



Legislative Assembly of Alberta

The 29th Legislature
Third Session

Standing Committee
on
Legislative Offices

Tuesday, November 7, 2017
6:30 p.m.

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Third Session**

Standing Committee on Legislative Offices

Shepherd, David, Edmonton-Centre (NDP), Chair
Malkinson, Brian, Calgary-Currie (NDP), Deputy Chair

Cooper, Nathan, Olds-Didsbury-Three Hills (UCP)*
Drever, Deborah, Calgary-Bow (NDP)
Gill, Prab, Calgary-Greenway (UCP)
Horne, Trevor A.R., Spruce Grove-St. Albert (NDP)
Kleinsteuber, Jamie, Calgary-Northern Hills (NDP)
Littlewood, Jessica, Fort Saskatchewan-Vegreville (NDP)
Nixon, Jason, Rimbey-Rocky Mountain House-Sundre (UCP)
Pitt, Angela D., Airdrie (UCP)
van Dijken, Glenn, Barrhead-Morinville-Westlock (UCP)
Woollard, Denise, Edmonton-Mill Creek (NDP)

* substitution for Jason Nixon

Also in Attendance

Clark, Greg, Calgary-Elbow (AP)
Swann, Dr. David, Calgary-Mountain View (AL)

Legislative Officers

Jill Clayton	Information and Privacy Commissioner
Del Graff	Child and Youth Advocate
Glen Resler	Chief Electoral Officer
Marianne Ryan	Ombudsman, Public Interest Commissioner
Merwan Saher	Auditor General
Marguerite Trussler, QC	Ethics Commissioner

Office of the Chief Electoral Officer Participants

Kevin Lee	Director, Election Finances
Fiona Vance	Legal Counsel
Drew Westwater	Deputy Chief Electoral Officer

Support Staff

Robert H. Reynolds, QC	Clerk
Shannon Dean	Law Clerk and Director of House Services
Trafton Koenig	Parliamentary Counsel
Stephanie LeBlanc	Parliamentary Counsel
Philip Massolin	Manager of Research and Committee Services
Sarah Amato	Research Officer
Nancy Robert	Research Officer
Corinne Dacyshyn	Committee Clerk
Jody Rempel	Committee Clerk
Aaron Roth	Committee Clerk
Karen Sawchuk	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Managing Editor of <i>Alberta Hansard</i>

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[Mr. Shepherd in the chair]

The Chair: All right. I'd like to welcome members, staff, and guests to this meeting of the Standing Committee on Legislative Offices. My name is David Shepherd, MLA for Edmonton-Centre and chair of the committee.

I'd like to just begin by having members and those joining the committee at the table introduce themselves for the record. I don't believe we have anyone on the phone. We'll start to my right.

Mr. Malkinson: Brian Malkinson, MLA for Calgary-Currie, deputy chair.

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

Mr. Gill: Prab Gill, MLA, Calgary-Greenway.

Mr. Cooper: Nathan Cooper, the MLA for the outstanding constituency of Olds-Didsbury-Three Hills.

Mrs. Pitt: Angela Pitt, MLA, Airdrie.

Dr. Swann: Good evening. Welcome, everyone. David Swann, Calgary-Mountain View.

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

Mr. Resler: Good evening. Glen Resler, Chief Electoral Officer.

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

Mr. Lee: Good evening. Kevin Lee, director of election finances.

Mr. Horne: Good evening. Trevor Horne, MLA for Spruce Grove-St. Albert.

Ms Woollard: Good evening. Denise Woollard, MLA for Edmonton-Mill Creek.

Drever: Hello. Deborah Drever, MLA for Calgary-Bow.

Mr. Kleinsteuber: Good evening. Jamie Kleinsteuber, MLA, Calgary-Northern Hills.

Mrs. Littlewood: Good evening. Jessica Littlewood, MLA representing the beautiful rural constituency of Fort Saskatchewan-Vegreville.

Ms Dean: Good evening. Shannon Dean, Law Clerk and director of House services.

Ms Rempel: Good evening. Jody Rempel, committee clerk.

The Chair: Thank you.

Just to note for the record a substitution, Mr. Cooper is the fabulous official substitute for Mr. Nixon.

Before we turn to the business at hand, a few operational items. The microphone consoles, of course, are operated by the *Hansard* staff. Please ensure all mobile devices and other electronics are in silent mode. Audio and video of the committee proceedings will be streamed live on the Internet and recorded by *Alberta Hansard*. Streaming access and meeting transcripts may be obtained via the Legislative Assembly website.

We begin, then, with the agenda. Do we have a member that would move a motion to approve the agenda for today? Ms Drever. Thank you. All those in favour? Any opposed? That is carried.

Then we have a set of minutes from our previous meeting. It was distributed for consideration. Were there any errors or omissions? If not, I would look for a motion to approve. Mrs. Littlewood. Thank you. We have a motion to approve the minutes. All those in favour? Any opposed? That motion is carried.

Excellent. That brings us to our business for today.

Welcome, Mr. Clark.

I'd like to welcome our guests Mr. Glen Resler, the Chief Electoral Officer, and his colleagues. Thank you for joining us. I know this was arranged on a shorter notice, so I appreciate the efforts you've made to pull together the information for your later presentation and to prepare for a discussion on some of the other items.

We have two items on the agenda that both involve your office. We'll spend the first half of our meeting on just a quick review of the 2016-17 annual report of the Chief Electoral Officer, and then in the second half of the meeting we'll address your request to discuss the potential use of some new equipment and procedures at the next provincial by-election. Just a quick reminder to my colleagues at the table that this second item will require a decision by the committee.

Just a few other quick notes before I turn the floor over to Mr. Resler. Our committee has a mandate to review the budgets, business plans, and reports put forward by Elections Alberta. However, it's important to remember that the Chief Electoral Officer is an independent officer of the Legislature. Our committee regularly reviews the reports of all officers during the annual budget estimates process. However, there have been times when officers have been invited to specifically discuss their reports in order to give this committee an opportunity to learn a bit more about the unique roles and work that are carried out by these offices.

Finally, just to remind everyone, MLAs who are not committee members are welcome to attend and participate in the committee meeting, but they are not able to vote or move motions.

Do we have any questions about any of that?

If not, I'll turn the floor over to the Chief Electoral Officer. Mr. Resler, you have about 15 to 20 minutes to make some opening remarks regarding your 2016-17 report.

Mr. Resler: Thank you. Good evening, everyone. It's our pleasure to be here with you. Under section 4(2) of the Election Finances and Contributions Disclosure Act I'm required to prepare an annual report on the exercise of my duties, and tonight I appear before the committee to present the 2016-17 fiscal year annual report.

With me today to assist in responding to questions from the committee are Kevin Lee, director of finance; Drew Westwater, Deputy Chief Electoral Officer; Fiona Vance, our legal counsel. In addition, I'm pleased to introduce Pamela Renwick in the gallery, who's our new director of election operations and communications. She just commenced on November 1.

Looking at our registration activities as of March 31, 2017, we maintained a register of 10 political parties. Of those, seven parties registered a total of 393 constituency associations. For our third-party advertisers, as of March 31 we had six political and three election. We had three leadership contests registered during the year: the Progressive Conservative Association of Alberta, the Alberta Liberal Party, and the Green Party of Alberta. During this period under review six Wildrose Party constituency associations held nomination contests under the current electoral division boundaries.

Looking at activities relating to financial disclosure, we had 403 contribution reports that are filed each quarter from our 10 political parties and 393 constituency associations. We reviewed 408 annual financial statements from the same parties, constituencies, and two election third-party advertisers. There were eight party and eight candidate campaign financial statements filed for the Calgary-Greenway by-election. We reviewed four leadership contestant campaign statements for the Progressive Conservative Party. Again, the six nomination contest campaign returns were filed and received for those electoral divisions.

Taking a look at enforcement, we had 25 ongoing investigations throughout the year. Seventeen were completed by March 31, 2017, and of the 17 that were completed, seven resulted in violations under the Election Finances and Contributions Disclosure Act. A total of \$6,850 was assessed in administrative penalties. In addition, \$4,000 in excessive contributions were refunded to the contributors. Also, action was taken against 14 constituency associations which were deregistered for failure to file and meet the filing deadlines.

