

Third Session – Forty-First Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Legislative Affairs

Chairperson
Mr. Len Isleifson
Constituency of Brandon East

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MANITOBA LEGISLATIVE ASSEMBLY
Forty-First Legislature

Member	Constituency	Political Affiliation
ALLUM, James	Fort Garry-Riverview	NDP
ALTEMEYER, Rob	Wolseley	NDP
BINDLE, Kelly	Thompson	PC
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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LEGISLATIVE AFFAIRS**

Monday, July 30, 2018

TIME – 6 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Len Isleifson (Brandon East)

VICE-CHAIRPERSON – Ms. Janice Morley-Lecomte (Seine River)

ATTENDANCE – 10 QUORUM – 6

Members of the Committee present:

Hon. Messrs. Cullen, Pedersen,

Hon. Mrs. Stefanson

*Mr. Ewasko, Ms. Fontaine, Mr. Isleifson,
Mrs. Mayer, Ms. Morley-Lecomte, Mrs. Smith,
Mr. Wiebe*

APPEARING:

*Hon. Steven Fletcher, MLA for Assiniboia
Mr. Dougald Lamont, MLA for St. Boniface*

MATTERS UNDER CONSIDERATION:

*Reappointment of the Conflict of Interest
Commissioner and Information and Privacy
Adjudicator*

* * *

Clerk Assistant (Mr. Andrea Signorelli): Good evening. Will the Standing Committee on Legislative Affairs please come to order.

Before the committee can proceed with the business before it, it must elect a new Chairperson.

Are there any nominations for this position?

Mrs. Colleen Mayer (St. Vital): I nominate Mr. Isleifson.

Clerk Assistant: Mr. Isleifson has been nominated.

Are there any other nominations?

Hearing no other nominations, Mr. Isleifson, will you please take the Chair.

Mr. Chairperson: Okay. Good evening, everyone.

Our next item of business is the election of a Vice-Chairperson.

Are there any nominations for this position?

Hon. Blaine Pedersen (Minister of Growth, Enterprise and Trade): I nominate Ms. Morley-Lecomte.

Mr. Chairperson: Ms. Morley-Lecomte.

Are there any other nominations?

An Honourable Member: Mr. Chair, can I nominate?

Mr. Chairperson: Mr. Fletcher, go ahead.

Hon. Steven Fletcher (Assiniboia): I'd like to nominate the new Liberal Leader, Mr. Lamont.

Mr. Chairperson: Okay, so I've just been informed that, because Mr. Lamont is not a committee member, he cannot be nominated.

Mr. Fletcher: If I could make another nomination suggestion, the member from Point Douglas.

Mr. Chairperson: Mrs. Smith, you've been nominated. Do you accept the nomination?

Mrs. Bernadette Smith (Point Douglas): No. I decline.

Mr. Chairperson: No. She has declined the nomination.

Mr. Fletcher: I would like to nominate the member from Tuxedo.

An Honourable Member: I can't be a Chair.

Mr. Chairperson: Okay, so she is a minister. She cannot be the Vice-Chair.

Mr. Fletcher: Yes, I'd like to nominate the member from Lac du Bonnet.

Mr. Chairperson: Mr. Ewasko has been nominated.

Mr. Wayne Ewasko (Lac du Bonnet): I respectfully decline.

Mr. Chairperson: And he—decline. Okay. Mr. Ewasko has declined his nomination.

Any further nominations?

Mr. Fletcher: Yes, I would like to nominate the member from—Mr. Wiebe land—Mr. Wiebe, which is your riding?

An Honourable Member: Concordia.

Mr. Fletcher: Okay, the member from Concordia.

Mr. Chairperson: Mr. Wiebe has been nominated.

Mr. Wiebe, do you accept the nomination?

Mr. Matt Wiebe (Concordia): No. No, I do not.

Mr. Chairperson: Mr. Wiebe has declined the nomination.

Any further nominations from the floor? Okay, here.

