclosures of wrongdoing that they receive actually result in an investigation and that only 3 per cent of those investigations that they undertake actually result in a finding of wrongdoing.

Mr. Clark: Okay. Good.

Mr. Hourihan: Does that answer your question?

Mr. Clark: It does. That helps, yeah.

Mr. Hourihan: I should add that some jurisdictions, I just forget exactly which ones – as I said, there are now nine. Two of them are new since we've been around – that's Newfoundland and the Yukon – and others like New Brunswick, for example, have an act, have had it for quite some time. They've reviewed it in the last couple of years, and it's now taking on much more of a prominent role, so they're getting up to speed, if you will, too. Saskatchewan's is maybe a year older than ours, and in those jurisdictions they're having trouble getting some traction going. Saskatchewan certainly is alive and well in terms of theirs. They have had a handful of disclosures. Manitoba for a number of years had a handful of disclosures over the first few years. Now they've started to increase in their numbers significantly over the last two years. I think that in one year they went from something like 11 inquiries to the next year having 37, which are not high numbers, but it's a significant increase whereas we came in and had significant numbers right from the very get-go, after June 1, '13. You know, we're bigger in size than those jurisdictions. Ontario is a bit different. It's under the Integrity Commissioner. Their numbers I'm not clear on, but they were not particularly high.

Mr. Clark: A last question: have there ever been penalties levelled under section 49?

Mr. Hourihan: No.

Mr. Clark: That's it. Thank you, Madam Chair.

The Chair: Mr. van Dijken.

Mr. van Dijken: Yes. Thank you, Madam Chair. Thank you, Mr. Commissioner, for your presentation. In your presentation you alluded to the need to bring more awareness of the act and the process for employees to be able to report and understand more of what the act is meant to do. What do you see as hurdles that are getting in the way of your office being able to actually bring more awareness to the employees that we're looking at?

Mr. Hourihan: The hurdles so far: I guess it's best explained when I say that people don't generally care about things until they have to, if that makes some sense. People don't really worry about it, and sometimes communication comes too fast, and then it's presumed to be out there when it's not out there at all. For example, right away when the act came into place on June 3, 2013, I sent out a message to all entities that we knew of asking them to identify the chief officer, the designated officer, and whether or not they did or did not have procedures in place, and I got a smattering of replies. For example, I got a very small smattering of replies from the schools. So part of me says: "Well, I got the information out there. Why aren't you responding?" But the other, maybe smarter part of me says: "Well, that was kind of a dumb time to send it to schools, on

June 3, frankly. I'm not going to get responses till the fall, and then in the fall how many of those letters are quickly accessed, and is there a realization of what's going on?"

So some of it is – complacency is too negative a term, I think. The entities send out a message, and they assume that all employees have it. That's sending out a message, but it's not getting received. There has to be an active awareness campaign by the organizations to get out there and make sure that they sort of punch it out there for their employees to get. We can and do try to help as well.

One of the hurdles we did get with the government at the time was that we wanted to send out an e-mail blast to all employees within government departments, and we weren't allowed to. The reasoning was that there were deliberations about some union thing. I just forget what it was. There were a couple of conversations going around about unions, so they had put a moratorium on sending e-mail messages out by everybody, and they didn't want to allow us access in spite of the fact that it wasn't related. It was nothing really nefarious or nebulous or anything like that.

I think it's just a matter of getting people's attention, understanding that awareness is extremely important here and that employees are not probably going to be made aware just by the simple form of an e-mail or a letter.

The Chair: Dr. Starke, did you have a question earlier?

Dr. Starke: Yes, I did. Thank you, Chair. Thank you, Commissioner, for your presentation. I'd like to get your comments on the investigations that you performed that have resulted in findings of wrongdoing, I guess, from two perspectives. First of all, what was the functionality of the act in terms of conducting that investigation, and in the course of conducting these investigations, are you finding that there need to be changes to the provisions within the act in terms of how they govern your investigating power? Secondly, can you offer to the committee some information as to what corrective actions have been taken in the cases where there was wrongdoing found?

Mr. Hourihan: Okay. The first question, the investigation of the ones where we have found wrongdoing and other ones: frankly, the act has worked fairly well in all considerations. Where we have bogged down a little bit, which I did mention earlier, is where there's a notion that when it says that we can go look at things, it's a "may," not a "can" or having the full authority. The ones on the other side who don't want us to maybe look or are just querying that are questioning whether or not we actually do have the authority, which then triggers a question of jurisdiction: we've had some problems there. Is it really problematic? I don't believe so. I think it's more a conversation that we have to have about the interpretation of the act. I'm pretty comfortable that we have the authority. It's just getting people past that point. I think that's more conversational than it is legal.

We have had some push-back in terms of, as I said in the presentation, who gets to determine relevance, and it's not particularly clear. I think the act is fine in that regard. It's just a matter, again, of education and awareness by the areas, and we need to do some more work in that respect, to get out there and speak with legal counsel and with chief officers.

One of the things that gets lost in all of this sometimes, I think, is that when an investigative organization like we are comes in, there's a notion that we're coming in to investigate you, and that's not really the case. We're coming in to have a look at things for you, being the chief officer, for your benefit so that I can make recommendations to you so that you can improve the service that you provide to the employees and that sort of thing. We need to have a little bit more conversation there.

With the exception of the areas that I mentioned, I don't believe the act is problematic in giving us the jurisdiction to do those kinds of things. It's just a matter of interpretation, and a lot of those things we can do within the interpretation of the act. From my perspective, I would prefer to have the ability to interpret that in the way we can here as opposed to having too many prescriptive, descriptive, finite areas that suggest that every little thing has to be looked at. However, I leave that to you for that determination.

I don't know if that answers that question. It's been okay that way. It hasn't caused us much grief.

The timelines are causing us some grief. But that said, I can extend the timeline, and I do where I'm required to, and I can do so with reason. I don't dislike the timeline in the sense that it keeps our eye on the ball. It's just that a couple of them – I know that they're going to be problematic right from the very get-go because I know that it's going to take five or six months to get the information, and that's back to that negotiation: "Look; I want this information." "Well, we don't necessarily want to give that to you. We're not sure that you have jurisdiction, so why should we give it to you? We'll determine what we give you." And I say: "No, you can't determine what to give me. I get to determine that I want to look at all of that. I'll determine the relevance. You can hold back the legal privilege area, but that's all. Give me the rest." So there's a bit of negotiation there. That's not the act; that's just education.

11:50

In terms of your second question, around what they did after the recommendations, that's a work-in-progress on a couple of them. We're still in the throes of waiting for the response. All indications from the investigators and the people that are looking into that are that they've accepted all recommendations and are doing their level best to get them in place. We've been very positively buoyed by the notion that in the cases that we have, there has been an encouragement by the authorities to go out to employees and say: we encourage people to come forward with issues of concern. There has been no attempt to sort of out a whistle-blower or chastise a whistle-blower or any of those sorts of things. So all indications to this point, although it's very limited in what we've had in the last two years, are good.

The Chair: I have Mr. Cyr next and then back to Dr. Starke.

Mr. Cyr: Thank you, Madam Chair, and thank you, Mr. Commissioner. This has been very educational. To go back to some of your recommendations there, I've got a few questions on your wanting to add government contractors to the act. Now, does this include both prime and third-party contractors, that you're trying to add?

Mr. Hourihan: Just clarify for me your definition of prime and secondary.

Mr. Cyr: The ones that directly contract with the government or the ones that contract through another entity with the government.

Mr. Hourihan: If a contractor is working in government right now – a labourer is brought in and is working on an IT contract and comes in and works in here putting these things up – they can report to us through the act. Now, if a company is out there performing the services of home care or long-term care and it's not anything to do with government – they're not attached to the health authority – then we have no jurisdiction. It's those areas that we think it should be, where it's all government funding and regulation and oversight except for our office. Did I answer that for you?

Mr. Cyr: Yes, you did.

Do any of the other provinces add the government contractors to their legislation?

Mr. Hourihan: I can't answer that off the top of my head. We have tables of those. I believe that Yukon does. Yeah. You know, I'd better not answer because I can't answer conclusively. I'll find out.

Mr. Cyr: Thank you.

Madam Chair, can I continue?

The Chair: Yes. Then Dr. Starke is back on the list again.

Mr. Cyr: For these government contractors that are added to those legislations, are they finding that there's a larger portion of their complaints that is successful against these government contractors?

Mr. Hourihan: I can't answer. I can't discriminate. I have no differences there.

Mr. Cyr: So we don't know if, like, 60 per cent of the cases that are moving forward are government contractors versus government employees?