The Fair Elections Financing Act came into play during this year and contained several key changes that impacted our office. The regulation of nomination contests: we're estimating a 250 per cent increase in the volume of registrations and financial reviews, so in addition to the 400-plus candidates, another approximately a thousand contestants.

There's an introduction of spending limits for parties, candidates, nomination contests, and election third parties. This will result in expanded financial reporting and review requirements. An aggregate contribution limit will require an ability for our office to data match contributors across all political parties, entities, and political events during the calendar year.

Bill 35 also introduced new requirements for third parties to register and report between elections. As the definition of political advertising includes issue advertising, this will capture a broader reach of individuals, unions, advocacy groups, and organizations. Third parties are required to report quarterly between elections and will be required to report weekly during the election period.

My recommendations for legislative changes centre around third parties. Prior to discussing them specifically, I believe there is a difference in understanding of the legislation that pertains to third parties. In general third-party activities are not restricted by legislation. They can perform research activities, polling, data analytics, fundraisers, sell party memberships, promote or oppose a party candidate or issue. Within the election period there is a spending cap on advertising that falls within the definition, but advertising is unrestricted outside the 28 days of an election period. The one act they cannot do is contribute to a political entity.

Third-party laws as they currently exist only apply to advertising messages, and then they only apply to advertising that falls within the specific definition. The trigger to register and report is the extent it relates to advertising outside of the election period. So whether something is advertising is context dependent, and if required to report, they only have to disclose the activities in relation to the advertising.

We have to look at how the definition applies to each individual situation. For example, when we look at legitimate opinion polling, it does not fall within the advertising definition. It does, however, if we encounter push polling, where an advertising message is being delivered to sway voters using manipulative questions.

6:40

While elections may touch on several guarantees under the Canadian Charter of Rights and Freedoms, 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(b) of the Canadian Charter guarantees

freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

The right to express yourself and form your own opinions is an essential feature of our democracy. Freedom of expression, including by corporations and groups, is a core part of the democratic discourse.

The Supreme Court of Canada has written about the relationship between the 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 . . . because 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 this Charter to third-party advertisers, they are allowed to convey their message but are required to register with our office and disclose their contributors if they fall under the definition of political or election advertising and if they collect or spend more than \$1,000. The registration process and the public disclosure do not impair their freedom of speech.

It is also important to consider section 3 of the Charter.

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.

But section 3 is more than the right to vote or the right to run as a candidate. The Supreme Court has interpreted it as guaranteeing 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 s. 3 . . . 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.

The Supreme Court has used section 3 as a counterbalance to freedom of political speech. The court recognizes that unregulated third parties could flood the electoral discourse.

The following quotation explores how regulating third parties promotes equality in the political discourse in the Harper versus Canada decision.

[When] advertising influences the electorate, and those who have access to significant financial resources are able to purchase an unlimited amount of advertising, it follows that they will be able to dominate the electoral discourse to the detriment of others, both speakers and listeners. An upper limit on the amount that third parties can dedicate to political advertising curtails their ability to dominate the electoral debate. Thus, third party advertising expense limits are rationally connected to promoting equality in the political discourse.

How does our legislation define third-party advertising? It's the transmission to the public by any means . . . of an advertising message that promotes or opposes a registered party, the leader of a registered party, [an MLA], a registered nomination contestant, a registered leadership contestant or the election of a registered candidate, including an advertising message that takes a position on an issue with which those entities are associated.

Bill 35 has widened this core part of the definition. For example, it makes the transmission by any means now. It's removed the element of charge in the definition, and also the definition now expressly includes only transmissions to the public, which takes out any private transmissions. But there are exemptions to the core part of the definition. First,

- (i) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news,
- (ii) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value . . .
- (iii) the transmission of a document directly by a corporation or a group to its members, employees or shareholders, as the case may be,
- (iv) the transmission by a person, corporation or group, on a non-commercial basis on the Internet, of the political views of that person, corporation or group,
- (v) the making of telephone calls to electors only to encourage them to vote, or
- (vi) advertising by the Government in any form.

Bill 35 also broadened these exemptions to the definition. The first bullet no longer applies to a bona fide media requirement. The transmission on a noncommercial basis on the Internet exempts nearly all Internet third-party advertising from any regulation, not only by individuals but also corporations and groups. Only advertising messages that cost money to transmit are captured by the definition.

There are two types of advertising, and it's important to understand the difference. The difference is timing. If it occurs during the 28 days of an election period, then it is election advertising. At all other times it is political advertising. The rules around political advertising are more relaxed. Any person, trade union, group, or corporation in the world other than a political entity or MLA can be a third party.

Between elections third parties would have to register with Elections Alberta and disclose their contributions on a sunshine list if they planned to spend \$1,000, incur \$1,000 in expenses, or receive \$1,000 in donations for political advertising. Contributions to third parties for the purposes of advertising are disclosed on a database maintained by Elections Alberta. Third parties are also required to identify themselves in their advertisements. There are no spending limits and no restrictions on the source or on the amount of contributions for political advertising.

Advertising during the election period comes with restrictions. For example, those who are not eligible to register as an election third-party advertiser includes corporations that do not carry on business in Alberta; a person not ordinarily resident in Alberta; trade unions or employee organizations that do not operate in Alberta; a group whose membership includes an outside-of-Alberta member; a registered charity; or a prohibited corporation.

Restrictions exist on who can contribute during the 28-day election period. It can only be from individuals, corporations, trade unions, or groups resident in or conducting business in Alberta. And there are spending limits. The limits would apply from the dropping of the writ to the close of polls and would be set at \$150,000, of which no more than \$3,000 could be used to support or oppose candidates in a particular electoral division.

Elections are complex endeavours. Our legislation is central to ensure ethical conduct. My office interprets, educates, and enforces under the legislation, keeping in mind the Charter and the objects of the legislation. I believe we share the same interests in ensuring the values of fairness, transparency, and accountability. My office has been working closely with third parties to ensure that they are informed of their legislative obligations and to ensure compliance.

Recommendations that I put forward in my report are to address issues that I believe are needed to ensure that the spirit of Bill 35 is not circumvented, to ensure that the rights of Albertans to meaningful participation in the political process are not overshadowed by a few, and to find a balance between judicial guidance and our legislation.

Looking at the recommendations for legislative change, my first one is to treat third parties similarly to political parties by enacting similar contribution rules, expense limits, and reporting requirements. The Supreme Court has emphasized the Canadian value of a level playing field, and a level playing field makes our legislation less vulnerable to challenges. Recently proposed legislation in B.C. reflects this also.

Second, to maintain the prohibition against third party/third-party collusion during the election period; for example, to prevent splitting third parties into multiple third parties.

Third, to prohibit political entities from colluding with third parties. This would prevent the circumvention of expense limits and access to contributions from trade unions and corporations.

6:50

Fourth, to consider removing "corporation or group" from the fourth exception within that advertising definition. This part of the legislation is about money in advertising. As it is currently, the exception effectively takes most Internet advertising out of the definitions. By limiting this exception to individuals, it will enhance transparency in advertising paid for by corporations and groups and will level the playing field of political discourse. Every other jurisdiction in Canada with a noncommercial Internet exemption applies this exemption only to individuals.

My fifth recommendation is to harmonize the registration of candidates and the regulation of election third parties to the start of a campaign period. This would extend the regulation of election third parties by one month in order to further their transparency.

Sixth, the prewrit regulation period would be more robustly supported with a fixed election date. That way, the prewrit regulation period would be ascertainable for all stakeholders in the election process.

Seventh, to consider deleting issue advertising from the definition of political advertising. The courts have expressed concern that political debate unrelated to an election would be captured. Without a fixed election date, advocacy groups can unintentionally be in a breach when an election is called. The alternative is to make sure that there are defined parameters in place so that I can interpret the legislative intent of issue advertising regulation.

Finally, restrict who can make advertising contributions in the prewrit period to match advertising contributions during the election period. There is inconsistency between the political entities and election third parties. Parties and candidates can accept contributions from individuals only. Election third parties can accept contributions from individuals, corporations, and trade unions.

That ends my presentation, and we'd be pleased to answer any questions that you may have.

The Chair: Excellent. Thank you, Mr. Resler. We appreciate the presentation and the additional information.

At this point we will open the floor to questions from the committee. Mr. Malkinson.