Mr. Fletcher: Yes, I'd like to nominate the member from Seine River. *[interjection]*

Mr. Chairperson: She's already—yes, she's already been nominated, Mr. Fletcher.

So we agree on that one?

Mr. Fletcher: I'd like to nominate the government—the Opposition House Leader.

Mr. Chairperson: Ms. Fontaine has been nominated.

Do you accept the nomination?

Ms. Nahanni Fontaine (St. Johns): No, I do not.

Mr. Chairperson: Ms. Fontaine has declined the nomination.

And I think that just about wraps it up. So Ms. Morley-Lecomte is the Vice-Chairperson.

Okay, so this meeting has been called to consider the reappointment of the Conflict of Interest Commissioner and Information and Privacy Adjudicator. Copies of the applicable legislation for these positions were circulated at the commencement of this meeting.

For the information of the committee, section 19.5, subsection (1.1) of The Legislative Assembly and Executive Council Conflict of Interest Act states that where the position of the commissioner is vacant or will become vacant within six months, the Standing Committee on Legislative Affairs shall consider candidates for the position and make recommendations to the president of the Executive Council.

For the position of Information and Privacy Adjudicator, section 58.1, subsection (1.1) of The

Freedom of Information and Protection of Privacy Act states that if the position of adjudicator is vacant or if it would become vacant within six months, the Standing Committee on Legislative Affairs must consider candidates for the position and make recommendations to the president of the Executive Council.

The term of the current incumbent, Mr. Jeffrey Schnoor, will expire on December 31st, 2018. For the information of the committee: historically, the person appointed as Information and Privacy Adjudicator has also been invested with the role of Lobbyist Registrar, and this committee may discuss the reappointment of a Lobbyist Registrar in today's activities, but the committee does not have the power to recommend an appointment for this position since it is a direct Cabinet appointment under The Lobbyists Registration Act.

So, for this evening, how long does the committee wish to sit?

Mr. Ewasko: Thirty minutes or the work of the committee is completed.

Mr. Chairperson: Thirty minutes has been suggested.

Any other suggestions?

An Honourable Member: Whichever is first.

Mr. Chairperson: Whichever is first?

Mr. Fletcher: I think we should go—Mr. Chair, I think we should spend the maximum time, which would be six hours.

Mrs. Mayer: Mr. Chair, would you kindly remind members what the rules of committee are, and—when they are supposed to speak, they're supposed to ask for you to acknowledge them. Things like that. Just so we're all refreshed. I know we've been off for a couple weeks; we may be a little rusty.

Would you kindly remind the members around the table what the rules are? And, for our new member, as well, so he's used to it.

Mr. Chairperson: Yes, it's a very, very good point. And, you know, because we do have a new member, absolutely. It makes a lot of sense.

So, again, just as a reminder, because the proceedings are recorded that you will need to get the attention of the Chair. So I can see who—so just a—raise a hand—or voice from Mr. Fletcher,

obviously—and then just wait until you're—until I acknowledge you so that they can turn your microphone on. Okay?

So from there—

Mr. Fletcher: Can you please tell us who the new member of the committee is? I don't believe there is an additional recognized member of the committee with voting status.

Mr. Chairperson: So just for clarification, I know—we've already said that Mr. Dougald is not a member of the committee, so there is no new member. However, he is a new member of the Legislature, and he's sitting at our table. So, with due respect, that's why we've introduced him.

* (18:10)

So we have on the floor right now with the 30 minutes or whichever is first and is—*[interjection]*—no, and then we have six hours as well.

So what is the will of the committee? *[interjection]* Okay, so is there an agreement from the committee that we sit for 30 minutes or until this is done? *[Agreed]*

So, since we'll be dealing with the hiring process of the independent officer, and in case members wish to discuss matters related to the person who currently upholds the positions, following past practice, this committee should continue to meet in camera. Once we have concluded that discussion, we can resume proceedings on the record.

Hon. Cliff Cullen (Minister of Crown Services): Thank you very much, Mr. Chair, and I think you've framed the discussion quite well.