Mr. Hourihan: No. I can't answer that very conclusively at the best of times because sometimes we don't know who we're talking to. We can presume that there's an employee, but we are not a hundred per cent sure. That's one of the advantages, I suppose, and one of the difficulties at the same time of anonymous complaints.

The act is really aimed at employees. There is the access in the act where I can look into a complaint made by a nonemployee, but it really is directed at employees. Oftentimes people will not identify who they are. So we're, you know, probably correctly and probably incorrectly at times presuming that they are employees. They may not be; they may be contractors who are coming in. There have been a couple where we've known that they were contractors that were in having a look and then not happy with what they were seeing and that sort of thing.

Mr. Cyr: Are we tracking how many government contractor complaints are coming in?

Mr. Hourihan: We're trying to track what we know with everything, yes. We're trying to track inquiries, you know, the number of anonymous versus identified complaints, whether it's an employee, whether it's a former employee, whether it's a contract, whether it's somebody else. We don't put sort of a third-degree questioning in the process. We allow people to come forward to us with inquiries, and people are authorized to come to us with inquiries. So we track what we can out of that, but we don't sort of give anybody the third degree and try and pull information out of them when they're not willing to provide it, for the purposes of encouraging whistle-blowers to come forward.

Mr. Cyr: Thank you, Commissioner.

The Chair: Dr. Starke.

Dr. Starke: Yes. Thank you. There was one other question that I wanted to ask, and it had to do with some of the questions that Mr. Clark had on your statistics. Specifically, there were 35 disclosures received of which 18 then resulted in investigations, so roughly half, and you mentioned that jurisdictional assessment was one area that resulted in a reduction. I also note that under section 19 you specifically indicated that you're not required to investigate where "the disclosure is frivolous or vexatious." Is that part of the reason why the 35 drops to 18? Is that the stage at which the decision or the ruling is made that the disclosure is frivolous, or is that higher, before that happens?

Mr. Hourihan: No. That would be later, and we haven't had that situation yet, frivolous and vexatious. We haven't had that. We've had a couple that have come close, so we thought: hmm; is the person using this as a shield to protect themselves or as a sword to attack? We have come across a couple of those; we have asked those questions. We're confident that that's not a situation that we need to be concerned with. From the Ombudsman Act I can speak to that. You know, there are 48 years of experience there.

We're very slow to determine vexatious or frivolous, but we're certainly examining it each time, and we look at those. We don't get very many of those, quite frankly. We might get some that are repetitive complainants, but they're not frivolous or vexatious. There can be a distinction although when there's high, high frequency, it can be indicative of something moving towards those. We watch those as well, but we have not had that situation in the whistle-blower legislation.

I should be clear on the 412. Those are all files received, so those are not all complaints or potential complaints of disclosure. Within that 412 there are a number of requests for exemption. That's a file that we open. I should have been more clear on that. There are a number of questions: "We're putting together our policies: is this policy okay? How does this look from your perspective?" The authorities will send some to us, and we'll have a look at those. Those would be a file. Of those 35 complaints of disclosure 18 were investigated, so there's only a difference of 17, not 400 or 395.

Dr. Starke: But you're saying that in that difference of 17 cases where it was adjudicated that you weren't going to perform an investigation, the frivolous or vexatious reason was not one that was prevalent in that area.

Mr. Hourihan: That's correct.

Dr. Starke: Okay. Thank you.

The Chair: Okay. We are near the very end of our time, and seeing no further questions, I'd like to thank the Public Interest Commissioner and his office for coming and presenting to us. We look forward to working with you further through the work of the committee. Thank you.

Mr. Hourihan: Thank you. I just will sort of, I guess, conclude my thoughts. We are certainly prepared to provide you with a list and a perspective on all of the things that we have come across, to look at at your pleasure.

The Chair: Thank you very much.

Mr. Hourihan: Thank you.

The Chair: Thank you, everyone, for your attention this morning. At this point we are breaking for lunch. We will be returning at 1 to hear from the Chief Electoral Officer on the Election Act and the Election Finances and Contributions Disclosure Act. We are in recess.

[The committee adjourned from 11:59 a.m. to 1 p.m.]

The Chair: Welcome back, everyone. I hope everyone is refreshed after lunch.

Before we hear our next presentation, the Chief Electoral Officer and his colleagues, let's take a moment. We'll go around the table

again quickly to introduce ourselves, and we'll see if we have anyone joining us on the phone. To begin, I'm Christina Gray. I'm the MLA for Edmonton-Mill Woods and chair of the committee.

Ms Payne: Good afternoon. Brandy Payne, MLA for Calgary-Acadia and deputy chair of the committee.

Mr. Nielsen: Hi. Chris Nielsen, MLA, Edmonton-Decore.

Ms Miller: Barb Miller, MLA, Red Deer-South.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Ms McLean: Stephanie McLean, MLA, Calgary-Varsity.

Miranda: Ricardo Miranda, MLA for Calgary-Cross.

Mr. Loyola: Rod Loyola, Edmonton-Ellerslie.

Ms Renaud: Marie Renaud, St. Albert.

Mr. van Dijken: Glenn van Dijken, Barrhead-Morinville-Westlock.

Mr. Lee: Kevin Lee. I'm the director of finance for the Chief Electoral Officer.

Ms Johnston: Keila Johnston, director of IT and geomatics at Elections Alberta.

Mr. Resler: Glen Resler, Chief Electoral Officer.

Mr. Westwater: Drew Westwater, Deputy Chief Electoral Officer.

Ms Vance: Fiona Vance, legal counsel for the Chief Electoral Officer.

Dr. Starke: Good afternoon. Richard Starke, MLA, Vermilion-Lloydminster.

Ms Jansen: Sandra Jansen, Calgary-North West.

Mr. Clark: Greg Clark, MLA for Calgary-Elbow.

Dr. Amato: Sarah Amato, research officer for the Legislative Assembly Office.

Mr. Reynolds: Rob Reynolds, Law Clerk at the Legislative Assembly.

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

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

Ms Rempel: Jody Rempel, committee clerk.

The Chair: Thank you very much, everyone. I don't believe we have anyone on the phone right yet, but perhaps we may be joined.

Welcome, Mr. Resler and your colleagues. You have 45 minutes for your presentation, and then we have time for questions afterwards as well. I'd like to invite you to begin.

Office of the Chief Electoral Officer

Mr. Resler: Thank you. Good afternoon, Madam Chair and committee members. In your binders, that were passed out to everyone, under tab 1 is a slide deck of the presentation if you wish to refer to that. I want to thank you for the opportunity to provide you with a technical briefing on both the Election Act and the Election Finances and Contributions Disclosure Act. This afternoon I'll provide you with one presentation for both pieces of legislation. Our discussion will include the historical context of the legislation, the role of the Chief Electoral Officer, a brief summary of both acts, plus applicable sections of the Canadian Charter of Rights and Freedoms, the impact that the current legislation has on our office, and our recommendations for legislative amendments.

The historical context. The first regulation was passed in 1905, the North-West Territories Ordinances. The first election legislation was in 1909, An Act respecting Elections of Members of the Legislative Assembly. In 1972 the Election Statutes Amendment Act was introduced, and a committee was formed to review electoral legislation. In 1977 the Chief Electoral Officer position was created as an independent officer of the Legislature to oversee the administration of general elections and election finances in the province. In the same year the Election Finances and Contributions Disclosure Act was introduced, and 1979 was the year of the first election administered by the Chief Electoral Officer. In 1980 there was a rewrite of the Election Act, which resulted in the creation of the office of the Chief Electoral Officer, and the finance legislation was also amended at that time.

The significance of the historical context. During the first 72 years of the province it was the clerk of Executive Council who administered provincial general elections. The delivery of the electoral process was designed on a decentralized model co-ordinated by the clerk, and each returning officer across Alberta was responsible and accountable for the conduct of the election in each electoral division.

The election environment and the delivery of election services were very political and partisan at that time. Returning officers were appointed by the Lieutenant Governor on recommendation of Executive Council. Enumerators and polling day officials were provided to the returning officer by the ruling party and opposition party members. The legislation was designed to be very prescriptive to ensure that each politically appointed returning officer and partisan election officials across Alberta performed their duties in a very controlled manner as prescribed by the legislation.

The Election Act was the definitive how-to guide for conducting elections. It not only describes what is to be done but also who is to do it, when it is to be done, and where it is to be done. This prescriptive legislation was deliberate to ensure that any changes to the administration or delivery of the electoral process were first approved by the Legislature.

When you reflect on the technology of the late 1970s, it consisted of typewriters and rotary dial telephones. The fax machine wasn't even around yet. We did not use computers. Elections were administered using a manual, paper-based system, and the list of electors was posted on telephone poles in your local neighbourhoods for everyone to look through. There was no privacy legislation, and newspapers were the primary form of communication.