Mr. Malkinson: Thank you very much, Mr. Chair. Thank you very much, Mr. Resler, for your presentation. I was reading through your annual report, in particular the recommendations that you made,

and I thank you again for presenting them here. Maybe I could get an idea of how your office functions, if you don't mind, just to provide some context for these recommendations. What practices have changed in the chief electoral office since changes came about as a result of the Fair Elections Financing Act being put into place?

Mr. Resler: On changes that are occurring, obviously we had a supplementary budget estimate that was submitted to this committee and was approved, which resulted in additional staff being hired. We hired two additional financial compliance analysts. We recently hired a senior investigator to assist in direct investigations and a fourth financial person as administrative support.

On other activities, we have initiated the development of an online reporting system so that it will provide parties, nomination contestants, leadership contestants with online entry as far as the registration process and the financial reporting process go, and that will start to be implemented January 1, I believe. We have been consulting with political parties and have had a couple of meetings in Edmonton and Calgary, meeting with different stakeholders on that. Other than that, on the Internet we've updated guides and documents to support stakeholders in interpreting the legislation.

Mr. Malkinson: Thanks.

I've got just a couple of quick thoughts here, Mr. Chair, if I could.

Does your office operate on an investigative model or a complaint-based model?

Mr. Resler: I'm not sure what an investigative model is.

Mr. Malkinson: For example, you mentioned in your presentation that you found seven violations. Did those violations come forth because of investigations that were initiated by your office, or were those from complaints from members of the public?

Mr. Resler: Under our legislation we have the capacity for both. We receive complaints from the public, which we follow through on. We also will follow up on our own motion on complaints that we see. So if we see any potential violations, whether it's in the media or any other discussions, we may follow up. But also with our financial reviews and compliance reporting, we follow up that way, too.

Mr. Malkinson: Do you have any idea of how many complaints your office has received since the new laws came into effect?

Mr. Resler: We don't track individually in that sense. We have complaints as far as investigations that we do track. Since then most of the calls are for information. We definitely do have complaints. Some of them have been closed. Others are still being followed up on. The legislation just came into play November 2016. For the most part the front end is education and advisory services. Whether it's third parties, political parties, all the different political entities, we're in contact as far as educating them on the new legislation and ensuring their compliance. So most of it is for clarification, even from the public, on what the interpretation of the legislation is.

The Chair: Thank you, Mr. Resler.

I'll go on, then, to Mr. Cooper.

Mr. Cooper: Sorry; is Mr. Malkinson done? Just in terms of how we're going to operate, do you want to . . .

The Chair: Yeah. I think it's reasonable to ask for clarification on procedure. Generally I think just going by line of question would

be fine, if all members are in agreement with that, and I will try to keep it to one or two follow-up questions on each main.

Mr. Cooper: Yeah, I'm good. I was just curious to know.

The Chair: Certainly.

Mr. Cooper: Thank you very much, Mr. Chair. Mr. Resler, thank you for your presentation and for your team being here this evening on such short notice. I see that you guys come to committee so often that you even have your own nameplates. That's very exciting.

I guess my first question for you today is that I'm just sort of curious to know, in terms of the process that was undertaken for you to arrive here this evening, how it is that on such short notice we were able to put this meeting together. I'm just curious to know the points of contact that you may have received to get here tonight.

The Chair: Mr. Cooper, I'm sorry. May I just ask how this relates to the recommendations of the report or the report itself?

Mr. Cooper: Well, I think that it's specifically to do with how the Chief Electoral Officer reports to the committee as well as with respect to the operations of his office, which are very clearly part of the annual report.

Mr. Resler: As far as the reason for being here, as I stated in the beginning, it's under section 4.2, as far as my responsibilities in the preparation of the annual report and the exercise of my duties. I did put a request in to the committee chair as far as the second half of the conversation, as far as the use of equipment and new procedures, and that's something that I requested, to have a meeting prior to the scheduled date in case a by-election is called prior to Christmas.

Mr. Cooper: Did you receive any correspondence from any minister or otherwise asking for your comments or feedback on the particular issue with respect to PACs?

The Chair: Again, Mr. Cooper, I apologize, but I don't see how that falls within the mandate of the committee, which is to review the recommendations of the Chief Electoral Officer.

Mr. Cooper: I think that the Chief Electoral Officer reports directly to the committee, and the correspondence that he receives and who he reports to or not reports to has a direct impact on how the committee operates. I think whether or not he received correspondence from a minister or otherwise is critical to the independence of both the committee and his office, so I think it's reasonable that he would answer that question.

Mr. Resler: I guess, first off, I strongly protect the independence of my office. Secondly, any correspondence or anything in relation to the administration of my office is confidential.

Mr. Cooper: So you would be unable to comment as to whether or not you received a letter requesting your opinion on political action committees?

Mr. Resler: Well, I have as far as from this committee in the deliverance of my recommendations to this committee to forward to Alberta Justice for further action. Also, on the Ethics and Accountability Committee we had discussions on that, in which legislative proposals were provided to Alberta Justice and the minister responsible for democratic renewal.

Mr. Cooper: So you have reported directly – not reported to, because I recognize that you only report to this committee. You

have corresponded directly with the minister responsible for democratic renewal?

7:00

Mr. Resler: I have personally, yes.

Mr. Cooper: Okay. Thank you.

The other question that I might just ask or some other comments with respect to the meeting this evening – and, listen, I think that this is an important topic that we need to discuss. There are some significant issues around third-party advertisers, and we have seen the government make some significant signals around what their intentions are or aren't. I guess I will say two things.

One, I certainly know that the opposition from time to time has requested annual reports be brought before committees or that independent members of the legislative offices report to committee, and those requests have not been taken seriously, particularly with respect to the death of children in care and other reports that have been released. Here on extremely short notice we have a report coming forward from the Chief Electoral Officer, which is a great report, and I appreciate the recommendations he makes, but the signals that it sends are very concerning to the Official Opposition around the fact that it appears that this may be more important than other requests that the Official Opposition have certainly made.

My big concern is that – and, listen, members of the Official Opposition want to ensure that we take political action committees seriously and that we get this right, so we want to make sure that we do our due diligence on this issue. But what it certainly appears from signals that the government has sent is that the committee has been called for us to . . .

The Chair: I apologize, but are you coming to a question for the officer?

Mr. Cooper: Yeah, and I'm also providing some context to the questions. As a member of the committee I believe that I'm free to speak to some of the issues that are before the committee.

It certainly appears that the government is looking to provide political cover to rush through a number of decisions so that they can pass a piece of legislation that will be very complex in this legislative session. It's certainly my desire for that not to take place. It's my desire to ensure that we get this issue right.

I would include that I know that my colleague Mr. van Dijken spent significant periods of time throughout last summer discussing this very issue, and then the government collapsed the committee in the middle of this very discussion. I think that Mr. Clark will recall that they were working on this important issue, and now it appears that we're about to do the exact same thing, rush a very important decision on political action committees through this committee to provide political cover for the government.

Now, there are a lot of very, very important questions that need to be asked. In light of your comments, Chair, and wanting us to be along a line of questioning, I'm happy to provide somebody else the opportunity to ask some questions. I know that I do have a number of questions as well, but I'm happy to cede the floor for somebody else to speak to those, or I can begin to ask some of the questions that we have.

The Chair: At this point, Mr. Cooper, I do have two other speakers on the list, but I'm happy to add you back into the queue. Thank you.

Dr. Swann, I do note your hand, and we will add you to the list as well.

Mr. Malkinson, I have you up again.

Mr. Malkinson: Thank you very much. I'm just going to follow up where I left off. You previously talked about that you don't specifically keep track of how many complaints you've received since the new legislation took effect. I was wondering: what evidence do you have that you can provide that investigations have been launched in response to valid complaints that you may have received? I know that you're not counting them specifically, but as far as valid complaints that you received since the new legislation came in, what can you provide as far as having those investigations following up those complaints that are, of course, valid?

Mr. Resler: All complaints are tracked as far as receipt in the office and whether they move towards the investigative process. We report them annually in our annual report. Any of those investigations that result in violations are reported on our website and posted publicly for everyone to see.

Mr. Malkinson: Thank you. That was the last of my series of questions.

The Chair: Thank you, Mr. Malkinson.

We'll return, then, to Mr. Cooper.

Mr. Cooper: Thank you, Mr. Chair. Mr. Resler, with respect to recommendation 1 in your presentation, also in the general report, you spoke about third-party advertising being treated similarly to political parties. Now, are you specifically in that recommendation referring to political advertising or election advertising, so during the writ period or outside of the writ period?

