



Legislative Assembly of Alberta

The 29th Legislature
Fourth Session

Standing Committee
on
Resource Stewardship

Conflicts of Interest Act Review
Stakeholder Presentations

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Fourth Session**

Standing Committee on Resource Stewardship

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Standing Committee on Resource Stewardship

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Friday, May 4, 2018

[Loyola in the chair]

The Chair: I would like to call the meeting to order. Welcome to members, staff, and guests in attendance for this meeting of the Standing Committee on Resource Stewardship. My name is Rod Loyola, and I'm the MLA for Edmonton-Ellerslie and chair of this committee.

I would ask that members and those joining the committee at the table introduce themselves for the record, and then I'll call on those joining in via teleconference. We'll start here on my right.

Mr. Drysdale: Wayne Drysdale, MLA for Grande Prairie-Wapiti.

Ms Kazim: Good morning. Anam Kazim, MLA for Calgary-Glenmore.

Mr. Kleinsteuber: Good morning. Jamie Kleinsteuber, the MLA for Calgary-Northern Hills.

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

Mr. Nielsen: Good morning, everyone. Chris Nielsen, MLA for Edmonton-Decore.

Ms Robert: Good morning. Nancy Robert, research services.

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

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

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

The Chair: We have a number of MLAs joining us on the phone.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow.

Mr. Dang: Good morning. Thomas Dang, MLA for Edmonton-South West.

Mr. Hanson: David Hanson, MLA, Lac La Biche-St. Paul-Two Hills.

Mr. Loewen: Todd Loewen, MLA, Grande Prairie-Smoky.

Mr. Rosendahl: Good morning. Eric Rosendahl, West Yellowhead.

Ms Babcock: Erin Babcock, Stony Plain.

Mrs. Schreiner: Good morning. Kim Schreiner, MLA, Red Deer-North.

The Chair: Okay. A few housekeeping items to address before we turn to the business at hand. The microphone consoles are operated by the *Hansard* staff, so there's no need for meeting participants to activate them. Please ensure all electronic devices are in silent mode. Audio and video of committee proceedings are streamed live on the Internet and recorded by *Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

A draft agenda for this meeting was distributed. Does anyone wish to propose amendments? If not, would a member be willing to move a motion to approve the agenda?

Mr. Nielsen: So moved.

The Chair: Okay. Thank you, Mr. Nielsen. All in favour of the motion? Any opposed? Okay.

We have the minutes from our last regular meeting. Are there any errors or omissions to note? If not, would a member move adoption of the minutes, please? Mr. Kleinsteuber. Thank you for that. All in favour of the motion? Any opposed? Thank you. That motion is carried.

Hon. members, at our last meeting the committee chose to invite oral presentations from a designated list of stakeholders regarding our review of the Conflicts of Interest Act. One of these stakeholders, the AFSC, did not wish to make a presentation. However, their response included a statement supporting recent changes to the Conflicts of Interest Act. A copy of their correspondence has been distributed for the information of committee members.

The stakeholders who accepted our invitation have been organized into two panels for today's meeting. Our first panel includes the Ethics Commissioner, and at their request the Ministry of Justice and Solicitor General and the Public Service Commissioner – hello, Mr. Panda. Thank you for joining us on the phone. Do you want to just introduce yourself for the record.

Mr. Panda: Good morning. Prasad Panda, MLA, Calgary-Foothills.

The Chair: Okay. As I was saying, at their request the Ministry of Justice and Solicitor General and the Public Service Commissioner will make joint presentations. Both stakeholders have been invited to provide a 10-minute presentation, and then I will open the floor to questions from committee members.

At this point I will welcome our first panel guest to join us at the table if they haven't already. Welcome. Please introduce yourselves for the record when you begin your presentation. I'll give it over to you, Commissioner Trussler.

**Office of the Ethics Commissioner
Ministry of Justice and Solicitor General
Public Service Commission**

Ms Trussler: Good morning. Marguerite Trussler, Ethics Commissioner. I intend to limit my remarks today. I'll not deal with all the recommendations in our brief. I only want to highlight a few, and I'll not go into any depth with respect to them.

I, first of all, want to comment on the numerous submissions from agencies, boards, and commissions. The legislation involving them was only enacted in December 2017. For the ABCs it's an unknown quantity, and they seem to be fearing the worst. I believe that many of them have an erroneous view of how the legislation actually works. We should be given time to implement it and see how it works before any changes are made.

I've met with several of the agencies. For the most part they seem to now accept the changes. I also think that the publication of the designated senior officials list has allayed many of the concerns, and I'm happy to report that the vast majority of the codes of conduct have been submitted to our office. There are only a handful that haven't come in, and we're busy at work reviewing these codes of conduct to make sure that they are in alignment with the legislation.

Now, on to the highlights of our brief. First of all, it would certainly help everyone, including me, if the act were renumbered as recommended on page 3 of our brief.

On the substantive matters let's start with page 4. My major goal is transparency, which is why I've recommended overall alignment and consolidation of the various acts and codes. The public and other interested parties should be able to find all the rules relating

to conflict of interest in one place. It's not a matter of whether someone's an MLA, a political staff member, a deputy minister, or a designated senior official; it's about conflict of interest and who has restrictions. I'm not saying that the provisions should be identical for each group, but they should be found in one place, namely the Conflicts of Interest Act. I feel very strongly about this point.

Now let's please turn to page 7. The definition of those whose private interests should not be furthered should be expanded to include parents, parents-in-law, siblings, and other relatives and friends. I would refer you to the federal act, which has such a provision, and it appears to be working very well in Ottawa.

On page 9 we recommended that the definition of private interest should be expanded. It's now only defined in the negative, and it's really hard to understand something that's only defined in the negative, so it would be helpful to also add a positive definition. Again I would refer you to the federal act.

Turning to page 10, on the subject of postemployment we recommended changing ministers' postemployment from one to two years, and I would reference both the federal and the British Columbia legislation, that have two years. The wording in the postemployment sections is very convoluted. It's not easy to understand. I get all sorts of calls on it, so we've suggested a revision to the wording in our brief so that when people read it, they actually can understand it.

On page 13 we deal with the direct associate returns for political staff, deputy members, and other designated office holders and designated senior officials. These provisions are relatively new. I think they came into effect December '14, but they're causing issues. Right now we're required to send them to the appropriate minister. However, those ministers aren't sure what to do with them, and they have no effective way of managing them. They're just pieces of paper in their office.

What I'm suggesting is either abolish the requirement to provide the information to the ministers – we would still receive the information – or send the return somewhere that's useful. Members' direct associate reports go to Treasury Board and Finance so they can be checked against government contracts that have been awarded, so it allows for the screening of government contracts to direct associates to make sure that nothing untoward is taking place. That's what happens with the MLAs, and the same is recommended for political staff, deputy ministers, and designated senior officials. It would also provide consistency of approach.

Now let's turn to page 15. All of the other legislative officers in Alberta can publicly indicate whether they are carrying on an investigation or not. My office is the only one that cannot. We're restricted by the legislation. I spoke with the Information and Privacy Commissioner, and she sees no problem with my request. I have no desire to discuss any investigation, merely to be able to confirm or deny that I'm engaged in one.