Now fast-forward to today. The Chief Electoral Officer is not part of the government of Alberta. I'm an independent officer of the Alberta Legislature responsible for the conduct of provincial elections. I am politically neutral. I report annually and submit my budget to the Legislature through the Standing Committee on Legislative Offices. As Chief Electoral Officer I support the Legislature and the democratic process in Alberta by providing guidance, direction, and supervision to political parties, candidates, electors, and election officers. I ensure fairness and impartiality on the part of election officers, I enforce compliance with election

statutes, and I provide Albertans with information about the electoral process and the democratic right to vote.

When a general election is called, in substance a series of 87 separate elections are conducted in the electoral divisions by the returning officers. We guide, direct, and supervise the 87 returning officers in the performance of their duties. Part of my role as Chief Electoral Officer is to ensure that the election infrastructure is well maintained at all times, that our office is election ready, that election officers are prepared to perform their duties in a professional, efficient, and knowledgeable manner, and to ensure that the integrity of Alberta's electoral system is protected.

Elections in Alberta involve three written laws: the Election Act, the Election Finances and Contributions Disclosure Act, and the Canadian Charter of Rights and Freedoms. All three work together, inextricably and in harmony.

The Election Act governs the administration of the Alberta electoral process. It establishes the framework under which individuals exercise their right to vote and seek office in the Legislative Assembly. The Election Act creates the position of the Chief Electoral Officer as an independent officer of the Legislature. It identifies the positions and the qualifications for and the duties of the election officers who conduct elections. It determines the process and qualifications for being nominated as a candidate. It establishes the qualifications for being an elector and the process for identifying and registering electors. It establishes the process for sharing information about electors with candidates and parties seeking office. It sets the rules relating to where electors may vote. It establishes requirements for publishing information about an election. It establishes the process for voting.

It also looks at a variety of mechanisms by which electors exercise their right to vote, whether it's in person, during advance voting, special ballots, or mobile polls. The act regulates the process for the counting of ballots, including scrutinizing of the process and the announcement and publication of results. It provides a mechanism for judicially recounting the ballots, and it establishes a mechanism to challenge the validity of an election. It also establishes offences and penalties in respect of the conduct of the elections. What the Election Act does not do or cover is senatorial selection, municipal elections, or the Electoral Boundaries Commission.

The Election Finances and Contributions Disclosure Act contains the rules on electoral financing. It governs how political parties, constituency associations, and candidates register. It states who can make contributions, to whom, and how much. It looks at third-party advertising, leadership contests for transparency purposes, the reporting of contributions and financial statements, and various enforcements and remedies when someone fails to comply.

1:10

The Canadian Charter of Rights and Freedoms. While elections may touch on several guarantees under the Charter, two in particular have attracted judicial attention, freedom of expression and democratic participation. These Charter values underlie the way society looks at elections and the way we balance competing interests that inevitably arise in the course of elections. Because the Charter is a constitutional law, the two election statutes in Alberta are to be interpreted to be consistent with the Charter.

Section 2 of the Charter states:

> Everyone has the following fundamental freedoms . . .
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Freedom of expression comes into play in elections, especially with matters like voting, campaigning, political advertising, including third-party advertising, and political contributions.

The Supreme Court of Canada has written about the relationship between freedom of expression and democracy. One example is from Figueroa versus Canada and states the following:

> Freedom of expression is a crucial aspect of the democratic commitment . . . It helps to ensure that participation in the political process is open to all persons . . . The state therefore cannot act to hinder or condemn a political view without to some extent harming the openness of Canadian democracy and its associated tenet of equality for all.

If we apply the Charter to third-party political advertisers, as an example, they are allowed to convey their message but are required to register with our office and disclose their contributors if they spend more than $1,000 on political advertising. The registration process and public disclosure do not impair their freedom of speech. This applies equally to large organizations conducting political campaigns and individual Albertans who self-fund and advertise their political opinions.

Section 3 of the Charter states:

> Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Section 3 is about more than the right to vote or the right to run as a candidate. The Supreme Court has said that it is about meaningful participation in democracy.

Again from Figueroa versus Canada:

> Democracy, of course, is a form of government in which sovereign power resides in the people as a whole. In our system of democracy, this means that each citizen must have a genuine opportunity to take part in the governance of the country through participation in the selection of elected representatives.

The fundamental purpose of section 3, in my view, is to promote and protect the right of each citizen to play a meaningful role in the political life of the country. Absent such a right, ours would not be a true democracy.

Looking specifically at the right to vote, in 2014 the Ontario Supreme Court in Frank versus Canada found the six-month residency restrictions on voting invalid, and the Ontario Court of Appeal upheld that decision. This is important to Alberta because we also have a six-month residency clause as part of our legislation in defining elector qualifications, and this is a matter that we'll bring forward for review.

Next I'd like to reflect on our current legislation and its impact on our office. The prescriptive approach of the current legislation has changed little since 1980. As drafted, the Election Act does not recognize the shift in responsibility from the day-to-day administration and delivery of the election process from the partisan political arena to the nonpartisan office of the Chief Electoral Officer. The legislation has been amended to remove the direct, biased political involvement in the appointment of returning officers and election officers – those responsibilities are now under my authority – but the legislation has not been amended to remove the prescriptive nature of the act. There is no flexibility in the legislation to allow for the Chief Electoral Officer to manage the electoral process by introducing different staffing models, innovation, or modernization of current practice and procedures without legislative amendment.

The legislation states what election officers we need to hire. If we look specifically at poll clerks, as an example, we are told we require one for every 450 electors, for whom we are to establish a polling station. The legislation states the duties of the poll clerk, when and how they are to perform their tasks and where they are to perform their tasks. It is so prescriptive that there's no flexibility in who can perform the duties or whether we're able to change the staffing model in the polling place or balance the workload.

Everyone can relate to the voting process: you enter the polling place, you walk into the gym, there are four polling stations set up, and the only lineup is at the table which you're going to. We're unable to use the other staff in the room to assist in alleviating the lineup because of the prescriptive nature of the legislation. It is hugely inefficient and can result in longer lineups, more complaints from electors, and a greater chance of errors by election officers.

Recently we piloted vote tabulator machines during the advance polls in the four October by-elections in 2014. The pilot was a success, but we were unable to implement the use of the vote tabulators for the 2015 general election because legislative amendments were not implemented. These tabulators would have assisted us to streamline the voting process, provide fast and accurate results for the advance polls on election night, and provide candidates and parties with results broken down by each polling subdivision.

There has not been a comprehensive review of the Election Act in 35 years. The election environment has changed enormously over this time period. We now live in the communication age, with 24-hour news reporting, smart phones, Internet, Google, social media. All of them did not exist when this legislation was first drafted. Amendments made over the last 35 years have been made on a piecemeal basis, and as a result there is a patchwork of prescriptive legislation in both acts that needs to be consolidated to ensure consistency in interpretation and delivery.

I've now been Chief Electoral Officer for a year and a half, and in my term so far I have overseen finance reporting for three leadership contests, administered five by-elections, administered the provincial general election in May of this year, and begun and concluded investigations into compliance under both acts. In an earlier role with the office I assisted in the administration of two additional provincial general elections, another by-election, senatorial selection, and a boundary commission. My deputy has over 30 years of electoral experience in provincial and municipal elections in both Alberta and Ontario. We feel that Alberta has a workable electoral system, but we have seen Alberta's democracy in practice, and the legislation has dated terminology and restrictive practices and procedures that are not conducive to adapting to existing and future technology and business practices.

I was in Ottawa this week to observe the federal election, and one of the discussion items with my counterparts was the need to rewrite electoral legislation to provide flexibility to better serve electors. New Brunswick has started this process. The statutes that support the electoral system need to be enabling, not prescriptive, in nature to allow the CEO the flexibility to adapt electoral systems and processes to the ever-changing environment. Albertans require legislation that is user friendly and looks to the future, not because this is the way we have always done things but because this is the way that works and will work in the decades to come.

Elections are complex endeavours. Elections are also human experiences that rely heavily on an army of well-intentioned, ordinary Albertans undertaking the work through a sense of civic responsibility and commitment to community service. In a general election over 18,000 Albertans voluntarily step out of their everyday lives and take their place in the election machinery that springs to life fully formed in less than 28 days. Countless more volunteers work with candidates and political parties on election campaigns and fundraising activities. This is the human face of elections. The ability to hire staff and recruit volunteers is increasingly more difficult.

In addition, electors are expecting improvements to the electoral process using current technologies. They are questioning paper-based processes for managing the list of electors, recording the voting process, and reporting of results.