Mr. Resler: It's election advertising.

Mr. Cooper: So that recommendation is specific to election advertising.

Mr. Resler: Yes.

Mr. Cooper: Okay. So outside of the writ period, or the political advertising, as you referred to it in your presentation . . .

Mr. Resler: Yes.

Mr. Cooper: Can you help clarify what your desire is around – do you have a desire around contribution limits or restrictions that you might place on PACs for political advertising?

Mr. Resler: For political advertising what I'm proposing or suggesting is a prewrit period which extends to the campaign period. It's shortening the political advertising period or lengthening the election period in a sense. So to look at regulation within that prewrit period starting on the initiating of the campaign period, which is February 1 right now under the current legislation.

Mr. Cooper: But outside of that period of time you would suggest that there are no restrictions . . .

Mr. Resler: The only restriction is considering the removal of issue advertising for the definition.

Mr. Cooper: Right. But as far as contribution limits would go or disclosure or . . .

Mr. Resler: We already have the registration disclosure process. That's a policy decision if that's to be moved.

Mr. Cooper: Can you remind me again what the disclosure requirements are?

Mr. Resler: If they fall under the definition, they have election advertising. So if they intend to spend or they spend a thousand dollars or receive contributions of a thousand, they're required to register and report it. The reporting is all contributions over \$250, and that's published on our website. So they'd have quarterly reporting of those contributions.

Mr. Cooper: For the record flying a small airplane is less than a thousand bucks, just so we're . . .

Mr. Resler: Yes.

Mr. Cooper: That's all for now, sir.

The Chair: Thank you, Mr. Cooper.

Dr. Swann: Thanks very much for this. I really appreciate your timely addressing of some of the questions that I've had with this report as well. I'm not sure. Have you identified spending limits?

Mr. Resler: Yes, there are . . .

Dr. Swann: In both the election period and the pre-election period?

Mr. Resler: In the pre-election period there are no spending limits.

Dr. Swann: And in the election period it's how much?

Mr. Resler: It is \$150,000 and \$3,000 per electoral division maximum.

Dr. Swann: Okay. Number 4: I'm feeling a little bit overwhelmed by the language. Could you unpack it for me, including the subsequent statement, that "every other jurisdiction in Canada with a non-commercial Internet exemption applies the exemption only to individuals"? Can you just unpack number 4 with that statement? What are you getting at in this?

Mr. Resler: If a corporation or group currently advertises on the Internet, they would not be required to register or report any of the contributions used to pay for that advertising.

Dr. Swann: That's a third party? You're talking about a third party there?

Mr. Resler: Well, they wouldn't fall under the third-party definition then, so they'd be exempted. You can have a corporation spending several hundred thousand dollars on a lavish campaign on the Internet, and they'd be exempt from reporting, you know, opposing or promoting a candidate or party.

Dr. Swann: Okay. And the following statement: "Every other jurisdiction in Canada with a non-commercial Internet exemption applies the exemption only to individuals." It doesn't apply to corporations in other provinces?

Mr. Resler: Correct.

Dr. Swann: So we're a little more relaxed, then, here on your recommendation.

7:10

Mr. Resler: Correct. In ours we're pretty much exempting all Internet advertising.

Dr. Swann: Political or election type?

Mr. Resler: Any advertising because it's not paid for. You know, you can post it on YouTube. It's a free service. If you wanted to push it and you wanted to promote it, say, through Facebook or something like that and you paid to have that up front so everyone would see that advertisement, then it would become paid advertising, and we'd look at the cost. Otherwise, if it's any other forum that would be no charge, it's exempt.

Dr. Swann: A final question: if we were to address this issue in committee, which committee would you suggest is the most appropriate to deal with this? Do you have a preference?

Mr. Resler: No preference.

The Chair: That's a bit outside the scope. I can appreciate the interest, Dr. Swann. Thank you.

Next up I have Ms Woollard.

Ms Woollard: Thank you, Mr. Chair. Thank you, Mr. Resler and your colleagues, for the work you've done and for coming here. I just have a few questions. How many total investigations have been launched, I guess we'd say, since the changes from the Fair Elections Financing Act were put into place? Would you know that?

Mr. Resler: As at March 31, 2016, we had 13 investigations carry into the first of the fiscal year. Another 12 were initiated over the year. How many were attributed to the final three months after that? I don't have that specific information.

Ms Woollard: Okay. That's great. Thank you.

Are there any sanctions or penalties anticipated with respect to any of those investigations? Well, the 25 you kind of identified.

Mr. Resler: We did have the sanctions, the seven violations that I noted earlier as far as under the election finance legislation. We also have an additional four violations in the current reporting period under the Election Act, and they all entailed administrative penalties.

Ms Woollard: Yes. You mentioned that. Thank you.

Again, I apologize if it's redundant here, but when you receive a complaint, then what is the process you follow? You get a complaint. What would be the next step and so on?

Mr. Resler: The approach that we look at when we're looking at enforcement is, you know, that the primary goal of enforcement is to prevent the breach from occurring to begin with. A lot of that has to do with educating the public and the electoral participants involved in it. What we look at second is minimizing the impact of the breach on the fairness and integrity of the election, so we have to look at the complaint that is provided to us, evaluate it, whether it falls under the legislation. If it falls under the legislation and there's a potential breach, an investigation is initiated. So there's an examination process to begin with. Once the investigation process begins, we determine the parties that are involved, gather supporting documentation and evidence, and then recommendations come out of that, and a report is finalized.

Our office isn't heavily staffed as far as for investigation purposes. It's the directors of operation and finance that would lead that, and we contract support staff to assist us. We have ex-police officers that we contracted, Edmonton and Calgary. We also have legal counsel that we consult with, and depending on the scale of an investigation, we may contract with an ex-judge to assist us in these investigations.

Ms Woollard: Okay. Well, thank you. You've already identified the number of people that you have, and it would obviously depend on the need, right?

Mr. Resler: The need and the timing. Closer to an election and right after an election there's always a higher volume.

Ms Woollard: Right.

A final question here. You've already hit on the expertise or qualifications that the people that you contract have. In your office do you have people that are trained in investigative tactics and procedures, or is that something that's a part of the usual administrative role?

Mr. Resler: It's part of the usual administrative role. In addition, as I said, we do hire ex-police officers, and we do have one that was hired this month for that specific role. It depends on the offence. Some of them are very straightforward. If it's a breach for a financial filing, now in the legislation there's an automatic penalty, but in other situations it's gathering information. Previously it could have been on corporate donations. It's just contacting both the parties involved and gathering the information. Those ones are similar to an audit, in a sense, so then the financial compliance analysts are able to gather the information for those undertaking the investigation.

Ms Woollard: Thank you very much.

The Chair: Excellent.

I have Mr. Clark.

Mr. Clark: Thank you very much, Mr. Chair. Mr. Resler and your team, thank you very much. Very good to see you all again. I guess I'll start by just sharing some of Mr. Cooper's frustration that we didn't get the opportunity to fully address these issues in the Select Special Ethics and Accountability Committee. We were just getting going on this particular topic when, unfortunately, that committee, back in 2015 – was it the fall of '15?

Mr. Cooper: Of '16. If I could turn back time.

Mr. Clark: Of '16.

Unfortunately, I think we could have avoided some of the challenges that we find ourselves in. We're here now. I just want to ask a couple of questions about your recommendations here in section 5 around spending limits. To Dr. Swann's question earlier, recommendation 1 talks about spending limits of \$150,000 inside the writ period, and I understand that. Is it possible or is it, in your opinion, consistent with the Charter for there to be spending limits outside of an election period?

Ms Vance: That's a great question. We haven't had a Supreme Court decision on that. Harper was from 2004. That was the Supreme Court decision which addressed spending limits in the federal act, but that was purely in a context of within the four walls of the election period. B.C. has had a couple of cases go up to its Court of Appeal. B.C. had spending limits, I think, first for 60 days prior to an election date, and in B.C., of course, they have a fixed election. In Alberta this is kind of apples and oranges. The Court of Appeal was concerned that 60 days, especially when you factor in what we call issue advertising, was not good enough to pass constitutional muster.