Clearly, tonight we're here to deal with the legislation, The Legislative Assembly and Executive Council Conflict of Interest Act, and I think you've framed the reference points quite nicely.

So, as a result of that, I move, seconded by the member—*[interjection]* I move that the Standing Committee on Legislative Affairs recommends to the Lieutenant Governor-in-Council that Jeffrey Schnoor be reappointed as the Conflict of Interest Commissioner and Information and Privacy Adjudicator for either a term not to exceed three years from the date of commencement or until amendments to The Legislative Assembly and Executive Council Conflict of Interest Act enter into force. The appointments will cease at the time in

which one of the two conditions above is met, whichever comes first.

Mr. Chairperson: Okay, so it has been moved by Minister Cullen that the Standing Committee on Legislative Affairs recommends to the Lieutenant Governor-in-Council that Jeffrey Schnoor be reappointed as the Conflict of Interest Commissioner and Information and Privacy Adjudicator for either a term not to exceed three years from the date of commencement or until amendments to The Legislative Assembly of Executive Council Conflict of Interest Act enters into force. The appointment will cease at the time in which one of the two conditions is met, whichever comes first. So the—*[interjection]*

Okay, so let me read just the bottom—it was: The appointment will cease at the time in which one of the two conditions above is met, whichever comes first.

So the motion is in order.

The floor is open for questions, and I see Mr. Fletcher.

Mr. Fletcher: This—I certainly support the reappointment of the Conflict of Interest Commissioner. However, there is a problem with this motion, and the problem is the second part where it discusses the amendment—if there's an amendment to the conflict of interest legislation, the appointment could and may end.

This is a problem, Mr. Chair, because the government has suggested that they will be bringing forward conflict of interest legislation in the fall, and in doing so, with the super majority, they will, upon the undoubtedly successful passing of the legislation, be able to sack the current Conflict of Interest Commissioner, and it would not be surprising if the government does not do that because the Conflict of Interest Commissioner released a point—a report, scathing, of the current legislative framework and essentially agreed with the legislation that I've been—I've introduced over the last—for two years now and agreed with the thrust of my resolutions on those points.

So I'd like to suggest for the committee that an amendment be made to appoint the commissioner for three years and not make it subject to an amendment to the conflict of interest legislation, as it would be an obvious method for the government to take vengeance on the Conflict of Interest Commissioner

for pointing out the many, many, many flaws in the current conflict of interest legislation.

Mr. Chairperson: Thank you.

Anybody else on debate?

Mr. Fletcher: On the issue of process, when does the Q & A end for this period? I do have specific questions not dealing with the individual conflict of interest, but the legislation as mentioned by the Government House Leader (Mr. Cullen).

I also find it odd that this committee is not able to ask the Conflict of Interest Commissioner or other—you know, who is responsible to the Speaker—we are not able to ask any questions to him, as he is obviously not present at this meeting.

Mr. Chairperson: Okay, so you make some valid points. However, this meeting tonight—we have a motion on the floor that we're discussing, and the purpose of this meeting tonight is to review the motion that's on the floor and whether or not to reappoint. It's not the place to ask questions of the commissioner or of the report itself; it's simply to discuss in this committee what the committee's desire is on whether or not to reappoint the current position.

So, I mean, you're asking questions, but who would answer them? So I'll—Mr. Fletcher.

Mr. Fletcher: I think it is a very high probability that there would be unanimous consent for the reappointment of the commissioner. That is not the issue with the motion. The issue with the motion is the caveat—or, the out clause that the government has given itself to terminate, sack, eliminate the Conflict of Interest Commissioner, through legislation, which they could do in theory immediately after the House resumes.

So that defeats the purpose of having a term of a Conflict of Interest Commissioner. Like, I—this is just—this is a governance issue.

Mr. Chairperson: Yes, it's—again, Mr. Fletcher, it's really tough. There's—we don't have someone here to answer the questions on behalf of the commissioner.