Because the health of our elections relies on the good-faith participation of so many individuals, our system constantly treads a balance between access to the process and confidence in the process. We need to try to not overregulate so much that the human participation in the democratic machinery is dissuaded, but we need to regulate enough to keep the confidence of the public and the integrity of the electoral system. It is in this balance that this committee can use its mandate to effect reform.

1:20

Elections are all about four key values that fall squarely in the mandate of this committee, and I believe we share the same interests: fairness, transparency, accountability, and efficiency. Alberta needs a substantive update of electoral legislation. It cannot be done piecemeal, as it has been done for the last 35 years. The Legislature can only amend legislation so many times before it becomes unwieldy, outdated, and opaque. A fractured approach to reviewing the legislation can lead to problems. In context of the committee's mandate, our legislation is central to ensure ethical conduct and accountability during an election.

In the course of generating Bill 1, the Legislative Assembly established this committee. Bill 1 was called An Act to Renew Democracy in Alberta. Let this committee do exactly that. I ask this committee to support our recommendations for both the Election Act and the Election Finances and Contributions Disclosure Act.

I wish to share with you a passage from the federal Royal Commission on Electoral Reform and Party Financing of 1991, also known as the Lortie commission. The purpose of the commission was to review anomalies identified by Charter challenges, specifically the democratic right to vote. The comments reflected on the Canada Elections Act, but the passage applies equally to our legislation. It states the following:

> The effectiveness and cost efficiency of elections administration have been hampered, however, by many provisions in the Canada Elections Act that do not recognize current realities or changes in technology. The Act must be sufficiently comprehensive to ensure the integrity of the electoral process and its immunity to pressures from the government of the day. At the same time, the Act must be sufficiently flexible to accommodate current realities and continuing technological change. Election administrators provide one of the most essential public services in a democracy, and their effectiveness should be facilitated, not impeded, by electoral law.

Elections Alberta requires the flexibility to adapt election procedures and practices to reflect changing technology and electoral environments in a timely fashion. We look to this committee to provide us the ability to modernize the electoral process in Alberta through best practices that maintain the principles of the act that are identified and endorsed by election officials across Canada. Electoral law should facilitate through flexibility.

I would like to provide the committee with a summary of our main recommendations for legislative change based on our values of fairness, transparency, accountability, and efficiency. Looking at fairness and making elections more equitable, we recommend the implementation of a fixed election date. A fixed election date facilitates advanced planning and election readiness. We are able to conduct field work such as confirming polling places in advance, obtaining lease space, the ability to open returning officer offices in a timely manner in order to serve candidates and the public. It will be easier to recruit staff, and we're able to tender more items to obtain best prices.

Our second recommendation is to treat third parties the same as other political entities during the election period. We need to ensure that contributor rules apply equally to avoid an uneven playing

field. We want to avoid situations where corporate and union funds are funnelled to third parties for advertising purposes. We propose contributions to come from individuals only to ensure the integrity of our electoral system. This will match the restrictions brought in by Bill 1.

Next is to implement a balanced approach to late filing of financial statements. Candidates that file late are prohibited from running in an election for eight years. We wish to limit the need for them to go to court for relief while maintaining the requirement to file through graduated fines. For example, several candidates this last election mailed their financial returns the week prior to the due date. They did not arrive until after the deadline. Instead of making them go to court for relief, we would apply a late-filing penalty if the documents are received within a 10-day period after the due date.

The fourth recommendation is to allow special ballots to be mailed out early. This will allow additional time to work with our outreach partners. It is difficult to request and return ballots overseas within the 28-day period and may disenfranchise, for example, our military personnel serving overseas.

The fifth recommendation is to level the playing field for independent candidates by providing them the ability to register at the commencement of the campaign period instead of having to wait till the writ is issued.

Sixth, we look to expand the exclusion zone around polling places for signage, campaigning, and exit polls. If a church is used as a polling place, the exclusion zone would include the church property and its parking lot.

Taking a look at the integrity of the electoral process is recommendation 7, making a better ballot. I wish to provide you with another example of the prescriptive nature and language of the act and how it restricts our office in this case from changing the ballot format. On the left-hand side of the screen is a ballot used in Alberta. The ballot on the right is an example of the format used in Ontario. The space used per candidate on the ballot in Ontario is less than Alberta's, but you'll notice the size of the font is significantly larger, making it easier to read. Even though we receive requests from Albertans to increase the font size on our ballots to make them more legible, the act prescriptively states that I have to print it in a 12-point font. We require legislative changes in order to improve a ballot layout.

Other integrity recommendations include requiring electors who come to vote to provide identification showing both identity and residence. This is consistent with municipal and federal legislation and several other provincial jurisdictions. This will make it clear to electors and election officers, and it will protect the integrity of the electoral system.

We are recommending the removal of the six-month residency requirement for elector qualifications. As previously stated in the court case Frank versus Canada, the six-month residency requirement was found to be invalid. The elector is still required to declare that they are an ordinary resident in Alberta and provide identification to substantiate their place of residence.

Ten, we are looking at expanding the use of mobile polls; for example, at postsecondary institutions, work camps, or emergency shelters.

Eleven, we wish to clarify that special ballots are not automatic upon request. Special ballots are the only form of unsupervised voting. It is to be a process exception, and integrity requires legislative capacity to require some form of credibility that would allow the returning officer to refuse the provision of a special ballot if he or she has reasonable grounds.

We are looking at identification requirements for candidates. This is to avoid the candidate who wants to create mischief to undermine the integrity of the voting process. We had a few candidates this last election trying to use false names so that their name could be placed at the top of the ballot or use a false name to cause confusion with the legitimate candidate's name.

Thirteen, we are recommending a review of the contribution limits.

Fourteen, we want to expand the categories in which the CEO can disclose information during an investigation. For example, if we are investigating a candidate, we should be able to disclose this information to their political party.

Fifteen, only individuals and financial institutions should be allowed to provide loans. As currently drafted, the act facilitates a breach. If the political entity defaults on the loan, the corporation is required to make the payment, which becomes a contribution and then a prohibited contribution. Other jurisdictions that prohibit corporations and trade unions from making contributions also prohibit them from making loans or guarantees.

Sixteen, only allow individuals to make guarantees.

The 17th recommendation is during emergencies to enable the CEO to alter the time of voting. Currently if large-scale disasters such as the Slave Lake fire or the southern Alberta floods occur during an election period, the vote would continue within the same timelines.

Taking a look at improving our independence, we wish to extend the requirement for neutrality to all election officers. Currently only the returning officer, election clerk, and administrative assistants are required to abstain from political activity once hired. We're looking for independence. It's crucial in the performance of my duties. The electoral process involves competition between opposing political parties and other participants.

1:30

Maintaining public confidence in the integrity of the investigative process requires that no participant is able to exert influence over my office and my duty to enforce compliance. As an independent officer of the Legislature it's necessary to carry out my duties independent of any political or government interference or influence. For this reason we're recommending that the CEO be given the authority to appoint independent investigators and prosecutors. Currently, if I recommend a file for prosecution, I must refer the file to Alberta Justice, special prosecutions. There is a conflict of interest with Alberta Justice looking at requests for prosecutions of sitting members and political entities.

Number 20. Consider tenure for the Chief Electoral Officer. Currently Alberta has the shortest term across Canada. Extending the term will enhance institutional memory and consistency, provide time to implement improvements, and protect the independence and impartiality of the position from political interference.

Number 21. We wish to allow the CEO to set election officer pay scales as part of the budgetary process. This process is approved by the Standing Committee on Legislative Offices.

To make election legislation more accessible to everyone, we are requesting that the Election Act and election finances legislation be combined into one statute. This is consistent with nine jurisdictions across Canada.

We wish to eliminate archaic structures such as the preregistration foundation for parties, the revision period for enumerations, and the method of the announcement of the official results.

We wish to modernize the language and use plain-language terms that everyone can understand; as an example, using "voting" instead of "polling."

We wish to clarify rules for scrutineers and combine voting rules specified in the act.

To increase transparency, we wish to include nonvolunteer services in the definition of contributions. In most jurisdictions volunteer services are excluded from the concept of political contributions while services rendered at below market value are included as a contribution to the extent of the benefit. Our recommendation distinguishes between volunteer and nonvolunteer services.

Number 26. We wish to include reporting and distribution of surpluses from leadership contestant campaigns.

Number 27. We wish to clarify that a candidate can only be nominated and registered on behalf of one political party.

Recommendation 28. We wish to provide additional disclosure on our website, such as compliance agreements, so the public can be made aware that action has been taken when they file complaints with our office.

