

PRINCE EDWARD ISLAND LEGISLATIVE ASSEMBLY



Speaker: Hon. Francis (Buck) Watts

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Standing Committee on Public Accounts

DATE OF HEARING: 8 NOVEMBER 2017

MEETING STATUS: PUBLIC

LOCATION: COMMITTEE ROOM, J. ANGUS MACLEAN BUILDING

SUBJECT: BRIEFING ON THE OFFICE OF THE PUBLIC TRUSTEE

COMMITTEE:

Bradley Trivers, MLA Rustico-Emerald [Chair]
Dr. Peter Bevan-Baker, Leader of the Third Party
Kathleen Casey, MLA Charlottetown-Lewis Point
Bush Dumville, MLA West Royalty-Springvale
Sidney MacEwen, MLA Morell-Mermaid (replaces Darlene Compton, MLA Belfast-Murray River)
Chris Palmer, MLA Summerside-Wilmot [Vice-chair]
Hal Perry, MLA Tignish-Palmer Road

COMMITTEE MEMBERS ABSENT:

Darlene Compton, MLA Belfast-Murray River

MEMBERS IN ATTENDANCE:

None

GUESTS:

Family Law and Court Services (Clare Henderson)

STAFF:

Ryan Reddin, Clerk Assistant (Research and Committees)

Edited by Hansard

The Committee met at 10:00 a.m.

Clerk Assistant: Good morning, everyone.

Some Hon. Members: Good morning.

Clerk Assistant: I'll open the meeting because the Chair and the Vice Chair positions are currently vacant, as you know.

Just to summarize, Mr. Aylward, the former Chair resigned his position on the committee a week or two ago, and appointed Mr. Trivers in his place. Mr. Brown, the Vice Chair was automatically no longer part of the committee upon being appointed to Cabinet.

On the agenda, the first item of business is for a nomination and election of Chair. Could I have someone nominate a member to be Chair?

Sidney MacEwen.

Mr. MacEwen: I'd like to move Brad Trivers be Chair.

Clerk Assistant: Okay. Do I have any other nominations?

Mr. Dumville: I move nominations close.

Clerk Assistant: Okay.

All those in favour of Mr. Trivers taking the Chair, please signify by saying 'aye.'

Some Hon. Members: Aye.

Clerk Assistant: All those opposed.

Hearing none, Mr. Trivers, please assume the Chair.

Mr. MacEwen: Congratulations.

Mr. Trivers: I gladly accept.

An Hon. Member: (Indistinct)

Mr. MacEwen: That's what you think.

Mr. Trivers: Well.

Mr. MacEwen: Things are about to change.

Chair (Trivers): I just wanted to start off by saying a few words. It's great to be here representing Public Accounts here in the Chair position. I know that I'm working with a lot of different Chairs here at the committee table. I have learned from you and how you have chaired meetings. We will move forward and we'll keep things open and transparent and everyone will get a full chance to have their say.

Moving right along, we should move to item three on the agenda: Nomination and election of the Vice Chair.

I'd like to call for nominations for Vice-chair.

Ms. Casey: I would like to nominate Chris Palmer as Vice-chair of the Public Accounts committee.

Chair: Thank you, Kathleen Casey.

Is there someone confirming that nomination?

Mr. Perry: I'll second.

Clerk Assistant: We don't actually need a seconder.

Chair: Good, we don't need a seconder.

Mr. Perry: Okay.

Chair: Okay, thank you, Mr. Perry.

Are there any further nominations for Vice Chair?

Mr. Dumville: Question.

Chair: Question, Mr. Dumville.

Mr. Dumville: I call the question.

Ms. Casey: Call the question.

Mr. Dumville: I call the question –

Chair: Calling the question to vote –

Mr. Dumville: – for the vote.

Chair: – okay. Yes, all in favour?

Some Hon. Members: Aye.

Chair: All right. Welcome, Mr. Chris Palmer, Vice-chair, Public Accounts.

Mr. Palmer: Do I need to move up there?

Mr. Dumville: Yes.

Chair: Come and sit beside me.

Mr. Dumville: (Indistinct) responsibility.

Chair: Thank you. Just while Mr. Palmer is moving up, I assume everyone has read the agenda here.

I'd like to call for an adoption of the agenda as presented.

Ms. Casey: So moved.

Chair: Thank you, Ms. Casey.

Moving right along, item number five. This is an important briefing on the Office of the Public Trustee.

I would like to call Clare Henderson, the Director of Family Law and Court Service from the Department of Justice and Public Safety, forward.

Thank you, Clare. It's great to have you with us today, if I may call you Clare.

Clare Henderson: Yes, you may.

Thank you very much for the invitation. The office appreciates the opportunity to appear.