9:10

I should also be able to release the advice I've given if the person to whom the advice was given publicly states the advice was sought and received. Right now we have a situation where I could have given an MLA advice, and that MLA could have gone off and done something entirely different. The MLA could then stand up, if there's a question about it, and say: I asked the Ethics Commissioner for advice, and I got advice. I can't then say: yes, but you didn't follow the advice. It's rather frustrating. It doesn't happen very often, but it's a frustrating situation.

On page 18 we've raised the request of the release of privileged documents, which is a very thorny one. I totally understand Justice's position, but it's really difficult to do an investigation if I

do not have access to all the relevant documents. It was the major cause of having to redo the Redford investigation. Both my needs and Justice's can be satisfied with proper drafting by the legislative draftsmen.

Finally, please refer to page 19. The federal legislation allows the commissioner to publish the names of those who have breached the requirements of the act and have been assessed an administrative penalty. We would request that we can also publish the names on our website, as is done in Ottawa.

I've skipped over several of the policy and administrative changes requested in the interest of time. Just because I haven't talked about them doesn't mean they're not important. I would ask that you reread our submission for the details of all of our recommendations and some of our suggested wording.

Thank you for your time, and I'd be pleased to answer any questions.

The Chair: Before we go to questions to the Ethics Commissioner, I want to invite Mr. Frank Bosscha, assistant deputy minister, legal services division, Ministry of Justice and Solicitor General, and Ms Lana Lougheed, Public Service Commissioner, Ministry of Treasury Board and Finance. You have 10 minutes.

Mr. Bosscha: Good morning and thank you. I'm Frank Bosscha, assistant deputy minister of legal services at the Department of Justice and Solicitor General. Thank you for this opportunity to help inform your review of the Conflicts of Interest Act. I'm here with my colleague, Lana Lougheed, the Public Service Commissioner.

Out of respect for the time allotted to us today, we plan to cover only the most significant matters we raised in our written submissions. We do support many of the Ethics Commissioner's recommendations; however, we do have some concerns with others. I will cover several legal matters related to the legislation, and then I will turn the floor over to Ms Lougheed to address the public service.

To start, I would like to recap the groups covered by the act. Primarily, the Conflicts of Interest Act governs the ethical standards of Members of the Legislative Assembly. It also covers staff working in the Premier's and ministers' offices other than administrative support staff. The act now applies to senior officials of public agencies, including Alberta Health Services and its subsidiaries. Furthermore, certain senior officials from significant public agencies are subject to additional requirements such as restrictions on holdings, financial reporting, and postemployment restrictions. Deputy ministers and other members of the public service are also subject to rules about conflicts of interest and are bound by the Public Service Act and related codes of conduct. The Public Service Commissioner will talk about those more later.

A summary of the legislative obligations for elected officials, the public service, and public agencies is attached to the end of our presentation. I will take a few minutes now to discuss some of the particular legal issues. First, the Ethics Commissioner has suggested that in the course of performing her duties of office, she should be able to review documents that are otherwise subject to solicitor-client, parliamentary, or legal privilege without that privilege being waived in other circumstances. As the Commissioner noted, we have, I think, somewhat differing views as to the access that should be granted.

As a basic right privilege is well-entrenched in Canadian law and has gained near constitutional status. When we talk about privilege what we mean is the right to confidentiality. Being able to talk with a lawyer about one's legal rights and obligations without fear of disclosure is a benefit enjoyed by all. It is part of due process and ensures that everyone can understand and protect their legal rights

and receive fair representation. This is not a technicality or a mere rule of evidence. The Supreme Court of Canada has long confirmed that it is a fundamental and vital aspect of our legal system and proper administration of justice. The key point is that according to the Supreme Court solicitor-client privilege must remain as close to absolute as possible and may only be interfered with when absolutely necessary, the position confirmed by the SCC in the 2016 University of Calgary case.

Viewed in this context, an amendment that would allow the Ethics Commissioner or other legislative officers to review privileged records would be problematic. First, disclosing documents protected by this right of confidentiality could mean that the protection has been waived in all circumstances. Disclosure of protected items to one party could mean that the right of confidentiality no longer applies at all and that the documents could be obtained by those pursuing litigation against the client, thereby jeopardizing the client's case. This could deter litigants from seeking legal advice. Ultimately, any changes in how privilege is handled could have far-reaching ramifications for all public bodies. Disclosing privileged documents to a commissioner, even for the limited purpose of adjudicating privilege, would constitute an erosion of this privilege.

Second, if there was a provision stating that the privilege is not waived in other circumstances, this could make for an unworkable system. The Ethics Commissioner would not be able to refer to any privileged documents in a report or elsewhere. It would not be viable for the commissioner to explain what certain decisions or rulings are based on without further jeopardizing a client's right to confidentiality.

Third, we already have a mechanism for dealing with these issues. The courts have full authority over legal privilege, and if there is a question about whether privilege is being appropriately claimed, a judge would decide. In applying the standard laid down by the Supreme Court of Canada, there would appear to be no absolute necessity for the suggested amendment.

Turning now to the next key issue, private interests, individuals covered by the act are not permitted to use their position to benefit the private interests of their spouse, children, or certain other people they are close to. The commissioner has suggested expanding this list to include siblings, parents, parents-in-law, other relatives, and friends. While relatives and in-laws are easy to distinguish from other people, we are deeply concerned about the vague nature of the word "friends." "Friend" is not a clear term, and there is no real test to determine who is and who is not a friend. The word is used and interpreted differently by different people.

It could significantly impact the way people interact with others. It could become impossible for decision-makers to function without benefiting someone they know in one way or another. Some individuals covered by the act could be paralyzed by the uncertainty around who or what is considered a friend and how they could be determined in advance and what private interests that friend may have. People need to be able to know in advance what side of the law they are on.

I will now turn it over to my colleague Ms Loughheed to discuss the key issues for the public service. Thank you.

Ms Loughheed: Thank you very much, Frank.

I'll first cover the Ethics Commissioner's proposal to remove all of the conflicts-related provisions from the Public Service Act and include them in the Conflicts of Interest Act. The members of the Alberta public service, including deputy ministers, are subject to the code of conduct and ethics for the public service of Alberta, which is a regulation under the Public Service Act. Our primary comment on this topic is that it may remain appropriate for the

public service and those outside the public service to be governed by different pieces of legislation and for different rules to apply to different groups.

Deputy ministers are nonpartisan and appointed on the basis of merit under the Public Service Act. They're expected to remain neutral and impartial. The Public Service Act governs employees in the public service, including deputy ministers, while the conflict-of-interest legislation, as you heard earlier, generally covers those outside of the public service, including elected officials, political staff, and, of course, more recently, public agencies. Moving deputy ministers and other public servants into the Conflicts of Interest Act may blur the line between elected officials and their political staff and the nonpartisan public service. Keeping those two groups separate, given that they have different roles and accountabilities, is important, and we think the distinction between the Alberta public service and those outside should be clearly represented in Alberta's legislation, which is fairly consistent with the way that it is done across the country.

We would also suggest that the gift provisions for public servants remain in the codes of conduct rather than being moved into the Conflicts of Interest Act. Moving gifting provisions for public servants into the Conflicts of Interest Act, again, would potentially erode the distinction between elected officials and appointed officials in public agencies on one side and the neutral government workers on the other.

The code says that employees are expected to conduct their duties with impartiality, and they're required to disclose any situation where there is or where there may appear to be a conflict of interest.