What happened was that B.C. went back. They tried again. They fixed some things. They made it 40 days. They had sort of a cooling-off period of 21 days after the Legislature dissolved. Again, the Court of Appeal was concerned that this got into issue advocacy

as opposed to political advertising. In B.C. I understand they're introducing more amendments this session. I'm not sure what the Legislature will do with that, let alone the court. That will work its way through. I'm not aware of other appellate courts that have addressed the spending period concept outside of the election period.

Mr. Clark: Okay. But it is safe to conclude that it's problematic to impose spending limits, sort of a global spending limit. You know, in the same way perhaps there was – in a campaign period we understand spending limits, but outside of an election period it sounds like it's problematic even as we get close into that actual writ period.

Ms Vance: Well, every time you limit anything to do with freedom of expression, that will be problematic under section 2(b). My feeling is that it depends very much on the context. It'll fall to a section 1 analysis, which asks the court to determine whether it's "demonstrably justified." That is where the meat of the arguments will be made, and that will depend very much on context, on how it's set up, on evidence. Some cases, you know, believe it or not, go on evidence, and evidence is sometimes the driving factor. It's problematic in the sense that it will infringe 2(b). Whether it would be saved under section 1, I can't answer that, I'm afraid.

7:20

Mr. Clark: I'm a big evidence guy as well.

Mr. Resler: Just to add to that – sorry to interrupt – we're seeing it right now in Ontario elections. They have a six-month prewrit period, in which I believe there is a spending limit of \$600,000, somewhere in that area, for third-party advertisers. That just kicked off in the last few weeks because they have a June election.

Mr. Clark: Okay. That's good to know. Thank you.

In your presentation – and I didn't write it all down – you said that there were certain things that are not considered third-party advertising. One of them is polling with the exception of push polling. I don't know if it's possible to bring that slide up again, and I apologize for springing that on you. We may not be able to pull it up entirely. I guess what I'm just really curious about – let's see. There we go:

- Research activities
- Polling
- Data analytics
- Fundraisers

Could that be a fundraiser for a political party?

Mr. Resler: Well, if it was a fundraiser for a political party, then it would fall under the definition of third-party activities supporting them, and they'd have to register and report, depending on if the threshold is met.

Mr. Clark: Just so I'm clear, in the current legislation, from the list of six bullet points there, if there is a third party which conducts those six activities, they are not required to register?

Mr. Resler: It all depends on the situation, and we'd have to look at every situation individually to determine whether it is activity or not. They're not restricted from performing those functions. The determination is whether it's considered political advertising.

Mr. Clark: Political advertising. We're a year and a half from an election, so we're well outside the writ period. Let's just say that a third party conducts a poll, just a straight public opinion poll: who would you vote for if the election was called tomorrow? It costs

them a couple of thousand dollars. They do that poll. Are they able to then hand that over to a political party and say, “Here you go; here’s a poll; do with it what you will” and do that without triggering any sort of requirement to register with Elections Alberta?

Ms Vance: I can maybe assist you with that. I’m seeing in your questions a tendency to find the relationship between third parties and political entities, right?

Mr. Clark: Yeah.

Ms Vance: The other part – there’s the third-party part of this – of it is that if you’re not an individual ordinarily resident in Alberta, you cannot make a contribution to a political party. Whether these activities would constitute contributions, that is a separate question and might be engaged.

Mr. Clark: So in that scenario that I’ve given you there, would that constitute a contribution?

Ms Vance: In my view, it’s possible. Again, it would entirely depend on context. I’m sorry; I can’t be more specific than that.

Mr. Clark: No. That’s fair. I mean, that’s exactly, obviously, what I’m driving at. There are a lot of these sorts of what we’re legally calling third parties. I think they’re more commonly referred to as PACs. They’re doing a lot of work that sure looks like political activity. In my personal opinion, we need to have political activity within the political sphere as much as absolutely possible.

I guess I’ll ask a more general question, then. If the recommendations that you have proposed in section 5 are adopted, would you say that this would make Alberta’s legislation as strong as it can be and still be Charter compliant? Are we pushing up against the Charter in every possible way, or are there other opportunities for us to further restrict the activities of PACs or third parties without offending the Charter?

Mr. Resler: There’s always a risk as far as the challenge coming forward. The recommendations are in the spirit of the current legislation, you know, whether you’re using the spending limits, the contribution limits. Different rules like that change what recommendations would come forward. It all depends. What we’re putting forward is in compliance with or in the spirit of Bill 35 and the legislation that currently exists, so we think it would strengthen it. We feel that it levels the playing field as far as all the political entities that are involved. It would make it stronger, yes.

Mr. Clark: Thank you. I’ll leave it at that. Thank you very much. I appreciate your thoughtful answers.

The Chair: Thank you, Mr. Clark and Mr. Resler.

I have Mr. Kleinsteuber, and then I’ll return to Dr. Swann.

Mr. Kleinsteuber: Thank you, Chair. Continuing with your recommendations on pages 49 and 50 of the report and related to third-party advertising, I’d like to ask some more questions related to that topic. Of the complaints received by your office since the Fair Elections Financing Act was passed, do you have an estimate of how many complaints you may have received that were directly related to third-party fundraising or advertising?

Mr. Resler: Do I have a number?

Mr. Kleinsteuber: Yeah, or an estimate.

Mr. Resler: I don’t have a number. I can say that some do relate to third-party advertising. Obviously, that will be reported next year. But as far as under this one . . .

Mr. Kleinsteuber: What range would you say? Maybe dozens or more? Fewer?

Mr. Resler: It would definitely be fewer because we only had 25 full investigations in that time period.

Mr. Kleinsteuber: I see.

Mr. Resler: But have we received queries? Have we received complaints? The answer is yes. Are we actioning them? The answer is yes.

Mr. Kleinsteuber: Okay. Just a follow-up if I may: how does Elections Alberta monitor the actions of registered third parties who are allegedly donating event space, organizing political rallies, or selling memberships to parties?

Mr. Resler: If we have knowledge of the activities, we follow through on them. If you have any knowledge of a potential violation of the legislation, I’d encourage you to forward that to our office for follow-up. If it’s activities that we know of, we’re phoning and we’re having constant conversations with them.

Mr. Kleinsteuber: Just a final question, too, if I may. What mediums are being monitored at the moment? Like, is social media included, maybe Facebook or any others?

Mr. Resler: Yes. We’re aware of situations that have been posted. It’s something we look at, but it’s also that the public will provide us with opportunities if they feel that there’s a potential violation. They’re usually quick to inform us of those.

Mr. Kleinsteuber: Okay. Thank you.

The Chair: Thank you, Mr. Kleinsteuber.
Dr. Swann.

Dr. Swann: Thank you. If by some miracle we manage to pass some legislation this session, what would be the period of time that it would apply to?

Mr. Resler: That would be up to the Legislature.

Dr. Swann: Can it be retroactive?

Mr. Resler: Again, that’s not an item that I can answer.

Dr. Swann: Presumably, if it was within the 12 months in which the legislation was passed, it could apply to that 12-month period. Would that be a source of dispute or constitutional challenge?

Mr. Resler: If the legislation was made retroactive?

Dr. Swann: To the beginning of the fiscal year in which the legislation was passed. I think this happened with the leadership . . .

Mr. Resler: It was effective the day it was tabled, I believe.

Ms Vance: Are you referring to Bill 35?

Dr. Swann: Yeah. It was effective the day it was tabled?

Ms Vance: Certain parts of it were. Certain parts came in December; certain parts came in January.

Dr. Swann: Oh, I see, depending on how it was passed, the point at which it was passed.

Ms Vance: Depending on when it came into force under the legislation.

Dr. Swann: So that involves, to some extent, proclamation, does it?

Ms Vance: It would be the coming-into-force provisions at the tail end of your bill.

Dr. Swann: How does that differ from proclamation? I don't know the difference there.

Ms Vance: My understanding is that – I'm not sure. I'm not sure that I'm actually the most informed to answer this question.

Dr. Swann: Okay. That's fine.

Ms Vance: You may have better resources than I to ask that of.

Dr. Swann: Okay. Thank you.

7:30

The Chair: Thank you, Dr. Swann.
Mrs. Littlewood.

Mrs. Littlewood: Thank you, Chair. Just following off of something that Mr. Kleinstuber was talking about with the activities of third parties, if your office were made aware of unregistered third parties that were engaging in these sorts of political rallies, selling memberships, what exactly would your office go through in terms of efforts to stop the actions and to encourage them to go through the process of becoming a registered party?