Chair: To clarify, as well, I realize that originally the committee had called Mark Gallant to come and present here today; but of course, due to the fact that he has a role to play in the judiciary branch, recently appointed to a role in the judiciary branch, it was decided that it'd be more appropriate to have someone not in the judiciary branch come and present on the public trustee. So, thank you.

Clare Henderson: Yes, thank you. I appreciate that the committee was content that I appear on behalf of the office.

Chair: Are you happy with people asking questions as you go along?

Clare Henderson: I am in your hands as to how you would like the appearance to proceed. I'm content to make a brief statement, or get right down to questions, whatever your preferences are.

Chair: I think it would suit the committee if you make a statement and we'll ask questions as we move forward.

Clare Henderson: Excellent.

The division and the Office of the Public Trustee, Public Guardian, and Official Guardian appreciates the feedback that was received from the Office of the Auditor General in the auditor's report and is taking proactive and diligent steps to action the recommendations of the Auditor General.

The Office of the Public Trustee is grateful for the support provided by the division and finance staff in taking proactive steps to improve function and respond to the audit. The division acknowledges the significant work of staff in the public trustee office to not only respond to the audit, but to maintain operations providing support to vulnerable Islanders that have been declared in need of assistance. We would also like to thank finance for their support in allocating staff to provide support to the office in both improving process and in responding to the audit.

Government is committed to supporting vulnerable Islanders and some of the steps taken to this point to respond to the Auditor General's recommendation are set out in the document provided to the committee, and they include the allocation of additional staff to support the public trustee office and taking steps to allocate temporary staff to engage in file review and file management improvement, and also moving forward with allocating additional 0.6 FTE staffing allocations in the form of a program analyst to assist with oversight and financial review.

Government is also working on legislative amendments to both the public trustee staff and guardianship legislation to ensure we're meeting the needs of today's clients. Also, the office is very excited that in the coming months we're going to be engaged in the needs assessment process with the court to include the functioning of the public trustee, public guardian, and official guardian

offices – which is a mouthful – in the new court case management system. So, we are taking proactive steps to identify ongoing technology needs that will assist in the functioning of the office.

I can also advise that the 2015 financial statements have been provided to the Office of the Auditor General, and finance staff is assisting the public trustee office in the preparation of the 2016 documents for review.

We do have further information in response, but if the committee is agreeable I can take any specific questions the committee may have.

Chair: Well, thank you for that.

That's a great way to start off the meeting, with a briefing like that, and I wanted to recognize the work that the Office of the Public Trustee does and how important that work is and I know we have members of the office here in the gallery today, so thank you for attending and I wanted to recognize you and the work that you do. It is important work to represent those who – and look after the finances of those where there's no one but the public to answer.

I don't have anyone on the questions list at this point, the speaking list.

Peter Bevan-Baker?

Dr. Bevan-Baker: Thank you, Chair. Thank you for being here, Clare.

I would just like to ask some specifics on the progress bullet points that you have here in your report.

Clare Henderson: Absolutely.

Dr. Bevan-Baker: The first one is you will allocate additional staff resources for file review and financial review. Do you have any sort of timeline – that's the 0.6 FTE – any timeline on when that is likely to occur?

Clare Henderson: In terms of the file review, I'm in direct discussions right now with both records management and with HR. We're reviewing the temporary staffing list to find temporary resources to come in. I'm hopeful that that process will start within the

next two weeks. It is contingent upon the availability of an individual that meets the suitable criteria, but I am ever hopeful that we can start that process very shortly.

I did have a meeting this – was it this week or last week – within the past seven days with records management about the RIM coordinator who's assigned to the division assisting with the file review process to ensure that not only file management practices are at a best-practice level, but also that we're compliant with the needs of records management in ensuring that our operations work from all sides.

Chair: Go ahead.

Dr. Bevan-Baker: The third bullet point here is: Working on new policies and procedures to improve the administration of files et cetera. If we look back to the last time that an Auditor General did a report in her office, 2006, very similar recommendations were made then. That was 11 years ago. To see that you're working on these new policies that were recommended 11 years ago and then re-recommended last year – I'm just wondering why it has taken so long to do that.

Clare Henderson: I can't speak to past process. I have been in this position for three months on Tuesday. I can tell you that within the past two-and-a-half months, and prior to my arrival, the office has been canvassing other jurisdictions in Canada and have received policy manuals and procedure manuals from other offices. We're in the process of reviewing those to make them suitable for the legislative function of the office within PEI.

We are very committed to getting a policy manual complete, drafted and rolled out to staff within the next six months. I'm hopeful to be able to exceed that deadline. As the Chair mentioned, the operational realities of the office are significant.

When dealing with individuals that have been declared incapable, the operational demands, in terms of the necessary responsiveness and the number of inquiries received on top of the administrative and accounting demands on the office, are significant.