We wish to clarify the relationship between the Election Act and the Legislative Assembly Act for automatic by-elections, for disclaimers, and tie votes.

We wish to clarify political advertising as it applies under the Election Act and the Election Finances and Contributions Disclosure Act.

Our accountability recommendations include modifying the three-hours-off rule to vote for employers. Modifying the rule will require employers to give employees three hours off to vote, recognizing that electors now have five days during which they can vote.

We want to provide flexibility on documents filed with our office to determine which require original signatures, such as nomination forms and candidate withdrawals, but allow electronic submission of other documents to remove barriers for those who do not reside in Edmonton.

Number 33. We are looking to broaden the tools of enforcement, make political entities expressly subject to administrative penalties, widen the concept of inducement to matters other than employment, and make leadership contestants jointly liable for the chief financial officer's failure to file a financial statement.

We want to add a violation ticketing regime, a compliance agreement process, and sharpen the tools of enforcement by increasing the liability on a person using the list of electors in an unauthorized manner.

We want to provide more clarity on scrutineers, who, once rejected, cannot be replaced.

We want to recognize the seriousness of offences by increasing the fine amounts.

We want to implement greater consequences for an elected candidate who misses the financial statement filing deadlines.

Overall, we are looking at strengthening our enforcement provisions. We do not have much authority to make a breach stop during a 28-day campaign. By including a greater range of administrative measures, we are able to encourage and obtain compliance through means other than prosecution. Broader powers will encourage compliance and instill public confidence in the electoral system.

Currently we're able to write a letter to stop the behaviour. By adding a ticketing regime, we are able to fine a candidate, for example, for improper advertising, and the fine amount would be based on factors such as the magnitude of the breach, the prejudice or the fairness of the election, whether there was a previous breach, and how long the breach continued before it was remedied.

We can enter into compliance agreements to address the improper activity and have them published on our website. Compliance agreements are effective where a person has made an error but is co-operative and intends to comply in the future. These would be voluntary agreements between both parities. Compliance agreements already exist federally, in Manitoba, and in Nova Scotia.

We wish to enhance oversight for returning officers and election officers. For example, expand the offence of refusing to carry out duties to include returning officers in its scope. We wish to create an appeal process for the violating ticketing regime.

Looking at efficiency recommendations, we look to eliminate quarterly reporting to reduce the burden on volunteers. We're looking to centralize many operations: candidate deposits, enumerations, ballot printing, special ballot issuing and counting, updating the register of electors, and the provision of the list of electors. We wish to diversify and update the methods of obtaining information for enumeration purposes. We wish to facilitate mobile polls on days in advance of election day itself. We wish to make election day in the general election a non-instructional school day to minimize disruption both to schools and to electors.

We wish to streamline the count process postelection so that a complete second count is triggered only by a margin of 100 or fewer votes. As you're aware, on election night all ballots are counted by the poll clerk and the deputy returning officer with scrutineers present. This is the unofficial count. The following week the returning officers perform a second complete count. This is the official count. Our recommendation is that if the threshold is greater than a 100-vote margin, the returning officer will complete an audit of the election night results by reviewing all statements of polls completed on election night to ensure there are no inconsistencies in the numbers reported for each voting area. However, a full count will be triggered if the margin of votes is 100 or fewer between the first-place candidate and the second-place candidate. This is consistent with other jurisdictions, and in fact our threshold for the full count is considerably higher. For example, in New Brunswick the recount requires a margin of 25 votes or less.

Recommendation 43. We look to make the judicial recount process clearer and more effective.

Finally, 44. Enable Elections Alberta to use emerging equipment and technologies while preserving the integrity of the process.

In conclusion, Madam Chair, all of these recommendations support our principles of access to the voting process for all qualified electors, protecting the integrity of the electoral process, the accuracy in the tabulation and reporting of voting results, and the secrecy of the vote to protect the privacy of individual voters. We have provided committee members with a detailed summary of our recommendations. In the binders provided, you'll see three-column documents for the Election Act and the Election Finances and Contributions Disclosure Act. These documents detail our recommendations by stating the current provision, our proposed revision, and the rationale for that proposed amendment.

It is my hope that you will consider the recommendations provided to you today. The legislation requires substantive update. Our vision is to modernize the voting process and provide services that put the needs of electors first. This vision cannot be addressed on a piecemeal basis. We need to replace the prescriptive nature of the legislation to preserve the values of a fair, transparent, accountable, and efficient electoral system now and for the future.

Should the committee wish, we are available to discuss our recommendations in future meetings, and we wish to thank you for your consideration on the recommendations present and will entertain any questions that you may have.

1:40

The Chair: Wonderful. Thank you very much, Mr. Resler. That's a lot of great information. A 12-point font: really? I did not know about that.

What we'll do is that we'll open the floor to questions, and I see Mr. Clark first.

Mr. Clark: Thank you very much. I'll just reiterate what the chair has said. I really do appreciate the clearly significant amount of work that went into preparing these recommendations. It's obviously something you and your office have given a lot of thought to, and it's made a tremendous difference to this committee. Thank you very much for that.

I will ask one single question. I imagine others have questions. Recommendation 8, the requirement to provide identification to vote: do we have any data or evidence of how much outright fraud or erroneous votes happen as a result of the lack of a requirement to provide ID?

Mr. Resler: There is no evidence of fraud across Canada. There is confusion as far as at the polls right now because other levels of government require identification. The confusion is from the elector who is already coming with identification in hand and questioning why we're not asking them for identification, and there's also confusion as far as the election officers. Many of the workers work all forms of elections, and because the rules differ across the different jurisdictions, they're actually asking even though the legislation doesn't require it. So it is getting more difficult to manage, but, you know, as far as the fraud aspect of it, there is no record of that.

Mr. Clark: Thank you.

The Chair: Are there any other questions for our Chief Electoral Officer or his office? Yes, Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Thank you for your presentation here. Do any other provinces use the vote tabulators?

Mr. Resler: Yes, New Brunswick does. New Brunswick uses it for all levels: for municipal, school board, provincial. Anyone else? I think they are the only ones at this time. Other provinces are looking at it. I know Nova Scotia will be implementing it in the next election, but others are looking at it.

Mr. Westwater: Many municipalities.

Mr. Resler: Yeah. Many municipalities do use them currently. When I say that we're looking at modernizing the process and introducing technology, tabulators is one of them. Edmonton has been using them since 1996, so it really isn't new technology. It's been around quite a long time.

Mr. Cyr: Thank you.

The Chair: Mr. Clark.

Mr. Clark: Thank you. I have a second question. Does the Election Act govern the means of electing MLAs? So if this committee chose to make a recommendation that we want to abandon single-member plurality in favour, perhaps, of a preferential ballot, is the Election Act, in fact, where that would be reflected, or is that a different piece of legislation?

Mr. Resler: That would be this legislation. The candidate with the most votes is the one that's duly elected.

Mr. Clark: That's where it's defined. Okay. Good. Thank you.

The Chair: Mr. van Dijken.

Mr. van Dijken: Thank you, Madam Chair. With regard to ensuring integrity in the vote, ensuring access as well as confidence that we are being prudent in protecting democracy, I sense a certain amount of – you stated: an act to restore democracy, and let us do that. I have a certain amount of hesitancy to just allow someone else to. I realize your position, but where are the checks and balances beyond your office, then? You're looking for more opportunity to complete your work, but there still need to be the checks and balances in place to ensure that we're protecting all these others, access, integrity.

Mr. Resler: Yes. Absolutely. Those key principles would be stated in the legislation. It might state that the polling place must be adequately staffed. It doesn't state that you have to have a poll clerk and a deputy returning officer at every table, for every 450 electors, those types of details. We will, you know, staff it appropriately. It does provide us the flexibility to change it. Instead of having a table for every polling subdivision, we may set it up like a bank and have a lineup in which the next available table is where you provide service. Those key structures would be stated in the legislation without specifically telling me who, what, and how it has to be done. Those guidelines, if guidelines are required, would be published on our website and provided to the political parties in advance.

The Chair: Mr. Cyr.

Mr. Cyr: Madam Chair. Again, thank you. How many other provinces grant tenure to their CEOs?

Mr. Resler: For tenure I think the shortest term is eight years or 10 years. Usually it's every two elections. Some are for life – Canada Elections Act, Ontario, and, I think, P.E.I. – but usually they're two terms or more. My current term is up in May, so about two and a half years is my term in comparison for this instance.

Mr. Cyr: So is it a five-year term that you're . . .

Mr. Resler: The term currently is one year after the general election. The competition process: by the time that's completed, brought in, you're partway through the four-year election period, so really in two and a half years, in which a year before the election you have to pretty much prepare for it, there's very little time in which you can implement any change or improvements to the system. In the last five years from when I started there were three different CEOs in the position.