Mr. Resler: We are actually performing those tasks. If it's a complaint from the public, we ask for information, any evidence they have that this is occurring or contact information type of thing.

If not, it's something that we see on our own motion that we follow through on. We'll find information, usually through social media, as far as who they are, a point of contact. We have contact with them, have discussions as far as what the legislative requirements are. In those discussions there's a determination of whether they fit within the definition. You know, it's a stage process as far as: do they fall under the legislation? Then we get into the dollar value as far as whether it cost more than \$1,000. A lot of situations do fall under that limit. Is it a volunteer service? Are there other exemptions there? So we follow through on it.

If it's determined that they should be registered, in pretty much all situations that we've had, there's a quick compliance. It's usually a lack of education, a lack of knowledge of what's going on. And once that's corrected, then they register, and they're in compliance with it. If they do not feel that there is a need to register and we do, then we'll initiate the investigation. If it does, we'll punish the offender appropriately or deter through education.

Mrs. Littlewood: What sort of timelines do you put on that?

Mr. Resler: It's not a quick timeline. With anything where we provide letters, we have to provide adequate time for them to respond. Then it becomes, you know, your back and forth, "You may provide 30 days for a response," and it continues from there. On average I'd say six months is a quick investigative timeline.

Ms Vance: It really, really varies from case to case, I would say.

Mrs. Littlewood: Uh-huh. What are the punishments if someone doesn't want to register?

Mr. Resler: Well, depending on the post – the legislation is quite specific about what we look at. You know, we have letters of reprimand, we have orders, we have administrative penalties, and in more severe cases we'll consent to special prosecutions with Alberta Justice.

Mrs. Littlewood: Just one more question related to it. How do you track, you know, what we see are ground organizing efforts of political parties to ensure that third parties are not funding that political party work, which can largely occur outside of the public eye?

Mr. Resler: If it's outside of the public eye, I don't understand how we would have knowledge. Does it fall into the definition of political advertising at this point in time?

Mrs. Littlewood: So it would just be complaint based at that point?

Mr. Resler: Yes. Without any knowledge, we wouldn't know.

Mrs. Littlewood: Okay. Thank you.

The Chair: Thank you, Mrs. Littlewood.
Mr. Cooper.

Mr. Cooper: Well, thank you, Mr. Chair. Sorry, Mr. Resler. Can you, again, just remind me of the parameters that someone needs to register outside of a writ period?

Mr. Resler: What organization? Are we talking third parties?

Mr. Cooper: Yeah, a third-party advertiser.

Mr. Resler: What parameters?

Mr. Lee: If they meet the definition of a third-party advertiser, which again we would go through to see what their actual activities are on a case-by-case basis, and they are in fact advertising and they plan to spend or receive \$1,000 in contributions for that political advertising, then they are required to register.

Mr. Cooper: Okay. I'm actually just seeking some clarification because, you know, I was at a couple of events this summer where small businesses put on events where they were concerned about an issue, particularly around the minimum wage, and they had some concern about whether or not they were or they weren't creating any excitement for their own business but merely were exercising their disappointment in a government policy but not necessarily advertising politically or taking a political stance, just opposing an issue. In a situation like that what I hear you saying is that you would work with that small-business owner to determine whether or not they spent more than a thousand bucks, whether or not they should have registered or not. But the threshold for them would only be \$1,000, correct?

Mr. Lee: Correct.

Mr. Resler: And it's \$1,000 of advertising, political advertising. There may be other activities that are going on that are outside of that definition. That's not part of that threshold.

Mr. Cooper: So if they hosted an event but they didn't actually advertise, they invited some colleagues and they spent \$5,000 on

the event, you know, because they had food and whatever else there, would that make them a third-party advertiser?

Mr. Resler: We'd be requesting more information to delve a little deeper.

Mr. Cooper: Okay. Fair. And that's actually hypothetical. I mean, in the event that I attended, they didn't.

Mr. Resler: You know, part of the issue is that it's complex legislation in that sense. It's not a simple black-and-white answer, and every situation has to be reviewed on its own merit to find the specifics of what is going on, right?

Mr. Cooper: Right. Thank you.

The Chair: Mr. Cooper, I have Ms Drever.

Drever: Thank you very much. I just have a few questions. Going to recommendation 3, does the officer consider door-knocking to be a form of advertising, and why or why not?

Mr. Resler: Again, it's context dependent, the door-knocking. Who is performing the door-knocking, for one? What is the manner of the door-knocking? What is the message? Is it a message that's promoting a political . . .

Drever: Political door-knocking.

Mr. Resler: Well, political door-knocking by whom? Is it a potential candidate that's going door-knocking? What is the context?

Drever: Okay. That's fine.

What efforts are being made to track the spending of funds accumulated by the legacy parties that joined to form the United Conservative Party? I'm just referring to recommendation 1 here.

Mr. Resler: You're referring to which recommendation?

Drever: Number 1.

Mr. Resler: Yeah. That recommendation doesn't deal with that specific topic. As far as what are we doing as far as the spending of the funds . . .

Drever: Well, I'm talking about spending limits, right? What efforts are being made to track the spending of funds accumulated by legacy parties that joined to form the United Conservative Party?

Mr. Resler: Those specific parties being the Progressive Conservative Association and the Wildrose Party?

Drever: Right.

Mr. Resler: They're still actively registered political parties, and they are subject to the Election Finances and Contributions Disclosure Act. So the reporting requirements that apply to every political party also apply to them and continue to apply to them. They can engage in any activities that any other registered political party is capable of. They are part of the reporting process, they have to report quarterly, they have to report annually, after every event, and they are in compliance with that.

7:40

Drever: Okay. Thank you.

Do you have the capacity to fully follow up and investigate every complaint you receive?

Mr. Resler: Yes.

Drever: Okay. Thank you.
Those are all my questions.

The Chair: Thank you, Ms Drever.
Mr. Gill.

Mr. Gill: Thank you, Mr. Chair. Yeah. Ms Drever was asking questions about political door-knocking, and you were asking, like, what kind. I'm just going to ask what "political door-knocking" by you means. How does that fit in with the recommendation?

Ms Vance: You know, I'm not sure that that – you would, again, need more information and specifics about who was doing it, what they were saying, where they were going, what the context was, when it was happening. Whether there was a cost involved, whether it was volunteer labour or whether it was not volunteer labour depends on whether this might be more properly a contribution to a political entity. And I'm not trying to run around, but many of these questions are very difficult for us to answer without an actual set of full facts in front of us.

Mr. Gill: Okay. No, I appreciate that. Thank you.

The Chair: Mr. van Dijken.

Mr. van Dijken: Good. Thank you, Mr. Chair, and thank you for coming forward for this presentation this evening, Mr. Resler and your team. I want to thank you for all the work that you did with us during the Ethics and Accountability Committee last summer. Many of these questions that are coming forward are pertaining to some of the discussions we had during that work as a committee. And here we are again. Sorry that we have to cause you to rehash a lot of old discussions.

We recognize that many of these recommendations came forward at that time. We had made motions to move forward on some of this, with unanimous consent at that time, yet it all fell by the wayside. I am very disappointed in the fact that all that work that we did was not considered fully in the drafting of a bill to try and help us come to a better spot with regard to elections financing and essentially allowing our democratic system to function transparently and to function fairly.

I do have one question. One comment also is that we sit here and we talk about the development of political action committees and the concern with that and what's driving that. I do recall having this discussion when we put in force spending limits on political entities. The Member for Calgary-Elbow spoke about the desire to try and keep the discussion within the political realm. But when government members on the committee pushed towards spending limits, I believe that that put us into the realm of taking it outside the political sphere and helped to develop and create these political action committees as we see them now starting to evolve.

One of the questions I have, though, is: how would you define political advertising in the context of government advertising? I have grave concerns that our political entities and our political system are being hijacked or have been in the past and are currently in a situation where we have government advertising that would be, in my opinion, considered political advertising, yet there are no restrictions on that. How do you see that as being able to be controlled within our democratic system here?

Mr. Resler: Government advertising is a specific exemption right now under the definition of election advertising and political

advertising, so it falls outside of our legislation, and it's not something that I am able to administer.

Mr. van Dijken: Okay. Thank you.

The Chair: Thank you, Mr. van Dijken.
I have Mr. Horne.