I think going forward, if we want to debate the motion itself, you could certainly, you know—if you talked about an amendment. But maybe we have an idea from Mr. Wiebe?

Mr. Wiebe: Well, thank you very much, Mr. Chair. It does occur to me the person that brought the motion potentially might have some perspective on it and might answer some of Mr. Fletcher's questions,

be able to give some context, at least, to those questions.

I don't think it's unreasonable to imagine that there can be some kind of back and forth here at this committee, and other members of the committee—in particular, the one who brought the motion—could give some context and maybe has something to say about Mr. Fletcher's concerns.

So I'll put that out there. I don't think, you know, we necessarily need to have the commissioner here to answer a question about a motion that was brought by the committee.

Mr. Chairperson: Very good point.

Any other comments?

Mr. Fletcher: I have many comments, but I think the suggestion by the previous speaker is a good one. If the House leader is willing to put some context and perhaps amend his motion or give us assurances, we can quickly proceed.

So I—if the House leader is willing to speak, I'm looking forward to that. And, if not, I have many more questions.

*(18:20)

Mr. Cullen: Well, sure, I'll put some context behind the motion.

You know, clearly, I think we're—Mr. Schnoor has been in his capacity for a number of years now, and he's—obviously has some very important work he's been doing. And he has provided some documentation, some ideas for legislation going forward. Obviously, there's a lot of—quite an extensive number of recommendations that he has put forward. Clearly, in his report, he indicated there is work to do here in Manitoba, and we certainly agree with that. So we will, as government and opposition, will be looking at those recommendations. At the end of the day, government will come back with legislation before the House. Obviously, all members will have an opportunity to debate that particular legislation when it does come before the House.

Clearly, if one looks at the motion before the committee, it clearly would indicate that Mr. Schnoor will be here to work with government—government has questions on those recommendations over the foreseeable future. So during the time that the recommendations are reviewed, Mr. Schnoor will be here and would be in his capacity as the Conflict

of Interest Commissioner to address any of those questions or concerns that may arise prior to the legislation actually being proclaimed.

So I think it's pretty clear the intent of the motion and the resolution before the committee.

Mr. Fletcher: I will note that the question was not answered in a direct manner. The issue here is not the reappointment of the commissioner, it is the ability of the government to terminate the appointment once new legislation is in place.

Now, I think members can see that there are some inherent problems when this is the case. The commissioner is going to be asked to make comment about the conflict of interest legislation, but yet his role is dependent on the goodwill of the government.

Now, in a normal appointment situation, be it the parliamentary budget officer or the conflict-federal conflict of 'intra', Mary Dawson, those are distinct terms that there isn't an out clause for the government to terminate.

And, Mr. Chair, like-I understand the government is doing what governments do. And I hope the opposition will do what oppositions do. But more importantly, I hope we will do what's in the interests of Manitobans, and having the legislation on conflict of interest being reviewed with a guillotine ready to drop at any time on the Conflict of Interest Commissioner is not good practice, and it would be in everyone's interests to amend the motion.

What does the government have to lose by amending the motion? They-if their intent is pure, then there isn't a problem. But if the intent is, in fact, to do what I've suggested will happen, then that says a lot about the government. And waiting for proclamation is after it's done. So I would-it would be very helpful-very helpful-if the government would take that second part out of the motion and recognize a three-year term.

I'm sure if things change, they could always come back to this committee as representatives of the Legislative Assembly. But otherwise, Manitobans can have no faith in the new legislation the government is committed to because it just is as plain as day.

Mr. Cullen: Well, I know the member likes to talk about federal politics and federal jurisdiction. You know, we here in Manitoba are dealing with the legislation we have before us. It's very clear

the mandate of this committee is to make a recommendation to the president of Executive Council. It's exactly what the rules say; that's exactly what we are doing. At the end of the day, the government, through the Executive Council, has the ability to make the decisions in terms of the reappointment or hiring.

And that's the legislation that's before us. That's the legislation we have to act within. And that's why we're having this committee meeting tonight.