Mr. Cyr: Did they leave office voluntarily?

Mr. Resler: Some retire, yes. Some aren't renewed.

Mr. Cyr: Okay. What is it that you're looking for for tenure? Is it two terms, two elections?

Mr. Resler: I would look at the two-term period.

Mr. Cyr: Thank you.

Mr. Resler: That's, you know, consistent when you look at the other legislative offices. I believe the Auditor General is an eight-year term. The other ones are usually five-year terms, but for our business it's the election, and that happens every four years, so two terms is what was recommended.

The Chair: I'm just checking for any other questions before we close this discussion topic. Mr. Cyr, would you like to say any more?

Mr. Cyr: Actually, I do have just one quick last question here. Your second recommendation, to treat third parties the same as other regulated entities re contributions: can you, I guess, more thoroughly explain what that exactly means?

Mr. Resler: With third-party advertisers, when you look at other jurisdictions, there's more influence by the third parties, say, in Ontario or in the United States, and we need to find a balance to ensure that, depending on what recommendations come out of this committee when we look at contribution limits and who is able to contribute, there isn't really an advantage or disadvantage, in a sense that third parties can influence the electoral process. You look at Ontario, and it's millions of dollars which are spent by third-party advertisers, and there are restrictions on the candidates and political parties and the amounts that they can raise or spend. When that's the case, there's an imbalance.

Ms Vance, would you like to add anything to that?

Ms Vance: No. I think you've covered it really well. I think the concern is that once you limit contributions to individuals, which Bill 1 did – on a political scale part of the political dialogue is recognized as coming from the third parties. To make the dialogue more even, if you like, is why the recommendation would be to treat them the same way and restrict contributions to third parties to just individuals during the election period.

1:50

Mr. Cyr: Is this regarding only contributions, that you're restricting, or are there other things that you're looking at restricting for third parties?

Mr. Resler: Just contributions.

The Chair: Mr. van Dijken.

Mr. van Dijken: Thank you, Madam Chair. Removing the six-month residency requirement to essentially state, "ordinarily resident in Alberta": how would you foresee that being determined, to be looked at as ordinarily resident in Alberta?

Mr. Resler: "Ordinarily resident in Alberta" is the current terminology used, so that already exists in the legislation. An elector has to be a Canadian citizen, 18 years of age, a six-month resident, and ordinarily resident in Alberta. That's already in place. That's already questioned. It's part of the declaration an elector would sign when they register to vote.

Mr. van Dijken: So you feel the six months is cumbersome or . . .

Mr. Resler: Well, we question whether it complies with the Charter itself. It's difficult when we look at the enumeration process or the maintaining of the elector records or register of electors. We receive data sets from other bodies, Elections Canada for instance, and we'll have to stale-date our data for six months before we can enter it into our register just because of that clause, too, so administratively it does impact. If we were going to an election next year, we wouldn't be able to roll in the federal election information because the six-month date wouldn't allow it, so it would impact the operations, too.

Mr. van Dijken: Okay.

The Chair: Mr. Cyr.

Mr. Cyr: I'm on a roll here, apparently. Thank you, Madam Chair. I don't see in here anywhere where we're looking at restricting volunteers that are paid by, say, corporations or unions. Is that in here and I just missed it?

Mr. Resler: Yeah. I'll just grab the definition here. The proposal as far as the definition of volunteer: I'm just trying to see which recommendation that is.

Dr. Starke: Twenty-five.

Mr. Resler: Twenty-five. Thank you.

To explain the services and the proposed revision to the definition of a contribution. "Services" would not include services provided by a volunteer who voluntarily performs services and receives no compensation, directly or indirectly. Services provided by a chartered professional accountant or a lawyer would not be included if they're providing the services under this act. Services provided free of charge by a person acting as the chief financial officer, services that a candidate or leadership contestant provides in support of their own campaign, and the value of services provided free of charge by self-employed individuals who normally charge would be included. A volunteer service is volunteered. There's no compensation to be received, so we wouldn't take a look at that.

Mr. Cyr: So you're saying that, say, a corporation had a full-time employee that was being paid on salary working on a campaign – would that be considered a contribution under 25, then?

Mr. Resler: Yes. A contribution is defined as any money, real property, goods, or services or the use of real property, goods, or services that are provided to a party, constituency, candidate, or leadership contestant for the benefit of that party, constituency, candidate, or contestant. This would be in line with most other jurisdictions across the country.

Mr. Cyr: Right now under the existing acts that we've got, this isn't okay already. Is that what you're saying?

Mr. Resler: Services aren't included in the definition of contribution right now.

Mr. Cyr: And that's what we're . . .

Mr. Resler: We're looking to put "services" in.

Mr. Cyr: Right. Sorry; is the definition of "services" that you want here?

Mr. Resler: Yes, it is. It's under items 5 and 16.

Mr. Cyr: Thank you.

The Chair: Thank you very much for your presentation today and the amount of detail provided. I think you've given us all a lot of homework, that we will enjoy going through, and then we will look forward to having you back to have more in-depth discussions on these items and more specific questions for you. Thank you. We really appreciate your time.

Mr. Resler: Thank you.

The Chair: I'd like to suggest that we take a five-minute break before we proceed into the next section of our agenda. We will recess and come back at 2:05.

Thank you.

[The committee adjourned from 1:57 p.m. to 2:06 p.m.]

The Chair: Okay. Thank you, everyone. We will come back from our five-minute break.

We are continuing on with our agenda for this meeting, and our next item of business is item 5, business arising from the previous meeting.

Regarding public consultation, at our last meeting we passed a motion asking the staff to put together some rough cost estimates for holding public meetings at venues outside of the Legislature meeting facilities as well as for various public consultation options and the costs related to them. Before we review those documents, I do want to note for everyone's information that I've tracked it down, and the committee has a budget of $156,000 available to us as we determine the best way to accomplish our work. So $156,000 is something to keep in mind as we proceed with the discussions.

For public meeting costs, everyone should have this document, distributed to you. It was available on OurHouse, and it refers to the public meeting costs as well as some additional information regarding attendance and participation in recent public meetings and legislative reviews. I'd like to just speak about this document with you briefly.

Mr. Nixon.

Mr. Nixon: One, just a clarification for Mr. Clark, who is out. I think it's important, given that we're going to be talking about what he has brought forward, that he hear that number of $156,000, so that he's in the loop on that.

The Chair: Thank you.

Mr. Nixon: I had one more, but that's the biggest one. I think Greg needs to hear that, and he was out of the room.

The Chair: Yeah. So $156,000 is the budget available to us as we determine the best way to accomplish our work.

Speaking about that budget, I would like to state that it is that budget from which we pay for members' travelling when we meet outside of session, which has already happened and is likely to continue happening throughout the course of this one year. It includes the cost for food, all sorts of things that are part of this committee work. That budget is used for a variety of items and can also be used for some of the items that are described on this page, including, starting at the beginning, the scenario of doing meetings in other venues. We have been provided with an estimate for a public input meeting held in Calgary.

In our motion we had talked about various locations, and what the staff were able to determine is that this is a pretty good average cost, because if we go to a rural location, although the travel costs will increase, the cost to rent venues will decrease. So we can look at this as an average around Alberta. The one caveat that I would add to that is that if we are looking at the cost of sequential meetings – for example, three meetings, on a Monday, Tuesday, and Wednesday – that cost then goes up. We are not actually saving money because each meeting needs to be prepped before we arrive there to perform our functions and to set up *Hansard* and whatnot. We can use this as an average cost if we go to a location and then return to the Legislature. Sequentially it would change slightly.

The second portion of this document refers to recent public meetings, and it includes the number of presenters that came to the feasibility of high-speed rail meetings in Alberta as well as the number of presenters when the review of pension reform bills was taking place. At the bottom there are some recent legislative reviews, and included is information about the number of public submissions. Finally, we have the number of attendees at the Alberta heritage savings trust fund annual public meeting. This information was prepared for us by the staff.

Do we have questions regarding this document?

Ms Renaud: I can see the top part, the estimated off-site meeting expense, but I'm looking at the examples here. I'm just wondering why you chose these two sorts of benchmarks on – I don't know – the numbers of people or the locations.

Ms Rempel: If I could just clarify. So you're basically wondering why we have this kind of middle column here, where we do the high-speed rail and the pension reform bills. That's because those are recent. We don't actually do a lot of these kinds of wide-open public meetings with the kind of work that most of our committees do, but those are ones that have taken place quite recently, so we pulled those numbers for you.

Ms Renaud: Okay.