Mr. Horne: Yes. Thank you, Chair. Just listening to a lot of the conversation, I'm kind of struck by a question that I think I'm using the right terminology for. Does the Chief Electoral Officer have the ability to effectively issue a stop-work order if there's a third party or, really, any entity engaged in an activity that is potentially troublesome under the act?

Mr. Resler: The answer is no. Part of the recommendations that we put forward to the Ethics and Accountability Committee, also to this committee, that have been forwarded to Justice, deals with accessing additional tools to perform our duties. One of them is compliance agreements so that we're able to provide compliance agreements, make them public as far as the activities.

Also, the ability to obtain injunctions, specifically during the 28-day election period: we don't have the capacity without that to stop those types of activities. We do work on those complaints with the political entities involved. Most of the time it is something that we can educate and ensure compliance on. We do provide cease-and-desist letters, but the activity itself wouldn't stop immediately if they did not comply.

Ms Vance: If I could just add to that. There's a section in the Election Finances and Contributions Disclosure Act, section 44.8, which deals structurally with what I would call contact information requirements on advertising messages. Subsection 4 is a mechanism by which the Chief Electoral Officer may cause the advertising to be removed or discontinued if the advertising is not in compliance with that particular section. That's the one exception where he has remedies outside of the usual.

Mr. Horne: Okay. Thanks.

Just one more question, if I may, Chair. I was wondering if you could perhaps elaborate on how it is you or your office determine whether or not to start an investigation in response to a complaint received from the public.

Mr. Resler: Whether to conduct an investigation based on the complaint: as far as the information that's requested, it's usually stating what they feel the potential breach is, what sections are being violated. We review the complaint fully to make sure it falls within our legislative mandate. If it does, are there valid grounds to investigate the action? Is there a potential breach? If there is a potential breach, then an investigation is opened.

Mr. Horne: Okay. Just a quick follow-up?

The Chair: One last question.

Mr. Horne: Of course. I don't recall specifically in the report. Is that reported, how many complaints are investigated as opposed to how many are not?

Mr. Resler: Yeah. If it's determined that there's a potential breach, they're all investigated. Then the outcome will determine whether there is a violation or not. I think that out of the 17 that were closed, five or six determined that there weren't any violations, and the rest were all violations under the two pieces of legislation.

Mr. Horne: Okay. Thank you.

The Chair: I have Mr. Cooper as our last speaker on this item.

Mr. Cooper: Thank you, Mr. Chair. With respect to government advertising and the by-election that is coming in the fullness of time, the question that I have for you is: do you think it would be reasonable for legislation to prohibit government advertising during a by-election?

7:50

Mr. Resler: It's a policy decision, and I think we did comment on that in the Ethics and Accountability review. I can say that in Saskatchewan it does apply under their legislation, but not all jurisdictions have that as far as the by-elections.

Mr. Cooper: So you haven't made an official recommendation with respect to government advertising during a by-election, but certainly there are other jurisdictions that have deemed it reasonable.

Mr. Resler: Yes.

Mr. Cooper: Would you say that it would be reasonable here in Alberta?

Mr. Resler: That would be a policy decision.

Mr. Cooper: Just checking.

The other question I have for you is specifically around the process in which legislation is drafted. Do you provide comment on draft legislation?

Mr. Resler: In the past, yes. I guess it would depend whether – you know, in the past we have had review committees in which the legislation, proposals, motions were passed. It will go to Alberta Justice drafters, and it usually comes to our office as far as the ability to administer the legislation, whether we have any comments or concerns. Do we see any potential conflicts with the current legislation that certain sections may raise? It has happened in the past, yes.

Mr. Cooper: Have you commented on any legislation, specifically with respect to third-party advertisers?

Ms Vance: The Chief Electoral Officer did make recommendations in October of 2015 in preparation for the Select Special Ethics and Accountability Committee. I believe some of those might have touched on third parties.

Mr. Cooper: Certainly, you have in the past. Have you in the last 30 days commented on any legislation?

Mr. Resler: We haven't seen any legislation. No.

Mr. Cooper: You have not?

Mr. Resler: No, I haven't.

Mr. Cooper: That's good for now.

The Chair: Thank you, Mr. Cooper.

Dr. Swann, you have one last question?

Dr. Swann: Thank you. Is it tradition, or are there some provinces that have actually provided a guideline of six months before an election to prohibit government advertising? I'm trying to

remember if it's more of a tradition or actually legislated that governments will not advertise within six months of an election.

Mr. Resler: I'm not familiar with it. I think that in a couple of the other provinces it is three to six months, in that range. But the issue there is that you have a fixed-date election. You know when the election is; you're able to say that for a certain time period prior to the writ there are restrictions. Without a fixed election date, you wouldn't know when that timeline would be.

Dr. Swann: With respect to a by-election?

Mr. Resler: The same thing applies.

Dr. Swann: The same thing applies. Currently even Saskatchewan doesn't have a period beyond which the government should not advertise?

Mr. Resler: I believe every jurisdiction has a fixed-date election with the exception of Yukon and Nova Scotia. They have a fixed date.

Dr. Swann: I'm talking about by-elections now.

Mr. Resler: Oh, by-elections. By-elections are at the call of the government, so the timelines are unknown – right? – other than, in our legislation, we know that it's to be called within six months.

Dr. Swann: So if the call of the Premier is in three months, it's feasible for this committee to recommend a period before a by-election in which government advertising is prohibited. It may be two or three or . . .

Mr. Resler: Yeah. Like, the by-election, I believe, has to be called before sometime in May, but as far as a recommendation on that, that's definitely up to you.

Dr. Swann: Thank you.

The Chair: All right, then. Well, thank you, Mr. Resler, for that presentation and the opportunity for members to have that discussion and ask some of those questions.

We will move on, then, to the next item that we have before the committee tonight, the test of new equipment and procedures. On November 2, 2017, this committee received a request from the Chief Electoral Officer pursuant to section 4.1(1) of the Election Act to discuss testing new equipment and procedures at the next provincial by-election. This is not the first time that this committee has been asked to review a request of this nature. What we are being asked to do is to consider a proposal being put forward by the Chief Electoral Officer that, if approved, would apply to the next provincial by-election.

At this point I'll once again turn the floor over to the Chief Electoral Officer. Mr. Resler, you have 15 minutes for your presentation, and then we'll open the floor to questions from committee members.

Mr. Resler: Thank you, Mr. Chair. As you stated, the second item for discussion this evening is the testing of new equipment and procedures. Committee members have been provided with a copy of the procedures for the use of tabulators and voter-assist terminals and a document on how the special ballot process can be enhanced. In compliance with section 4.1 of the Election Act, if new equipment or procedures are introduced, approval of the procedures by the standing committee is required.

Looking specifically at vote tabulators, a vote tabulator is a digital optical scanning machine that reads and records how ballots are marked, deposits them in a ballot box, stores the voting information, and reports the voting results after the close of polls. Members may be already familiar with the tabulators as over 30 Alberta municipalities used them during the 2017 municipal elections, municipalities such as Medicine Hat, Lethbridge, Parkland county, Spruce Grove, Morinville, Fort Saskatchewan, St. Albert, Strathcona county, Grande Prairie, Red Deer, and Airdrie. The city of Edmonton has used tabulators since 1995. We wish to test the use of vote tabulators in the advance polls, special ballot polls, and on election day at the next by-election.

The next slide compares the voter turnout at advance polls in the last three provincial general elections. In 2008 the advance poll voting was restricted to electors who were going to be away on election day. In 2012 legislation was amended to allow any elector to vote at the advance poll. There was no longer a restriction to vote during this period; as a result, we experienced elector volumes tripling at the advance polls. In 2015 legislation was amended again, extending advance polls from three days to four days. The number of electors who chose the convenience and flexibility offered by the advance poll period once again increased. We've seen further increases in the use of advance polls, both in the municipal and the federal elections. Our expectation for 2019 is to see more electors using the advance polls to vote.

The benefit of using tabulators in the advance polls is critical to address the increasingly high volume of ballots cast and the increased time commitment required by election staff to count the ballots on election night.

In addition to the tabulators, we're requesting to use voter-assist terminals in order to provide electors with disabilities a private, accessible, and independent voting option. Electors will be able to independently mark a ballot using Braille-coded keypads, a touch screen, pressure-sensitive paddles, and a sipping, puffing straw. Currently electors who are unable to mark the ballot independently have to ask for assistance, resulting in the loss of ballot secrecy.