It is imperative, in terms of drafting appropriate policy that operational staff are involved in the development of that policy. We are committed to undertaking that process. I do have a draft that has been provided from the office of the public guardian, official guardian and public trustee that is under review. Again, it's based on operations in other jurisdictions that aren't specifically, technically functional here.

We're looking at best practices from other jurisdictions while engaging in the legislative review process. We're committed to making sure that the policy document that will be put forward is the best practice guideline to ensure best practices are in place for the vulnerable Islanders that the office assists.

Dr. Bevan-Baker: Chair.

Chair: (Indistinct)

Dr. Bevan-Baker: That is good to hear, Clare.

Certainly six months seems like a very reasonable time frame. I feel reassured by that. Especially given the long, the very long period of time where apparently very little happened in terms of developing functional policies within your – not your; the office.

I want to switch tack a little bit and ask about supported decision making. Currently, we don't have legislation on the books here regarding supported decision making, unlike some other provinces. I have been in talks with many community organizations here who are very strong advocates of that, and I'm just wondering if you have any sense or any news from your department as to where the file on supported decision making rests at the moment.

Clare Henderson: I can advise that that is the subject of discussion in terms of the legislative review that is happening.

There is a comprehensive review that is happening within the department of the existing legislation that relates to consented treatment, the public trustee office and the public guardian legislation. We're under discussion about what the best steps are to address all of the, both the needs of the public trustee and the public guardian and

the collateral implications, such as supported decision making.

Those discussions are happening and we are working with the legislative division and the public guardian and also canvassing other jurisdictions to find what best practices are in terms of present functioning.

The office is aware because the inquiries that come into the public trustee office on a daily basis sometimes relate to the very issues that you're raising. Government is committed to putting forward legislation that supports the best functioning of the office for vulnerable Islanders, including those that would need supported decision making.

Dr. Bevan-Baker: Again, I'm quite delighted to hear that, Clare. You gave a pretty clear timeframe in terms of when the review will be done and a new policy manual will be brought forward.

Any sense of a timeframe when those Islanders who have been waiting, again, for supported decision making legislation, when we might expect to see a draft of that?

Clare Henderson: I can't specifically provide you with a timeline at this time because it is a comprehensive review that's happening. When legislative change happens, as you're aware, there are collateral implications in terms of the legislation.

What I can do is undertake to make inquiries and provide a firmer timeline so that a response can be given.

Dr. Bevan-Baker: Chair.

I'd really appreciate that.

Chair: Go ahead.

Dr. Bevan-Baker: Thank you.

Clare, as of March 31st, 2014, the last time that we have the audited statements from your department, the net value of client assets held in trust was \$9.4 million.

Do you have a figure of where that stands today?

Clare Henderson: I don't specifically have that figure in front of me. I do understand that the numbers remain similar at present. Again, I can certainly confirm that and then provide that information to you after the appearance if that is agreeable?

Dr. Bevan-Baker: Sure.

Clare Henderson: If I could just have a brief indulgence to write that down?

Dr. Bevan-Baker: Yeah, absolutely.

Chair: Maybe while she is making that note: There is significant information, as well, that hasn't been covered in the briefing that talks about specific responses to audit concerns.

Perhaps, committee members, just think about whether we would like to hear those specific responses as well.

If you're ready, go ahead –

Dr. Bevan-Baker: Thank you, Chair.

Chair: – Peter Bevan-Baker.

Dr. Bevan-Baker: I see in the final bullet point here on the first page of your report, Clare, that the 2015 financial statements have indeed been provided and you're working on 2016. That's great. We'll have a much better idea of where the office is when that comes forward.

I'd like to switch now to the – a lot of moving parts in this segment of government at the moment.

Clare Henderson: Yes.

Dr. Bevan-Baker: We have a new child lawyer. There's been a lot of discussion around child advocate and supported decision making, I just brought up. There are three examples of things that may impact and touch on your office.

I'm wondering whether, I mean the only one that is actually in place now is the child lawyer. Has that position, in any way, affected the Office of the Public Trustee in terms of your relationships with that branch of government?

Clare Henderson: I apologize. If you could just clarify –

Dr. Bevan-Baker: Sure.

Clare Henderson: – you mean the relationship between the Office of the Children's Lawyer and the Office of the Public Trustee?

Dr. Bevan-Baker: Yeah, just if this new position, which has been created, if that, in any way, has impacted the work that you do, or – in a positive way, or is there any overlap between the two offices?

Clare Henderson: The Office of the Public Trustee is one component of a larger office, which is the Office of the Public Guardian, Official Guardian and Public Trustee. The official guardian, which is created under the rules of court acts as litigation guardian to minors who are involved in court proceedings. For example, if there is an insurance settlement as a result of a motor vehicle accident that there was a child involved in, the official guardian may be appointed as litigation guardian for the financial interests of the minor.