The Deputy Minister of Executive Council administers the code with respect to deputy ministers, and deputy ministers administer it with regard to the employees of their departments. Rulings on conflicts of interest under the code may be appealed to the Ethics Commissioner, who also has the authority to administer certain obligations to deputy ministers. The current framework is working as intended in this particular area.

On another note, the Ethics Commissioner has recommended that deputy ministers should be able to accept free tickets to conferences and events on behalf of a minister. We believe that this has a potential to raise some concerns about the impartiality of the public service, and without question the nature and purpose of the event would need to be strongly considered, with an emphasis on ensuring impartiality and that there be no personal benefit.

9:20

With respect to the recommendation that you heard about the public agency provisions in the act, it is worth reviewing, just briefly, the policy goals and outcomes that drove those amendments given their recentness. Specifically, the policy goal behind the Conflicts of Interest Amendment Act, 2017, was to expand the application to apply to all senior staff of our public agencies, boards, and commissions. There have been periodic calls to do this over the past two decades in Alberta.

Public agencies account, as you know, for a significant portion of public expenditures, and they perform important services, too, and on behalf of the government of Alberta. Prior to the act's amendments there were no consistent or enforceable conflict-of-interest standards, nor was there any rational alignment between the conflict-of-interest requirements for agencies and those for public servants and elected officials. That gap in accountability created some risks for both the government of Alberta as well as for the agencies themselves.

Now we have 120 agencies plus their subsidiaries who are required to submit their codes of conduct to the Ethics Commissioner for review and approximately 150 CEOs and chairs

who are subject to senior official requirements under the Conflicts of Interest Act, including restrictions on furthering private interests, using influence, using insider information, and the requirement to disclose real and apparent conflicts.

Of those 150 CEOs, 54 are designated senior officials, who are also subject to a similar suite of requirements as deputy ministers and elected officials, including disclosure to the Ethics Commissioner, restrictions on holding publicly traded securities, and postemployment restrictions.

Finally, the commissioner recommended as well that assistant deputy ministers should be required to provide annual financial disclosure to her office. I don't support that particular change. Assistant deputy ministers are subject to the conflict-of-interest provisions in the Alberta public service code, that I talked about earlier. They cannot take part in a decision that might further a private interest, and they are required to file financial risk indicators at the beginning of their tenure and have that reviewed on a regular basis.

The Chair: Thank you very much, and thank you to our panel guests.

Now I'm going to turn it over and open it up to questions. Mr. Kleinsteuber.

Mr. Kleinsteuber: Thank you, Chair. I guess the first question I have is for the Ministry of Justice and Solicitor General and the Public Service Commissioner. We noted in your submission that the term "free event" might be a bit misleading – I think you covered it a little bit in the presentation as well – and that the reference should be to events at which attendance by government representatives is expected. I guess the question was if you thought that such an event reference is clear and useful when compared to the term "free event."

Ms Lougheed: Yes. On every one of these situations, considering the details of the particular circumstance is critically important, and the Ethics Commissioner provides very wise counsel and advice to deputy ministers and all members impacted by those particular provisions. Where the wording can be enhanced and strengthened, there is absolutely value in doing that.

Mr. Kleinsteuber: Okay. Well, thanks.

Just a follow-up question, if I may, for the Ethics Commissioner. The third point in the letter mentions the fact that encapsulating all of the conflict-of-interest provisions under the act "would be significantly more efficient and effective." You go on to state that the issue "is not about employment relations or the nature of one's appointment." I was just wondering if you could expand on that for the committee's benefit. Would you think that the employment relations and the nature of one's appointment would be central to any code of conduct considerations? Like, who you report to and who reviews your conduct and the nature of your job would be very important in determining how the conflicts of interest are determined. After your response I'd appreciate maybe some comments from the other two departments as well.

Ms Trussler: I look at it from the point of view that we're dealing with conflicts of interest; we're not dealing with different groups of people. While they may not have the same provisions apply to them because they play different roles – political staff play different roles than ministers, et cetera. From the point of view of the public, to be able to find the provisions for conflict of interest, it makes more sense to have it under one act.

Mr. Kleinsteuber: Okay. Thank you.

Ms Lougheed: The view of my office on this is that the current structure is based predominantly on the fact that the public service is expected to be a distinct and impartial entity. The legislation that governs the public service has been created in every jurisdiction across Canada under an act called the Public Service Act or the Civil Service Act. The rules for public servants are contained within that legislation to very clearly demonstrate to the public that the public service is a separate entity and is expected to be treated in a way that it maintains that neutrality and that nonpartisan approach. For those reasons, our recommendation is that the legislation for the public service should remain separate from the legislation that governs those outside of the public service while still employing the mechanism that provides the Ethics Commissioner with oversight for those areas.

Mr. Bosscha: Justice supports the Public Service Commission in that view. When you have two separate pieces of legislation, it does make it easier and a clearer line in terms of dividing between the bureaucracy and those that are outside of the bureaucracy. Having everything contained in one act starts that blurring of: you know, is there an overlap, or is there something that you should be concerned about? You have a nonpartisan bureaucracy that is now being considered in the same sort of legislation as political and the ABCs, that are now under that act. From our perspective, it is a clean line and division between the bureaucracy and those that are not part of the bureaucracy.

Mr. Kleinsteuber: Okay. Thanks a lot.

The Chair: We're going to go to Mr. Drysdale and then to Mr. Malkinson.

Mr. Drysdale: Thank you, Mr. Chair. A question for the Ethics Commissioner. I might be misunderstanding it, but in your recommendations it says, you know, that you would like to make investigations public when you get a request for an investigation. I'm not sure if I agree with that or am comfortable with it. Maybe I misunderstood that.

Ms Trussler: Here's what happens now. I get a phone call: "Are you investigating this?" The person who's made the complaint has already filed the complaint. They've said publicly that they're making a complaint. I may not have even received it. They might just be saying it for effect. I get these phone calls all the time: "Well, are you doing an investigation?" And I have to say to them, "I can't tell you whether or not I'm doing an investigation." I just want to be able to say: "Yes, I'm doing an investigation" or "No, I'm not doing an investigation."

Mr. Drysdale: And not state what the investigation is about?

Ms Trussler: No. I don't want to be able to do that. I just want to be able to say: "Yes, I'm doing an investigation" or "No, I'm not doing an investigation" or "I have not received a complaint." It's probably useful to have that as well.

Mr. Drysdale: Yeah. I'm just concerned that . . .

Ms Trussler: But I don't want to talk about the investigation.

Mr. Drysdale: Yeah. People are presumed innocent till proven guilty. So if there were a bunch of frivolous, you know, requests for investigations out there that ended up being not true, if all of a sudden somebody is accused of something, the way social media is today, they're automatically guilty, and you could ruin somebody's reputation on a false accusation.

Ms Trussler: But that's already happening in the sense that if someone decides to lay a complaint against another MLA or a member of the public decides to submit a complaint, they go public and say, "I'm making a complaint," and they put their letter of complaint up on social media. They may not ever make the complaint. They may never send that letter. But I can't say: "Yes, I've received a complaint" or "No, I haven't" or "Yes, I'm doing an investigation" or "No, I'm not doing an investigation." All the other legislative officers can say whether or not they're doing an investigation.

Mr. Drysdale: Okay. I guess, the main thing: as long as you don't say too many details about the investigation.