Ms Rempel: And, yes, we would consider them to be relatively well attended.

Ms Renaud: These two in particular were relatively well attended?

Ms Rempel: Yes. The pension reform bills, in particular, were far and away the most well attended meetings that we've had in a long time.

Ms Renaud: Really? What does a poorly attended one look like?

Ms Rempel: We have cancelled meetings because we have had no one register to present.

Ms Renaud: What is the cut-off normally for cancelling an event, or how late can someone register?

Ms Rempel: Well, I wouldn't say that there's a standard. I mean, that would be a decision made, you know, possibly by the chair of the committee or the committee itself. When these meetings do go ahead, we usually like to have at least a few days' notice. Again, it really depends on the situation. If there's time left over, most often the chair then will also open the floor to anyone who maybe didn't preregister but is there in person and hoping to speak, which happened in these cases. But as you can see with the pension bills, those were scheduled to go for three hours, and outside of Edmonton and Calgary they were all adjourned 45 minutes to an hour and a half early.

Ms Renaud: I'm most surprised, actually, by the high-speed rail numbers for some reason. Wow. All right. Thank you.

The Chair: Are there other questions related to these costs and this information presented?

Cortes-Vargas: What is the procedure if they're going to cancel a meeting?

Ms Rempel: For this kind of public meeting once it has already been advertised and so on?

Cortes-Vargas: Yes.

Ms Rempel: Rhonda would have more of the specifics.

Ms Sorensen: Thanks. It's a great question. It has happened before. In those communities, if we have a chance, depending on how much leeway we have due to the fact that – if we're advertising in a weekly publication, for example, the deadlines might not allow us

to cancel through an advertisement. If it does allow us to cancel through an advertisement, we'll place it in a daily and then probably put out a news release and contact anybody who might have shown interest. Of course, now we have social media, too. We would put out the messaging that way.

Cortes-Vargas: Is there a cost associated with that?

Ms Sorensen: Absolutely. If we are advertising in the same publications in which we advertised the actual meeting itself, then the advertising costs essentially double. For example, if we had spent $10,000 on advertising that this meeting was taking place and had the opportunity to advertise its cancellation, then it would be $20,000 that you'd be looking at.

Ms Rempel: Yeah. Again, depending on the situation, the timing, and so on, we may still be required to pay for venue rentals, partial catering costs because of, you know, breaking a contract, that sort of thing.

Mr. Nixon: Do we have a rough estimate of what a meeting like today's would cost? Of that budget that's already been set for this committee, what costs do we already know we're going to incur, and how much is left?

The Chair: I do not know the answer to how much a meeting like today's costs, one outside of session, so we'll perhaps ask the staff. The budget is something that we would have just started to use, though, because we met for the first time in September. So that's important to note.

Costs for out-of-session meetings.

2:15

Ms Rempel: I mean, we've never, you know, put together sort of a formal number for that, but we could look at what would be included.

The Chair: Ms Dean.

Ms Dean: Thank you, Madam Chair. I think you would have the bulk of your budget available at this point in time. I mean, it's really just the cost of your lunch today and any travel.

Mr. Nixon: Let me ask you in a different way. Do the staff know roughly what they expect? Not taking trips throughout the province, putting that to the side for a minute, would they expect that that budget we will incur in order to do the work that we have to do over the next 12 months – what would be left for us to undertake something like this?

Ms Dean: That would be largely contingent upon the extent of the advertising costs. That's the big-ticket item with respect to committee budgets.

Mr. Nixon: Okay. Thank you.

Mr. Clark: I guess to pick up on Mr. Nixon's question, then. The travel that we've allocated here in the off-site meeting expense and meals and per diems: is that truly a net new cost, or is that a cost we're already incurring? Are we adding that on top? I mean, those of us from outside of Edmonton travelled to be here, we've got our committee expense claim that we will file, and there was a nice lunch for us here, those sorts of things. Is this all truly over and above what we're already spending, or is some of this actually something we would be spending anyway?

Ms Rempel: I think it is largely a net new cost. I mean, we didn't have a lot of really specific information, of course, to put together because, you know, it was kind of a general situation that we were assuming, but when we put together these numbers, we actually looked at: "Okay. Well, we have members who are already living in Calgary, so they presumably would not have travel costs." So we didn't factor that into these numbers, and they would presumably not be claiming for meals, that sort of thing. I think that considering it is a rough estimate, it's pretty fair to say that it is all increased costs.

The Chair: Okay. Are there any other questions on these cost estimates that we've been provided for now? No?

Then the second part of this agenda item is that we also requested that the communications branch put together a briefing document around some of the costs, and advertising has already been mentioned. This is an opportunity for us to take a look at what that's been put together as.

Ms Sorensen, if you can give us an overview.

Ms Sorensen: Thank you, Madam Chair. I just want to clarify that these are not recommendations; they are simply provided to you as options that we may have used throughout other reviews. I've tried to focus on the first part, under Communications Options, things that we have used successfully throughout other legislation reviews. Typically the stakeholder notice is one of our strongest strategies within legislation reviews, and I believe Phil will be talking on that a little bit later. If we were to proceed with that, then any of our other paid recommendations would be following the same messaging that goes out in the stakeholder letter.

Then we get into advertising. Like I think Ms Dean mentioned, this is the big-ticket item. When we do a province-wide ad, which typically is inviting participation from the public at large and/or could be including information about meetings that you are holding in other locations, it is going to cost approximately $35,000 to do weekly publications, and that is about 120 newspapers throughout Alberta. That can also vary, depending on the size of the ad, so it depends, really, on how much information you're putting into that advertisement. The ads that we've typically done in this $35,000 mark have included one piece of legislation, so it might be a little bit more when you're trying to advertise for four pieces of legislation. Same with going into the Alberta daily newspapers, of which there are nine daily publications. You're looking at a cost of about $8,000, which, again, might be a little bit more, depending on the size of the ad.

The target advertising, which is what Jody spoke to in the document that we just covered, is for when we are going into a community and we typically advertise in that community and within a 100-kilometre radius for people to attend a meeting. That's typically about $10,000.

Then during other legislation reviews we've used a number of different strategies, depending on the direction that the committee gives, that supplement the advertising. These strategies don't give any direct cost to the committee; they're done in-house. Those include things like the committee website and all of our advertising, news releases. Everything that goes out tries to draw everybody back to the website, where we contain most of the information.

Social media: we would leverage our own social media accounts and then encourage members to retweet or repost things that we're putting out there. Media relations: traditional media relations such as news releases and whatnot we would also put forward.

We can also develop an e-card, which would essentially follow anything that we're advertising, that could be sent to members, who can then e-mail it on to other people that they think would be interested in the review.

Then I added some additional options that just kind of came up around the table last time, just to give you an idea of the costs. I see the chair and the deputy chair from the Alberta Heritage Savings Trust Fund Committee are also on this committee, so they're well aware of one of the first examples, where we do a televised broadcast and online chat at a cost of about $10,000. But, again, the mandate for that committee is quite different than a legislation review, which can be pretty focused, and you're looking at provisions that are within legislation that might not be of wide interest to a widespread audience.

Another idea that was discussed is the telephone town hall. I can't with any confidence say whether or not this would be an effective strategy in this situation because we've not used it, but I have spoken to colleagues who have used it, and the impression I'm getting is that it's quite labour intensive, it's best used if you are trying to put out specific information or kind of gain a consensus from the public on a certain issue, which may not be the use that you're looking for here, and it's at a cost of, they said, at the minimum, $60,000.

That was, essentially, the information I was able to gather, Madam Chair, and my hope here is to kind of gain some understanding of where the committee would like to go so that I could come forward with some stronger recommendations.

The Chair: Thank you very much.

Speaking specifically about the communications options and the off-site meeting costs, are there questions or clarifications? I'll just give everyone a moment. Okay. I see no additional questions.

Thank you very much for preparing that information. It's very helpful to the committee as we look at options going forward.

Finally, the consideration of a deferred motion. At our meeting on September 29, 2015, Mr. Clark moved the following motion, that

> the committee undertake a comprehensive consultation with Albertans, including but not limited to in-person hearings to be held in both urban and rural Alberta and also including an online feedback capability.

After a lengthy discussion the committee voted to adjourn debate on this motion, and this motion is now being brought back onto the floor. Is there any discussion? MLA Miranda.

Miranda: Thank you, Madam Chair. You know, Albertans are looking to this committee to ensure that they are engaged in this process, and as was mentioned, it is one that is quite comprehensive. As we all got this binder not too long ago, I think we can appreciate the scope and the breadth of the work that needs to be done. We also have to ensure that we are doing our work to engage Albertans and making sure that we are serving them in the best way possible. At the same time that we're looking at the costs, we also have to be mindful that we have to be fiscally responsible, especially when we're looking at this budget that we have in front of us.