We have tested these terminals with the Canadian National Institute for the Blind, and they have provided their endorsement for deployment in future elections. The voter-assist terminals would be located in the returning officer's office and used in conjunction with the special ballot tabulator poll commencing the first day of advance polls and ending on election night.

These two pieces of equipment are not new to us. On July 3, 2014, the Standing Committee on Legislative Offices approved my request to test the vote tabulators and voter-assist terminals at the Calgary-Elbow, Calgary-Foothills, Calgary-West, and Edmonton-Whitemud by-elections that were held on October 27, 2014. The tabulators and the voter-assist terminals performed flawlessly during the four days of advance poll voting, and stakeholders, including registered political parties and the media, were invited to demonstrations on the use of the tabulators and the equipment prior to the implementation. Positive feedback was received on their use and deployment during the by-elections.

The cost to implement this equipment during the next provincial by-election can be absorbed within the current budgetary provisions. Tabulator use will result in increased accuracy, timely reporting of unofficial results, and efficiencies in processing the ballots and, when used in a provincial election context, will provide increased accessibility for electors. Safeguards are set out in the procedure document to maintain the integrity of the election process when using this equipment.

8:00

The final item I wish to discuss is the special ballot process. Currently the Election Act is quite prescriptive in how a special ballot is to be processed. Only the returning officer is able to receive the requests, mail out the ballots, count, and report. In previous elections, without having a fixed election date, we were unable to open returning officer offices for several days. In the meantime at head office in Edmonton we have a provincial call centre that is set up immediately to provide service to Albertans.

Unfortunately, when communicating with electors, we have to tell them to contact their local returning officer if it's a special ballot request. With only 28 days or less to receive a request, mail it out, and have it returned, it can be challenging for some electors. In the 2015 provincial general election just over 12,000 special ballots were cast, and approximately 13 per cent of the mailed special ballots were rejected, including those ballots that were not returned by election day.

What we are proposing is to enhance accessibility. In addition to the service provided by the returning officers locally in each electoral division under the current legislation, we want the capacity to provide similar service through Edmonton. This would allow Elections Alberta to play a central role in assisting the returning officer in a function that is very time consuming.

If you're not familiar with the process, electors who are unable to vote at an advance poll or on polling day due to a physical incapacity, being absent from the electoral division, or being an inmate, election staff, candidates, official agents, scrutineers, or residents of a remote area are able to request and receive a special ballot.

The slide that is on the screen right now is a slide of the current special ballot that is used throughout the 28-day period. Currently the request comes in, and the package is assembled and mailed to the elector. The elector completes the ballot by writing in the name of the candidate or the political party name on that blank line on the screen, and they then insert the ballot into multiple envelopes along with a copy of identification.

So what they will have to do with the package that we're looking at is they will have a ballot, and this is the actual size of the ballot. They will have to include the ballot in the secrecy envelope. The secrecy envelope is then inserted into a certificate envelope. They have a declaration, and they will also add identification. They then insert that into another envelope, which they mail to the returning officer. Plus, they're given instructions.

With the use of tabulators, what we are proposing is that returning officers and Elections Alberta can provide an elector from anywhere in the province, if it is a provincial general election, with their local ballot. Once completed, it is mailed to Edmonton for processing. In-person voting by the special ballot will still occur at the returning officer's office locally.

We're proposing two types of ballots, and those ballots are attached to the back of the procedure document that we provided to you. The first type of ballot is the one for prior to nomination day. It will be a ballot listing all registered parties with a blank for specifying independent candidates. Once nominations are closed, a candidate ballot will be printed and used. The candidate ballot is the same ballot that is used at advance polls and on election day.

Again, we'd follow the same process, the difference being the type of ballot. It would be a larger tabulator ballot, easier to read, the first one listing the parties. After nomination day it will be strictly the candidates. The ballot is folded in half and put into a secrecy ballot. The secrecy ballot, again, goes into a certificate

ballot with identification. The certificate ballot is inserted into a larger envelope, that envelope into another envelope, and mailed to Edmonton.

So the special ballot process will mirror the current process in how they're processed. The difference will be the use of the tabulators in counting the ballots. For electors who write in the name of their candidate, the ballots will be transposed to a candidate ballot for tabulation purposes, and this is done in the presence of scrutineers.

The procedure documents that you were provided with outline the use of the vote tabulators and voter-assist terminals and the enhanced access for the special ballot process. Under section 4(1) of the Election Act I am requesting the committee's approval to test at the next by-election the use of vote tabulators and voter-assist terminals and the enhanced procedures for the special ballot process as specified in those documents.

We will now open the floor to any questions, Mr. Chair.

The Chair: Thank you, Mr. Resler. Once again, we appreciate your presentation, and indeed we will open the floor to questions from members.

We do not appear to have any questions from members regarding your request. At this point, then, if we do not have any questions, we have two options as a committee: to move a motion to support the request Mr. Resler is making to implement these technologies and these procedures in the next by-election, or we can choose not to move a motion.

So at this point is there a member who would wish to move a motion? Mrs. Littlewood.

Mrs. Littlewood: I think this is incredibly exciting, and I would like to move a motion.

The Chair: Okay. Clerk, do we have an appropriate motion?

Ms Rempel: Thank you, Mr. Chair. If the committee is interested in approving Mr. Resler's request, they may look at a motion that in accordance with section 4.1 of the Election Act the Standing Committee on Legislative Offices approve the proposal by the Chief Electoral Officer to introduce the use of vote tabulators and an enhanced special ballot process at the next provincial by-election.

The Chair: Thank you, Clerk.

Does that capture the essence of your motion, Mrs. Littlewood?

Mrs. Littlewood: I think that sounds great. And I appreciate you mentioning Fort Saskatchewan in your opening comments.

Mr. Resler: Could I just ask a question? Does that include the voter-assist terminals?

The Chair: Is that captured within the motion?

Ms Rempel: Yes. That was drafted with the entire proposal under consideration.

The Chair: Excellent.

So we do have a motion on the floor. Do we have any discussion? Mr. van Dijken.

Mr. van Dijken: Yeah. Maybe this was a question for before the motion, but speaking to the motion, I see that we do have precedents. It was utilized within the 2014 by-elections. Now there's a desire to have some learnings with this process and evaluation of the equipment. Do we have any kind of a process

already identified on what we're looking for to ensure that we get information that can be valuable going forward?

Mr. Resler: Absolutely. Part of the reason for bringing it forward is broadening the testing, so not just at advance polls but also with special ballots and on election day. The special ballot process will be testing software that's been developed as far as the poll book, so the tracking, real-time reporting as far as electors and their voting activity, whether they voted or not. It's an integration of different systems that we're implementing along with the tabulator, so we're substantially broadening their scope.

Mr. van Dijken: Can I just ask a follow-up? I guess, the precedent that we have is from 2014. Did it encompass all of these items that are requested here, or is it . . .

Mr. Resler: In 2014 it was strictly the tabulator and voter-assist terminals, and that was used only at the advance polls. So it was strictly a paper-based system.

The Chair: Anything further, Mr. van Dijken?

Mr. van Dijken: I think that will be all.

The Chair: Thank you.

Any other members who wish to speak to the motion or have any further questions? Mr. Malkinson.

Mr. Malkinson: Thanks very much, Mr. Chair. I'd just like to say that I'm always curious to see new processes tried. I think you made

a compelling argument to let you give this a try in the next, upcoming by-election, whenever that may be. So I'm definitely supportive of you doing that and look forward to hearing what your learnings are from it after the by-election.

8:10

The Chair: Thank you, Mr. Malkinson.

If there are no other members who wish to speak to the motion, I will call the question. All those in favour of the motion, then, which is to approve the proposal from Mr. Resler? Any opposed? That motion is carried. So that covers that.

Thank you, everyone. Once again, specifically to our Chief Electoral Officer and his colleagues, thank you very much for making time to join us this evening.

Mr. Resler: Thank you very much.

Ms Vance: Thank you.

The Chair: At this point, then, we've reached the point on the agenda for other business. Is there any other business committee members wish to raise?

Seeing and hearing none . . .

Mr. Cooper: Motion to adjourn.

The Chair: Mr. Cooper moves that we adjourn. All those in favour? Any opposed? The meeting stands adjourned.

Thank you.

[The committee adjourned at 8:11 p.m.]