Ms Trussler: I actually would like the legislation not to let me say those details because I don't want to get into that.

Mr. Drysdale: Okay. Thank you.

9:30

The Chair: Clear? Good.

Mr. Malkinson.

Mr. Malkinson: Thank you very much, Chair. I'm just going to start off with a question for Justice and Solicitor General. Looking on page 7 of your written submission, you talk about the direct associate reports. This really gets into what the Ethics Commissioner said as well. The office of the Ethics Commissioner had recommended that these reports be sent to Treasury Board instead of to the ministers responsible. You know, I certainly understand how it is of benefit to the individual supervisor to know who the person's direct associates are. However, the office of the Ethics Commissioner also recommended that the names be checked against the government's payment system to see if they were in receipt of payment from a relevant ministry or agency. The commissioner touched on this in her opening comments. My question is: can you tell us whether or not that is currently done under the act, that checking of the government's payment systems?

Mr. Bosscha: I don't know that, personally. I'd have to check in to how the administrative side of it works. Unless Ms Trussler . . .

Ms Trussler: Yes. It's done right now for MLAs.

Mr. Malkinson: MLAs only?

Ms Trussler: MLAs only, and that was why direct associate reports were instituted in the first place, to do that check. It's not done for political staff members or deputy ministers or designated senior officials.

Mr. Malkinson: Okay. So that's not done currently.

Since I have you, just a bit of a follow-up. In the written submission from MacEwan University – that's another one I got from reading through this earlier – it talks about a functional limitation in the act related to the inability of individuals connected to public agencies to access advice and recommendations from you, the Ethics Commissioner. What are your thoughts on that? Do you have any additional comments on that particular point?

Ms Trussler: I don't particularly remember what they said.

Mr. Malkinson: Okay. Mr. Chair, if you give me a second, I can perhaps relay that recommendation.

The Chair: Yeah. Please.

Mr. Malkinson: We can move on to the next – I'll pull that up and give you the Coles Notes on it.

Ms Trussler: I do remember reading the MacEwan one and thinking: they don't understand the legislation. But I don't particularly remember that comment. I may be able to find it, actually.

The Chair: I'm going to take this opportunity to ask those who are joining us on the phone if they have any questions. Anyone wanting to be put on the speakers list?

Mr. Panda: I'm good. Thank you.

The Chair: Okay.

Ms Trussler: I think I have found it.

Mr. Malkinson: The lovely clerks here were able to find me a copy a little faster than I could on my computer.

The recommendation is:

The functional limitation within the Act relates to an inability to seek advice and recommendations from the Ethics Commissioner. Both sections addressing advice and recommendations, both binding and general, permit the Ethics Commissioner to give advice to Members, former Members, political staff . . . but do not include any mention of individuals connected with public agencies. This is a significant oversight in our opinion. Although senior officials, members, and employees of public agencies need to be capable of making independent, sound ethical judgements, the Ethics Commissioner's expertise on ethics or conflicts of interest . . . is invaluable. As such, consideration should be given to extending the class of individuals who are permitted access to the Ethics Commissioner's advice and recommendations. This is particularly salient for those who may be impacted that are related to the Designated Official who are not employed by the public agency.

That's the section I was referring to.

Ms Trussler: There is a general provision in the Conflicts of Interest Act that would allow those people who report to me, namely designated senior officials, to phone for advice.

Mr. Malkinson: Okay. Well, that was easy. Thank you.

The Chair: Any more questions, Mr. Malkinson?

Mr. Malkinson: I'm good for now, Mr. Chair.

The Chair: Okay. We're going to go back to Mr. Drysdale.

Mr. Drysdale: Thank you, Mr. Chair. Sorry to keep harping on. I was just reading after our last discussion about the investigation. In your recommendation it says, "The Ethics Commissioner should also be able to give a brief summary of the allegations." You just said that you didn't want to do that, so I'm a little confused there.

Ms Trussler: Yes. I said that earlier in my brief, but I would be happy if I could just say yes or no.

Mr. Drysdale: Yeah. In your recommendation, then, what you'd give us: you'd want that taken out? You recommended that you should be able to give a brief summary of the allegations.

Ms Trussler: I get asked all the time: what is the allegation? You pull that out of the letter of complaint. It's helpful for the person who has a complaint against them for me to delineate what the allegation is because sometimes it gets blown up in the media. From that point of view, it would be helpful for MLAs or other senior

officials that are being investigated. But if all I got was the ability to say yes or no, I'd be happy with that, from my point of view. But from the point of view of MLAs, it would be better if I could actually say what's being investigated so that there isn't something blown up on social media.

Mr. Drysdale: But if there are false allegations made and then you state publicly what the allegations are, people are going to assume stuff. I know it's not right, but . . .

Ms Trussler: But they'll already have been made on social media before it gets to my office. I'm usually the last to know.

Mr. Drysdale: Yeah. Okay. I'm just a little nervous about that.

Then also there was the question of a request for docs. You know, there seems to be a little difference between Justice and you on that. I don't know if it's me confused, but Justice isn't agreeing with you on the request for docs falling under the solicitor-client privilege.

Ms Trussler: No. We don't agree. I agree it's a thorny issue, and I totally understand Justice's position on it. You have to be very careful if you release those documents. The drafting would have to say that I couldn't release those documents. It would have to say that the solicitor-client privilege is maintained. I might be able to refer to them but not quote from them. The drafting would be extremely difficult, but it can be done.

But I understand their position on privilege. It's their choice as to what they think is privileged or not. The court can review it. I would not be able to in any way question whether or not that was a privileged document. It's just a really thorny issue, but it does create a problem when you're doing an investigation and you can't see the documents.

Mr. Drysdale: Okay. Thank you.

Ms Trussler: Now, there are lots of things that are solicitor-client privilege. One of the things we'd have to look at is if somebody within the department goes to a lawyer and says: I'm in big trouble; can we talk about this? That's a really narrow part of privilege that I think should probably still remain protected. I do understand that it'll keep people from seeking advice, but normally when lawyers claim solicitor-client privilege, they claim it in sort of a broader spectrum, and it's that broader spectrum where there are documents that are often relevant.

Mr. Drysdale: Okay. Thanks.

The Chair: I'm going to check again with those who are joining us by phone. Are there any questions?

Okay. Well, I just want to remind all the committee members that representatives from Justice and the office of the Ethics Commissioner will continue to attend meetings and provide technical support, as requested, during deliberations.

Thank you all for joining us this morning and for responding to the committee's questions. If you wish to provide additional information, please forward it through the committee clerk.

We are now going to take a five-minute coffee break and invite our other panellists, who are already here. We'll come back at 9:45. Thank you.

[The committee adjourned from 9:40 a.m. to 9:50 a.m.]

The Chair: I'd like to welcome everyone back from our break.

Because we have a new panellist joining us at the table, before we begin, I would ask that we quickly go around the table and introduce ourselves for the record. We'll start here on my right.

Mr. Drysdale: Wayne Drysdale, MLA, Grande Prairie-Wapiti.

Ms Kazim: Anam Kazim, MLA for Calgary-Glenmore.

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

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

Mr. Nielsen: Good morning. Chris Nielsen, MLA for Edmonton-Decore.

Ms Robert: Good morning. Nancy Robert, research officer.

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

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

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

The Chair: If those who are joining us on the phone could now introduce themselves, please.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow.