I think that when we're looking at a plan and we're looking to go out and engage Albertans, I still don't know what the focus is at this time. We received lots of information I have yet to process, to read through, so I do not feel that we are at a point yet where we can actually even consider which of the options that are in front of us, communication or engaging mechanisms, are the best. So I would actually move, in order that we can actually achieve this, that

> we adjourn the debate at this point and come back to it at a later time.

That would be my motion.

2:25

The Chair: We have a motion to adjourn debate on the floor, and it is not debatable. We will come back to this topic again. All those in favour? All those opposed? The motion is carried. So we will come back to this topic again.

On our agenda we have item 6, Public Interest Disclosure (Whistleblower Protection) Act review, research documents and stakeholder list. The research staff have prepared a draft stakeholder list regarding the PIDA review for our consideration.

Dr. Amato, would you like to take us through this document?

Dr. Amato: I'd be pleased to. Can I please draw your attention to this document, which is the draft stakeholders list of the Public Interest Disclosure (Whistleblower Protection) Act. If you'd permit me, I will just very quickly review in general the purpose of a stakeholders list and reiterate that this very much is the committee's document, that it is comprehensive but not exhaustive, and that we indeed hope for feedback from the committee in terms of both revisions and perhaps even other organizations that might be included. Finally, I will go over some of the organizations that are, in fact, included in this document.

The purpose in general of a stakeholders list when it comes to a legislative review is to make a list of both organizations and individuals who have some sort of stake in the legislation, and once the stakeholders list is approved by the committee, these organizations and individuals are invited to make submissions to the committee, giving their opinions and advice to the committee, that the committee may wish to consider. So that's, in general, what a stakeholders list is, and in this case the draft stakeholders list is comprised of both organizations and individuals to whom the act applies.

If you would be willing to turn to the table of contents, you will notice that the stakeholders list is comprised of the various entities to which the public interest disclosure act applies, and these were discussed this morning during the overview of the legislation. This is, generally, the public sector in Alberta, and you have all organizations and entities that are listed both in the legislation and in its regulations here.

The other section of the list and the interesting part of comprising it was to target some stakeholders and to consider how the committee, if it wishes, might reach out to the employees to which the act applies. As such, you'll notice that in all of the sections you have, in addition, unions, and when it comes to universities and colleges, you have staff associations and faculty associations listed here as well as certain other regulatory bodies whose membership has a stake in the legislation.

I will also just briefly say something about what may appear as an abbreviated education sector in the document under section 6.0, public charter schools, and 7.0, education sector, independent schools and colleges. On this list there are umbrella organizations, and all of the school boards, for example, in the province are members of these umbrella organizations, and the hope is that if these organizations are targeted, they in turn will contact all of the school boards in the province.

That concludes my presentation. We would be happy to receive comments, suggestions, additions, or revisions.

Thank you.

The Chair: Thank you very much.

Dr. Starke: Well, Chair, I have to confess that I have a concern, in just going through this document, that as far as a stakeholder list it is sadly out of date. For example, page 5, Travel Alberta: Bruce Okabe has not been the CEO of Travel Alberta for nearly a year. Paging to page 21, Lakeland College: Glenn Charlesworth is two presidents and CEOs back for Lakeland College. I can give you the

name of the new president and CEO. But those are just the ones that I am familiar with, paging through this.

You know, if this is typical of this list, it's sadly out of date and needs to be brought up to date and these corrections made. Certainly, in the case of Travel Alberta I can give you the name of the new CEO and in the case of Lakeland College as well. I would suggest that everyone here on the committee go through and see if the areas that they're familiar with are similarly accurate or inaccurate and that we at least make those updates. Otherwise, at least some of our credibility is damaged if you send to people that are no longer with the institution.

The Chair: Thank you.

Dr. Massolin.

Dr. Massolin: Yes. Thank you, Madam Chair. Just through you to Dr. Starke, thank you for those comments. As part of our process we put this together just for the committee's approval and an indication of the groups that will be contacted. Before we send out these letters, we actually do a verification of all the names and addresses. Yes, it was an oversight to put these on the list before that. Rest assured that we would do that before we send these out.

Thank you.

The Chair: Okay. Thank you very much.

Ms Renaud: Just a quick question. You mentioned earlier that, you know, you identified the umbrella groups and that then the information filters down and people have access to it. Is there a way or is there a mechanism to check that that is done? Is there some oversight to ensure that the information gets out?

Ms Rempel: I guess just a brief comment on that. I mean, we can't enforce that in any way, of course, but we have done that with other reviews. You can see either by the groups that contact me with questions about how to submit that they have obviously been hearing about it or by the actual submissions that we do get in. We couldn't say, of course, in every situation whether or not that happens, but I think we feel fairly confident that that does tend to.

Ms Renaud: Good. Thank you.

The Chair: Mr. van Dijken.

Mr. van Dijken: Yeah. To further expound on that, I would have concerns that if this is our stakeholder list, will Municipal Affairs, the ministry, for instance, be corresponding with, say, the AUMA and the AAMD and C to allow them to be aware of the opportunity to present? Will seniors' facilities, health facilities also be made aware through the different ministries? By what process do we see communications going forward to those types of facilities and boards and agencies?

Dr. Amato: I can speak to the limited number of agencies, boards, and commissions that appear on the list. The reason why this is somewhat limited is that it's comprised of agencies, boards, and commissions that have employees and whose employees are separate from the ministry. The agencies, boards, and commissions for the most part – well, entirely – who are not included on this list are subject to the provisions in the Public Interest Disclosure (Whistleblower Protection) Act and the procedures that are developed by the chief officer and the designated officer of the ministry.

2:35

Mr. van Dijken: But in furthering, possibly, the act itself, we need to hear submissions from entities that are maybe not already included in the act, so the communication needs to happen beyond what's just encompassed in the act currently.

The Chair: Okay. Thank you, Mr. van Dijken.

I will mention that with this list that we have here today, we can add on to it, and the stakeholder list will all receive a letter inviting them to participate, but we can also communicate more widely than this list and invite others to participate as well. What I had in mind coming into this discussion was that with this list we would allow one week for each of us to consider additional entities or who should be included and add those on and then send the list out inviting all stakeholders for input, giving us each as members of the committee an opportunity to enhance the list and add additional people. Would that seem to be a reasonable compromise to the members of the committee?

Mr. van Dijken: Yeah. That's quite acceptable.

The Chair: I would request that someone move that

> the Select Special Ethics and Accountability Committee authorize the chair and the deputy chair to approve a final stakeholders list for the review of the Public Interest Disclosure (Whistleblower Protection) Act and that once the committee members have all had one week to suggest additions, the chair invite written submissions from the stakeholders.

Moved by Mr. Nielsen. Thank you. Any further discussion on that motion or that concept? Okay. All those in favour? The motion is carried.

We will send those letters out after one week's time, after verifying all of the addresses and so on. Again I'll repeat also that once the consultation period has begun, if in two weeks' time you think of an additional stakeholder who should be invited, we can forward that information to the stakeholder and invite them to contribute as well.

Dr. Massolin: Madam Chair, it's a committee decision as to what you accept as a submission. Nothing is restricted by the stakeholder list. That's just a way to get the message out. It's up to the committee to decide what sort of information it receives.

Thank you.

The Chair: As a reminder, the reason we were able to create the stakeholder list now for that particular act was because it is a comprehensive review whereas with the other three acts we anticipated perhaps a narrowing or some additional focus before going out and creating stakeholder lists in our consultation plan there.

Are there any other thoughts or considerations regarding the whistle-blower act that we would like to discuss at this point?

Seeing none, we will move on to agenda item 7, next steps, simply to say that the aforementioned narrowing or discussion around those three acts is important work that needs to begin. We are moving into session, so we will all have now more access to each other, and I anticipate being able to start having more conversations around how we will proceed with these other three acts. During the estimates process we will not be able to meet as a committee, but that does not preclude some discussions happening around ways to proceed with these acts. I look forward to continuing some of those conversations with the members of the committee so that when we come back to our next meeting, we can start working through our work plan.

Is there any other business?

Regarding the date of the next meeting, consideration of main estimates is anticipated in November. As soon as we understand when estimates will be completed, I will be scheduling our next meeting of this committee to follow that. We will have our next meeting once main estimates have completed.

If there's nothing else for the committee's consideration, I'll call for a motion to adjourn. Moved by Mr. Loyola. All those in favour? All those opposed? The motion is carried.

Thank you very much, everyone.

[The committee adjourned at 2:39 p.m.]

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