Mr. Dougald Lamont (Leader of the Second Opposition): What is the rationale for having a clause that says that his appointment would be changed if the legislation is changed?

Mr. Cullen: The premise would be, as indicated before, that obviously Mr. Schnoor would be here to help government work through the recommendations that he has on the table, the thought being that he would have the-you know, the knowledge. He's done the background work, the cross-jurisdictional 'stan'-scan on this-in this regard. He would have the information. He would be a resource for the government as the government moves through the legislative-making process.

Obviously, this is an important piece of legislation as we move forward, very comprehensive, quite a number of recommendations in it. So, certainly, as a government, we want to make sure we get this right, and we're using him as resource for that.

Mr. Lamont: I'm not sure that he answered my question.

What is the rationale? I don't understand. This is-I mean, we're talking about a matter-the matter under consideration is the reappointment of the Conflict of Interest Commissioner, but this is-but it-but we're also talking about the fact that he would apparently-so you're saying-so it seems to me that you're saying he's going to be-to participate.

Are you anticipating that he would leave once this is-or, that he would not be the person who's carrying this through?

Mr. Cullen: The legislation says that the legislative committee makes a recommendation in terms of moving forward to the president of Executive Council.

So, at the end of the day, the committee would make a recommendation whenever the terms of this resolution were to come to fruition. The committee-

'nacity'—committee would reconvene, make a recommendation at that time to the president of Executive Council, and the president of Executive Council would ultimately make that final decision.

So, clearly, there would be—assuming there would be discussions between—well, I can't really preclude what the outcome of a future standing committee would be. I—that's—it's hard to judge that.

Mr. Fletcher: The Government House Leader (Mr. Cullen) has agreed that the purpose of this committee is to make a recommendation for the appointment of the Conflict of Interest Commissioner. Period.

The legislation doesn't go beyond that. It doesn't say unless, if, and, or but. If we're going to make a recommendation, let's do it. Let's not add a—extra get-out-of-jail clauses or clauses that can jeopardize the impeccable integrity of the commissioner because the government is reserving the right, through committee and through a backhanded-door process, to do what they can do in an up-front manner.

Now, I know the member is upset or can be defensive sometimes because I do bring a lot of experience from the federal scene and been on many, many committees at the higher level of office, and certainly have been able to sniff out all the tricks—I mean, on government and in opposition. I have seen it all. This is a government-implemented loophole that is very problematic and undermines the entire integrity of the conflict of interest legislation.

* (18:30)

And, by the way, that would be completely consistent with the government action since I introduced the conflict of interest amendment act in March of 2017 and numerous resolutions. The government does not want to change the conflict of interest legislation. They only have raised it after—after—I forced a vote on that private member's bill in the Legislative Assembly.

So now for the government to say, oh, well, we're all pure here, on a—the end of July, on a beautiful Manitoba evening, is just not credible. So someone might call time, Mr. Chair. I wish we had six hours. But the government insisted—insisted—that we only spend half an hour. So I wonder if we can get rid of that extra stuff and reappoint the commissioner, or we're going to have to find another time for the committee to convene because we have, apparently, due to the government wanting to get

out, probably for ice cream, limited ourselves to 30 minutes. And it looks like it's 32 minutes right now.

Mr. Chairperson: Any other comments? Questions?

An Honourable Member: A point of order.

Point of Order

Mr. Fletcher: Mr. Chair, at the beginning of the meeting, there was a motion introduced—or asked by yourself on how long the committee should speak or sit for. I advocated for six hours; the committee decided it to be 30 minutes. The 30 minutes has expired, and therefore the committee meeting has ended.

And I would also like to point out, Mr. Chair, that in the letter from the Conflict of Interest Commissioner dealing from—I have it right here, and I'd like to table it for everyone's—it's from the Conflict of Interest Commissioner. And it was a very bizarre letter. So the—in this letter, it was suggested that the report was requested by the Speaker. The report was presented to the Speaker. But the Speaker declined to accept the report; thereby the Conflict of Interest Commissioner decided to send the report to each individual MLA, which is very odd, to have one Speaker request a report but then not accept the report. Or was it LAMC that asked for the report? But, still, they didn't accept the report.