Mr. Dang: Good morning. Thomas Dang, Edmonton-South West.

Mr. Hanson: Morning. Dave Hanson, Lac La Biche-St. Paul-Two Hills.

Mrs. Schreiner: Good morning. Kim Schreiner, MLA, Red Deer-North.

Mr. Rosendahl: Eric Rosendahl, West Yellowhead.

Mr. Panda: Good morning. Prasad Panda, MLA, Calgary-Foothills.

Ms Babcock: Sorry. I was speaking over Mr. Dang. Erin Babcock.

The Chair: Who was that that just joined the conference?

Mr. Loewen: Todd Loewen. I was just disconnected and came back on.

The Chair: Okay. Thank you, Mr. Loewen.

I just want to make sure: Mr. Fildebrandt, are you on the line?

Okay. Sounds good.

I just want to remind everyone that the microphones are controlled over here by *Hansard*, so there's no need to press on the microphone buttons.

Our next group of presenters have been invited to each make a five-minute presentation regarding the Conflicts of Interest Act, after which I will open the floor to questions from committee members. At this point I will welcome our guests. I will just ask that when you begin your presentation, you introduce yourself for the record. Over to you.

ATB Financial MacEwan University

Mr. McKellar: Thank you. My name is Stuart McKellar. I'm the general counsel and the SVP of corporate operations as well as the corporate secretary for ATB Financial. Thank you for the opportunity to attend before you today.

A couple of quick facts. ATB Financial is a Crown agency that's been providing financial services to Albertans for more than 75

years and has grown to a \$48 billion enterprise. Over 5,000 team members helped 725,000 customers in 244 Alberta communities. ATB has received multiple awards for best employer, for best team member engagement, customer satisfaction, and for excellence in corporate governance. This past year ATB has had its best financial results ever, contributing approximately \$350 million to the province.

ATB's mandate is to provide Albertans access to financial services and to enhance competition in the financial services marketplace in Alberta, and our purpose is to transform banking, to reimagine it, to make it work for Albertans. ATB is committed to and has a strong connection with the people of Alberta. We have world-class capability and competency, and we're intently focused on helping Albertans be successful.

Crown agencies serve many different purposes for the province. The government has characterized or categorized its agencies according to the purposes they serve, and there are five categories. They are regulatory, like the Metis Settlements Appeal Tribunal; public trust, like AIMCo; corporate enterprise, which sells goods in the province, like ATB Financial; service delivery, like Alberta Health Services; and advisory, like the Northern Alberta Development Council. Five different types of Crown agencies.

We believe that the five separate categories should be taken into account when government creates policy for Crown agencies, and it would be more effective in ensuring that Crown agencies fulfill their specific mandates. A broad policy approach that does not take into consideration the different purposes of Crown agencies may actually hinder the agency from performing its mandate. Confidence in the independence of the agency may actually be weakened through the broad application of government policies to it, and this is compounded each time another broad policy or piece of legislation is applied to a Crown agency without giving specific consideration to that Crown agency's mandate.

Provisions found in the Conflicts of Interest Act may be entirely appropriate for a Crown agency with the ability to influence government and government policy such as an agency serving an advisory purpose. That is not the case for ATB Financial, which simply has no ability to influence government policy. Of course, ATB Financial is complying with the act. However, there should be recognition that ATB has long had its own conflict-of-interest provisions, which are appropriate to a highly regulated financial institution in a very competitive industry.

The ask is that when government is considering policy, it engage with its Crown agencies, specifically those potentially impacted, to ensure that those Crown agencies understand the purpose of the policy and, in turn, for those Crown agencies to assist the government in understanding the impacts of the policies being considered.

Thank you for the opportunity to present.

The Chair: Thank you very much.

We'll now go on to Ms Ione Challborn.

Ms Challborn: Thank you. Good morning, Mr. Chair and committee members. My name is Ione Challborn, and I am the chair of the board of governors of MacEwan University. I know my voice can be quiet. Can everybody hear me? Thank you.

MacEwan University very much appreciates the opportunity to meet with the Standing Committee on Resource Stewardship to discuss the implementation of the recent amendments to the conflict-of-interest legislation. Though we are representing only ourselves here today, I do imagine that the issues that I bring forward today are of interest and concern to other postsecondary institutions in the province.

As we mentioned in our letter to you of February 28, the university is very supportive of the spirit of the legislation and recognizes the importance of clear and consistent conflict-of-interest rules. Without the lived experience under the act, as we will have going forward, we will continue to assess and evaluate the impacts of this legislation on our business. Submissions and presentations such as this will also help you make those assessments as we go forward.

In considering the context of the postsecondary sector and the application of the legislation, we would like to bring to your attention the following points. The first is the importance of flexibility in the code of conduct to address the unique nature of the postsecondary sector; in particular, event participation related to donor activity, gift protocols in recognition of international intercultural activities, and the preservation of academic freedom and the rights of intellectual property. The draft codes of conduct that we submitted on April 30 we believe have captured the spirit of the legislation while at the same time provided flexibility to address these concerns.

A second point is the impact of the act on designated senior officials and their families. This legislation has introduced new terms and conditions for a significant portion of our president's term and after a relatively short period in her tenure. We think that these are relatively intrusive financial disclosures, and they impact her and her spouse and her minor child. The rules of engagement for her presidency have been changed. The university remains concerned and will continue to seek clarity to understand where the risk may be to justify employment restrictions and what implications exist for her and her family's future.

In addition, these changes, we believe, will affect negatively our ability to attract and retain progressive and innovative leadership, and this will impact not only our university but the postsecondary sector as a whole. This will then directly impact our students, to whom we are all so committed. If we are not able to attract good faculty, we will not be able to attract good students. They will not have the best success possible, and that will affect their economic and cultural contributions to our province.

10:00

In addition, we are very concerned with the balance of institutional autonomy with government oversight. We believe that this legislation impairs the university's ability to be an autonomous governing association. There is other legislation that has had this impact, most notably legislation around executive compensation, and it diminishes the powers and authority of the board of governors in managing the terms and conditions of our employee. We do understand that the government has a role in setting policy direction, mandates, and accountability frameworks. However, involvement in operational matters is counter to effective governance and contradictory to the spirit of the autonomy provided for in the Post-secondary Learning Act. We look for appropriate balance of autonomy and government oversight.

We want to thank you very much for the opportunity to present to you today. We respectfully request support from the committee in allowing us the flexibility in application of the legislation in these areas.

Thank you.

The Chair: Thank you very much to both of you.

I'll now open the floor to questions from committee members.

Ms Kazim: Thank you, Mr. Chair. I have a question.

The Chair: Please go ahead.

Ms Kazim: Thank you very much for the presentation. Your time is appreciated. Several times in the written submission it is stated that “ATB also feels that the Act has a negative impact on our ability to attract and retain the highly qualified people the Province needs to run a large financial business like ATB.” Yet in other instances it is stated: “every confidence that our existing codes meet or exceed the intent of the Act.” These two statements seem contradictory. On one hand, it says that the codes of conduct are already tougher than those imposed by the act, and on the other hand it says that imposing the act will negatively impact ATB’s ability to attract talent. ATB’s codes are already more strict. If so, how could imposing a less strict set of guidelines impact ATB’s ability to attract people?

Mr. McKellar: That’s a great question. The codes of conduct are not our primary concern, but let me give you an example under the Conflicts of Interest Act that is. The Conflicts of Interest Act requires approval, for example, for a CEO to take on additional employment and that that approval be by the Ethics Commissioner. It is our strong position that the best party in a position to have that understanding of whether or not our CEO should take on a board appointment or a royalty review, for example, is the board of directors. The board of directors has direct oversight over our CEO, and to have the Ethics Commissioner approve or disapprove of that kind of appointment doesn’t make sense to us, and it has a chilling effect on our ability to recruit CEOs that have a belief that they should be engaged in other service alongside of what they’re providing for ATB Financial.

We are in the midst of a CEO search, and one of the more prevalent questions that we had from candidates was: what is the impact of being a designated senior officer? What does it mean with respect to putting my assets in a blind trust or having to have disclosure of my assets? That’s a real chilling effect when you’re trying to attract world-class talent to run a world-class organization. It’s a chilling effect. It really is.

Ms Kazim: Okay. Thank you very much for sharing your insight into it.

I have a follow-up question, Mr. Chair.

The Chair: Please go ahead.

Ms Kazim: On pages 2 and 3 of the written submission and the presentation, concern was expressed about the requirements for designated senior officials to place their private holdings in a blind trust, and it stated that “ATB has clear restrictions and appropriate oversight over investments senior officers and board members can make.” Can you please give us more detail about that? Are the restrictions currently in place at ATB more restrictive than a blind trust or less?

Mr. McKellar: I would tell you that they’re more restrictive, and here’s why. We have a securities trading policy for the board members, and we have a similar policy for management as well. The policy itself requires that we cannot invest in organizations, for example, that we provide credit to, whether they’re public securities traders or not. It also provides that we cannot take advantage of our position to make investments into organizations from where we would have knowledge or a tip. We follow our code of conduct provisions with respect to what we can and cannot invest in. Putting assets in a blind trust might make a lot of sense for a public official who has opportunity to influence policy. Our team doesn’t have that ability. Our board doesn’t have that ability to influence policy through its investment decisions, nor does our CEO or any of the management team. We do have a rigorous policy in place, with

oversight and reporting in to my office or the chief risk officer at ATB.

Ms Kazim: Okay. Thank you very much.

Mr. McKellar: Thank you.

The Chair: Mr. Drysdale, please go ahead.

Mr. Drysdale: Sure. Thank you for your presentations this morning. I have a couple of questions. I’ll first start with the ATB. Do you know if you had the opportunity to consult on this bill before it was presented or ran through?

Mr. McKellar: Right. We had limited, if any, opportunity to consult on this bill.

Mr. Drysdale: Do you think it would have been beneficial to bring it to this committee and have these discussions before the bill was drafted?

Mr. McKellar: Absolutely. I think that’s what my message really is to this committee. You have Crown agencies whose feet are on the street out in the province, and to take advantage of their insights as to the impact of policy before it becomes legislation I think is really a great opportunity to understand where those impacts of the legislation would be that might be negative to an organization like ours or to a university or any of the Crowns, frankly.

Mr. Drysdale: You know, I understand that some of this stuff, for both of the presenters, is going to make it harder for you recruiting in the future.

A question to the university. You’ve said – and I’ve heard it from other colleges and universities – about trying to change a president’s contract in the middle of their contract. I realize that this is probably going to end up being a legal matter because you can’t just break a legal contract. It’s probably unfair to ask you to comment on that – if you could, that would be good – and also on the fact that it’s really going to limit you for recruitment. Maybe not even so much here in Edmonton, but when they set limits on what you can pay and when you get way out, like, northwest, where I live, in order to attract, you know, talented and qualified people, there has to be an incentive. Otherwise, why would they leave the big cities? If everybody is going to pay the same, I think it’s really going to restrict it. I don’t know if you have any comments on that.

Ms Challborn: Well, I appreciate your comments. You’ve kind of answered your own question in that I’m not able to comment on anything that may or may not arise in a legal framework in the future. But we do have a contract in place, and changing an existing contract certainly has consequences.

First of all, retaining. Hopefully, that’s what you want in an institution, to retain an excellent president. With respect to attraction, if the circumstances are such that we need to attract one, you have just described the problems.

Mr. McKellar, if I could take your remarks and any time you said, “Crown agency” insert “postsecondary institution,” I think that would be my response.

Mr. Drysdale: Yeah. I guess that just confirms what I thought. I think the province is setting itself up for a lot of legal battles here in the future, and it concerns me.

Ms Challborn: And instability in an important sector in our province.

Mr. Drysdale: I was going to make some comments, but I won't. I'll get in trouble. Thank you for your answers.

The Chair: Thank you for reserving your comments, Mr. Drysdale. Mr. Nielsen, please go ahead.

10:10

Mr. Nielsen: Well, thank you, Mr. Chair. I have a few questions, so if you feel you need to kind of cut me off so I don't take up too much air in the room, please feel free to do so.

The Chair: I'll let you know. I'll let you know.

Mr. Nielsen: I appreciate that.

Thank you very much for coming here this morning to present. Actually, my questions will just be directed to the representative for MacEwan University. Again, thank you for being here this morning. I was wondering if you might be able to tell us what types of personal gifts a university president would get that would be higher than the threshold dollar amount and, if possible, maybe from whom a president would be getting these kinds of gifts.

Ms Challborn: Well, I'm thinking, and I may ask my colleague from the university to help me out here.

Mr. Nielsen: Absolutely.

Ms Challborn: Michelle, would you please join me?

I know that when our president first joined our university, there were gifts of art, you know – and some of those are hard to value – to recognize her as a new president as well as her indigeneity.

Ms Plouffe: A couple of examples I might give . . .

The Chair: Excuse me. Could you just introduce yourself, your name and position, please, for the record?

Ms Plouffe: Sure. I'm Michelle Plouffe. I'm the general counsel and vice-president at MacEwan University.

One example would be if our president attends a ceremony, an indigenous ceremony, it is quite normal for them to offer her a gift such as a blanket, and while a blanket might not seem to be a high price tag item, they can be. They can be really quite expensive, and you would – I will try to use her words – risk offending, you know, the group if that gift wasn't accepted.

We also do a lot of work in the international realm. It is also very normal, for example, in recruiting students from China or India or Ukraine, for example, to be offered gifts as part of kind of a welcoming and a community type of response. We do a heavy amount of recruiting, so not only for our president but our international recruitment team would often see a number of parties where they would be invited to events, lunches, and dinners and be given gifts to take back. That happens quite regularly in the postsecondary sector.

Mr. Nielsen: Okay. So I guess that given that the legislation doesn't actually prohibit receiving gifts and only requires them to disclose the personal gifts, why would you raise this as a concern for our postsecondary presidents?

Ms Plouffe: I think it is part of our normal protocol. It happens all the time. I think, you know, that putting on the onus to disclose, to try to value some of these things is also very difficult. We have the same requirements for all of our employees – it's not just our president – where we could have a recruiting team on a trip for three or four weeks, where they would go to a number of different

countries, so I think it becomes quite onerous to keep track, to try to value.

Then when you think about a disclosure and the possibility of being in breach of our code, the consequences could be quite serious. So there's a real nervousness about the application of the legislation, especially if there's a complaint made to the Ethics Commissioner, of what that actually looks like. We don't know what that looks like, obviously, but there is a real concern as we apply these terms to a postsecondary institution, you know, about how they will be applied and enforced.