So it's all very odd. And, Mr. Speaker—or Madam—or Mr. Chair—this is an issue that the Conflict of Interest Commissioner raised himself in his letter dated to the members of the Manitoba Legislature. And I'm just in the process of finding it to table it.

The—but the point is, Mr. Chair, that—

Mr. Chairperson: Okay, Mr. Fletcher, as you had raised this on a point of order, I do need to point out that when the question came to the floor, at 6:10 p.m., for the 30 minutes and—

An Honourable Member: Well, Mr. Chair—

Mr. Chairperson: Excuse me. And—so we do sit until 6:40. So I'm going to rule your point of order out of order because it was not in order.

Mr. Fletcher: I don't believe that was a point of order; it was a comment in that—in regard to the letter. I found it. Can I just read it, please?

In this letter, it says, I'm pleased to submit to you my recommendations for 'modernizing' Manitoba's conflict of interest legislation for the members of the—as you know, I—you originally asked that I submit—

Mr. Chairperson: Mr. Fletcher, Mr. Fletcher. Can you get to the point where this has something to do with the hiring process? Because that's what this meeting is about. Thank you.

Mr. Fletcher: Yes, no problem, Mr. Chair.

It says: I submit my recommendations to the Assembly management commission. The Speaker—and this is where it comes in—said it was not appropriate—it was not the appropriate body to receive it. I'll table this letter right now for everyone to get.

So the reason that this has an impact, Mr. Chair, on the government is that in a bizarre set of circumstances, the people at LAMC who apparently made the request for the report would not accept the report. So what is going on there? Perhaps there was an attempt—or they didn't like—they being the government—did not like the answers and recommendations of the commission—of the commissioner. And it would not be at all surprising that the government will use the second portion of the motion that is before us to eliminate the Conflict of Interest Commissioner.

And, Mr. Chair, I will point out that the legislation speaks only to the appointment—only to the appointment—of the Conflict of Interest Commissioner, not—not—the potential termination of the Conflict of Interest Commissioner.

Now, if the government passes the legislation, I guess that they could put that in. But to do it at a committee and make it a committee recommendation is disingenuous, faulty and clearly allows for a non-clear presentation of the commission—of the commissioner.

Now, Mr. Chair, I have the recommendations with me, all of them. This is a substantial report. It's 56 pages. And in it, it speaks about conflict of

interest. And by the government introducing this legislation, it itself—or this motion in itself is a conflict of interest. So how can the government—

Mr. Chairperson: Okay, again, Mr. Fletcher—again, what you're bringing up has nothing to do with the hiring process. So please keep it to the topic of the motion that's on the table. And we've got one minute left.

Mr. Fletcher: The motion—the legislation states that this committee is to make a recommendation for the hiring of the Conflict of Interest Commissioner. That is what we're talking about. It is completely in order to talk about the motion.

And the point is—and I'll come at it from a variety of ways—is that by having this clause, additional clause that has nothing to do with the legislation, the government is undermining the credibility not only of the Conflict of Interest Commissioner but also undermining the government and the interests of all Manitobans.

And, Mr. Chair, you know, I—it was not my decision to limit this meeting to 30 minutes. I wanted six hours to talk about this. So for people to say—and it's been suggested—oh, that we are not within the—or we need to make this decision because of time, which is related to this motion, is not appropriate.

And, Mr. Chair—

Mr. Chairperson: Okay, just—I'm going to interrupt you for a moment. It is now 6:40. So the 30 minutes has come to an end.

What is the will of the committee?

An Honourable Member: Committee rise.

Mr. Chairperson: Is it the will of the committee to rise? *[Agreed]*

So just a reminder that the motion is still on the floor, so when this committee resumes, we will continue debate at that time.

Committee rise.

COMMITTEE ROSE AT: 6:40 p.m.

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