Mr. Nielsen: Okay. Thank you for those comments. I appreciate it.

Ms Challborn: Could I just add one thing? You know, part of what Michelle is talking about is the heavy administrative burden. That administrative burden takes away from actually doing the work that we are there to do. As well, if a mistake is made, the mistake can be what becomes highlighted rather than all of the good work.

I had one other point, but I've forgotten it now.

Mr. Nielsen: It's okay.
Is it okay to continue?

The Chair: Please go ahead, Mr. Nielsen.

Mr. Nielsen: Thank you, Mr. Chair. I was wondering if you might be able to provide examples where a university president maybe sits on another board of directors for pay. Would your institution's conflict-of-interest policy require them to disclose that to the board of the university, and why would it be a problem for them to disclose this type of information, then, to the Ethics Commissioner?

Ms Challborn: I personally don't have an example of a university president sitting on a board for pay. Michelle may. I know that our president sits on the board of the Downtown Business Association. She sought my approval for that as chair of the board. It is her obligation to do that so that we could see that there was no conflict of interest. There is no pay in this particular circumstance, and we believe it to be good citizenship for the university in the downtown core.

Ms Plouffe: If I might add to that, I think it's not so much the disclosure requirement as the message we are sending. What are we asking our presidents to do? A big portion of their role is community engagement, donor engagement. As government funding, as ever, gets tightened and restricted, we have an obligation to engage our donors and to be heavily involved in our community. Again, what arises is a lack of clarity on how they are to be engaged. I mean, some of our donors are fairly large business entities, necessarily, so we keep a close eye on entities, you know, if they're suppliers or vendors, for example.

But when you think about others where, you know, it's a larger institution that may provide pay for being a part of that board, the clarity for our presidents being involved in those kinds of institutions becomes muddy. Again, going back to the heavy-handed nature of a code that has review requirements, the need to respond to complaints that go to the Ethics Commissioner, that could go all the way to our minister, that causes some angst and a real lack of clarity on application. We did have an opportunity to sit down with the Ethics Commissioner after the legislation was passed, and it was still really unclear to us where those limits are drawn when we talk about a disclosure. But as we know, if there are complaints or if the media gets engaged, that could be quite damaging to a president when, really, our board necessarily

demands our president be out there and external in our community. That's really, I think, the point that we're trying to make.

Mr. Nielsen: Okay. If I could just shift gears a little bit, in the letter that was . . .

Mr. Clark: Mr. Chair, can I be added to the list, please?

The Chair: Actually, do you mind if you hold, and we'll go to Mr. Clark?

Mr. Nielsen: Absolutely, Mr. Chair. Thank you for doing that.

The Chair: No problem at all.
Mr. Clark, please go ahead.

Mr. Clark: Thank you very much. I guess, you know, as I'm listening in here and as I've looked at the documents, the question I keep coming back to is: what problem are we trying to solve? What I'm hearing from our stakeholders today is that there is a strong sense that they have some internal processes that cover off most of the changes, that there has been to date a lack of consultation before changes were made, and that that's had some significant impact on these large and complex organizations.

Perhaps I'll just ask a general question first to Mr. McKellar – he's talked about some of the unique aspects of ATB – and then to Ms Challborn, just for her to weigh in as well. I guess what I'm really curious about is: how do these provisions compare with other jurisdictions? It may be a little more difficult for ATB. I don't know. Actually, I don't quite know the full landscape of other provinces that may have wholly owned financial institutions. If there are some comparables, I'd be quite interested in hearing that, and obviously other postsecondary institutions perhaps may be able to offer some more comparables. I guess that's what I'm really curious about. How does this compare to other jurisdictions, and are there other lessons that can be learned from how they have handled similar situations?

Mr. McKellar: Thank you for the question. Alberta has a unique enterprise in ATB Financial. There isn't another province that owns a financial institution like us, so I really don't have a great comparison with respect to how other corporate entities are treated with respect to the Conflicts of Interest Act or something similar.

10:20

Your first question, though, around what the problem is that we're trying to solve: that's a bit of a – I'm just going to be candid – stumper for us, as to what the purpose was of this particular policy with respect to our operations and our mandate. Given that we have excellent Crown governance or excellent corporate governance – we have an independent board that provides deep oversight over the operations of ATB – that's just a bit of a stumper.

I'm sorry; I can't answer your follow-up question.

Ms Challborn: For MacEwan University I would echo your comment. We're not certain what solution we're trying to get at with this legislation, so it feels very heavy handed and overreaching into the operations of the university. As Mr. McKellar said, all the postsecondaries, including MacEwan, have very, very strong boards of governors. They have excellent bylaws and codes of ethics and conduct that govern their work. Of course, we fall under the Post-secondary Learning Act, so we're not sure what this is trying to achieve that we're not able to achieve already with sound decision-making internally.

Mr. Clark: Yes. Thank you for that. I mean, I guess I will use my latitude as a Member of the Legislative Assembly and a member of this committee to say that I am concerned that these changes feel like they're coming from a place of a preconceived idea of what problems may exist. I haven't seen a huge amount of evidence that there are problems that are to be solved that limit Crown institutions of a broadly defined ability to be innovative and responsive. While I think that applies generally, I think I'm especially concerned about the impact that generally applicable rules would have on something as unique as ATB. I would really encourage us to strongly consider some refinement to absolutely accommodate the unique situation that ATB has within the province and within the country and also look very closely at some of the concerns raised by Ms Challborn, and let's look at a number of the other submissions as well.

Thank you, Chair.

The Chair: Thank you very much, Mr. Clark.
Back to Mr. Nielsen, I guess.

Mr. Nielsen: Thanks, Mr. Chair. I really appreciate it. I was just wondering. In your letter there's a comment around the cooling-off period for subsequent employment, that would disproportionately affect women with regard to our postsecondary institutions. I was wondering if you might be able to expand on this and how the legislation could impact our female presidents more so than their male counterparts.

Ms Chisholm: Hi. I'm Marcie Chisholm. I'm the associate vice-president of human resources at MacEwan University. If you look at the landscape of leadership, not just in public postsecondaries but across all sectors and all industries, there is underrepresentation of women. When you also look at the demographics of those groups, particularly in the university presidents' groups, there are lots of folks who have spouses who are not working. So when presidents are relocating across the country, from province to province, within provinces, that is a factor in their decision-making, the impact on their own family.

We are very fortunate to have a young, vibrant, indigenous female president for our institution, who relocated her entire family across the country to come and join us and contribute to our mission. We do feel that limitations on employment and that cooling-off period could really affect her geographically because if she has established a home here and a family and has employment restrictions that keep her from working in Alberta, that makes different decisions for her family come into play.

I hope that helps to illustrate the point we were trying to make.

Mr. Nielsen: Yes. Thank you very much for sharing that. I appreciate those comments.

I guess that, just to maybe wrap up, given that most presidents are academics and go back usually into the teaching role or another administrative position in postsecondary, which, I want to point out, the legislation doesn't prohibit, what is your concern with respect to a postemployment cooling-off period for these presidents? Why should they be treated any differently than CEOs of other public, arm's-length government institutions?

Ms Chisholm: Again, I think that I would go back to the points made by our colleague from ATB earlier. It's hard to understand the rationale for the cooling-off period. Universities are serving the public broadly, and it's difficult to just see what the justification is for that cooling-off period, that would limit alternate employment within the Alberta university space. Lots of university presidents go on to other presidential roles. They don't necessarily fall back to

faculty at the end of their term. Some do, but that's often at the end of their career as opposed to in the middle.

Mr. Nielsen: Great. Well, thank you so much for answering those questions. I really appreciate it. Thank you for all the work that you do in preparing some of the best students in the country, as far as I'm concerned. Thank you for being here today.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Kleinsteuber, we'll continue with you.

Mr. Kleinsteuber: Thank you, Chair. I'd just like to take the question back maybe, if I could, to ATB. The last point you made in your written submission is that you're concerned about the "perceptions that ATB is just like a government agency rather than an independently run and managed commercial institution." It goes on to say that it "could erode our future success and trust with our customers. That's a history we've been trying to correct for the past 20 years." It seems like you're saying that at some point in the past ATB was directly controlled by the government, a little bit more influenced perhaps. I guess I'd just like to give you the opportunity to elaborate on that a bit.

Mr. McKellar: Thank you. Think back to 1997. ATB became a Crown corporation. Prior to that, it was a piece of the department, and it was under direct control of the minister. We had a supervisor who led the organization, but we did not have a board of directors. There were some inappropriate goings-on back in the '90s that involved ATB. Since that time and the appointment of the independent board we've been fiercely protective of that independence because of the history of some direction, some interference that caused great pain, great reputational harm to the organization and to the government of the day.

So we're very protective of our independence, and that's why we're here today, to remind members of this committee and the government as a whole that the independence of a Crown organization is really critical through its good governance. Even the appearance or the perception of the weakening of our independence starts to bring into question, you know: what role does government have with us? We deeply appreciate the understanding through the mandate and roles document and through the legislation that tells us what is instructive as to what we're to do as an organization, but we have to be arm's length from government to deliver our mandate in an appropriate way and without perception that there's any potential for wrongdoing. That's just critical to our organization. In the financial industry as a whole trust is the cornerstone of what we do with our customers. So that's a very big concern, the erosion of independence.

That's a great question. Thank you.

Mr. Kleinsteuber: Great. Thanks for clarifying that.

That's all I had, sir.

The Chair: Okay. I want to double-check with those who are joining us by phone. Any questions for our panellists?

Mr. Drysdale, you're good?

Okay. I want to thank all of our presenters that were here today for meeting with us this morning and for responding to our questions. If you wish to provide additional information, please forward it through the committee clerk as soon as possible.

This concludes the oral presentations for today's meeting. I would like to thank all the presenters who appeared before the committee today. Presenters are welcome to stay and observe the remainder of the meeting, or if you need to leave, please feel free to do so at this time.

10:30

Mr. McKellar: Thank you very much.

Ms Challborn: Thank you very much.

The Chair: You're very welcome.

Moving on, then, to the next steps in the review process, we need to consider what will happen next in terms of the review. In order to assist us with our deliberations, it would be common practice at this point for the committee to ask research services to prepare an issues document pulling together the input received through the written submissions and today's presentations. Does anyone have any thoughts on this? Mr. Nielsen.

Mr. Nielsen: Just one quick question: I guess just based on what research services has seen today, any estimate of how long it might take you?

The Chair: Dr. Massolin.

Dr. Massolin: Thank you, Mr. Chair. Well, normally we operate under the committee's schedule, so we work back from when the committee next schedules its meeting, but the point is still well taken that it'll take a little bit of time to pull together the considerable information the committee has heard from the various stakeholders. I mean, usually that takes, you know, about seven business days, something like that. Then there's some lead time that you need to have for the committee to work with that information prior to the next meeting.

Thank you.

The Chair: So roughly two weeks, would you say, Dr. Massolin?

Dr. Massolin: I would say that that would be okay.

The Chair: Okay. Thank you very much.

Any other comments, questions?

Would anybody like to make a motion, then? Mr. Kleinsteuber, please go ahead.

Mr. Kleinsteuber: I would suggest a motion here. I'd like to make a motion that

the Standing Committee on Resource Stewardship direct research services to prepare an issues document in relation to the committee's review of the Conflicts of Interest Act.

The Chair: Did you want to put a deadline on that, Mr. Kleinsteuber? Hint, hint.

Mr. Kleinsteuber: To the tune of about two weeks, I'd say.

The Chair: May 18?

Mr. Kleinsteuber: For example,
by May 18.

The Chair: Does that seem plausible, Dr. Massolin?

Dr. Massolin: Yes. We'll have it posted by the 18th. Is that the intention?

The Chair: Yes.

Dr. Massolin: Certainly.

The Chair: Okay. Are we all clear on what the motion is? By May 18, right?

Mr. Clark: I have a quick question, Mr. Chair, if I may.

The Chair: Yes. Please go ahead.

Mr. Clark: If I could just contribute to this remarkably organic process that we've got going on here, I guess I'm just curious about the issues document. My apologies if I either missed that it was discussed or if this has already been done – apologies, because I'm back on the committee again, having taken a brief hiatus on other committees – but will the issues document include a cross-jurisdictional analysis? Is that part of the scope of this, or has such work already been completed?

The Chair: Dr. Massolin, would you like to comment?

Dr. Massolin: Thank you, Mr. Chair. Yes, a crossjurisdictional comparison has already been submitted, but I would point out that it's a good idea for committee members to use the issues document alongside the crossjurisdictional because there's a lot of good information that's in the crossjurisdictional that will help out with the issues document. The other thing is that the issues document will contain some crossjurisdictional information where appropriate, just to help the committee members, along with some background information. I guess the short point to make is that the crossjurisdictional will be very important to the committee during this next deliberative phase of its review.

Thank you.

The Chair: Thank you for that friendly reminder, Dr. Massolin.

We are about to vote on a motion. Would everyone feel more comfortable if we reread the motion, or is everyone clear on the motion? I'm thinking everyone is clear on the motion. All in favour of the motion, please say aye. Any opposed to the motion? [interjection] I guess that's a cheer that this motion is now carried.

Based on our progress today, I anticipate that we will move on to the deliberation stage of the review at our next meeting. With this in mind, I would encourage all committee members to begin narrowing down the various focus issues that have been identified during the review process and what recommendations should be considered regarding the Conflicts of Interest Act. I would also remind everyone that Parliamentary Counsel is available to provide advice in confidence on the draft of potential motions.

Does anyone have any questions about next steps in the review process?

Well, perhaps I'll just share, then, that the deputy chair and I have had a conversation. We'll most likely poll for the next meeting; however, we will base it on information regarding, I guess, potential rumours of when we'll be sitting until. I'll put it that way. Once we have a better understanding of until when we'll sit, I'll get back to you with a poll on dates for the next meeting. Sound good?

Mr. Malkinson: Sounds reasonable.

The Chair: Thank you very much.

Okay. Is there any other business for discussion today?

As we already discussed, the date of the next meeting will be at the call of the chair.

I'll ask for a motion to adjourn, please.

Mr. Nielsen: So moved.

The Chair: Mr. Nielsen, thank you very much. All in favour of the motion? Any opposed? On the phone, just to make sure?

Mr. Rosendahl: No. That's good. Thank you.

The Chair: Perfect. Thank you, sir.

That motion is now carried. Have a good day, everyone.

[The committee adjourned at 10:37 a.m.]