The children's lawyer has been doing significant and phenomenal work in working with children who are involved in, sometimes, contentious family law files and providing support and providing a voice for those children in court when decisions are being made about what their best interests are.

In terms of the, kind of, collateral impacts of functioning, I'm not specifically aware of a file, at present, that the children's lawyer and the official guardian are involved in concurrently. Certainly, that is something that is possible.

I can advise that the children's lawyer has been very collaborative with all of the offices that are available through the Family Law Centre. In the event that that type of collaboration would be of support to children involved in court proceedings, I'm very confident that both the children's lawyer and the official guardian would work quite well together in supporting the needs of Island children.

We're very excited at the work that's being

done to support children at times where they are most vulnerable and in need of having a voice.

Chair: Go ahead.

Dr. Bevan-Baker: Thank you, Clare.

Thanks for that clarity as the distinct roles of what your office does from a legal point of view and the children's lawyer.

In terms of a child advocate, clearly we don't have one here on Prince Edward Island at the moment, but you talk about how important it is that vulnerable children are taken care of.

Does your office have any position or any thoughts on the value of an independent office, or an independent position of child advocate and how that might impact positively or otherwise the work that you do?

Clare Henderson: Right now, my office is committed to supporting the work of the children's lawyer, who plays an on-the-ground, immediate role in providing a voice and support to children engaged in high-conflict family law files. So, the dedicated support that is being provided by the office is focused on the children's lawyer as being a very important role in providing a voice to children during court proceedings that directly impact their lives.

The work that the children's lawyer does also provides support to Island families that are engaged in high-conflict divorce proceedings, custody and access concerns. She provides a very important role in providing a voice for children and reminding parents that are in conflict that the voice of that child is important, and so at present, the division is very much supporting the rollout of the children's lawyer program and we're committed to doing that.

Dr. Bevan-Baker: Do you feel – Clare, and I – Catherine is doing wonderful work and I've spoken to her on a couple of files already and I absolutely agree with you. Do you feel, however, that the lack of an independent arms-length body is in any way an impediment to looking after the most vulnerable children?

Clare Henderson: I would point out that the Office of the Children's Lawyer is an officer of the court, and being an officer of the court has particular obligations in terms of that function and I would very much suggest that she plays a very independent function and that function is independent of – she's not taking instructions from parents. She's not taking instructions from government. Children are her clients. Ultimately, it is the child that she takes instructions from and that she advocates on behalf of.

As a lawyer and solicitor, she has a professional obligation at all times to act in the best interest of her client based on their needs and best interests. So, I would suggest that there is very much an independent, professional solicitor who is present in court when necessary and does what she can to ensure that things stay out of court; that high-conflict situations are de-escalated, that demands on the court system are mitigated because families have the opportunity to work together with a professional, with a solicitor, with a lawyer who is advocating and providing a voice for their children.

Chair: One more and we'll go to Chris Palmer.

Dr. Bevan-Baker: Sure, thank you.

Well, I'll move to one of the recommendations of the Auditor General in her most recent report, and that was that the office establish some form of performance monitoring or goals. Is that going to be a part of the review that you mentioned right at the beginning?

Clare Henderson: Absolutely.

We've been very excited at the review that's happening right now. We've been very fortunate to have staff from finance, from records management. The manager of the department for finance has been assisting the division in reviewing practices and we're looking on a go-forward basis to ensure that all of the recommendations of the Auditor General are put in place. The staff in the public trustee office are every day working very hard to ensure that the interests of vulnerable Islanders are protected, and they welcome the opportunity for feedback and for the opportunity to improve process.

That is very much part of the process that is happening now and we are looking forward to responding to all of the recommendations of the auditor.

Chair: All right, Chris Palmer. You had some questions?

Mr. Palmer: Yes. Thank you very much, Clare.

You may have partially answered my question, but I do want to start by saying the Auditor General has done some great work and I think it's really commendable that your group is so eager to implement as many of those recommendations as you can because that is the role of the Auditor General, is to help us improve the various lines of business that we have in government.

My question is more around the gaps or the exceptions to those recommendations. Are there any recommendations that the Auditor General made that your department doesn't agree with, that may not be implemented?

Clare Henderson: Some of the recommendations in terms of practicality may not be able to be implemented as specifically as recommended by the Auditor General. For example, one of the recommendations that was made was for invoices to be received for comfort allowances from clients.

But in terms of the legal functioning of the office, so when someone is declared incapable of managing the finances, any funds that they hold are transferred to the public trustee for administration. Those funds still belong to the individual, and so when a comfort allowance is being provided to the client, they're being provided their own funds and so from an operational and legal perspective, it would not be practicable to require that client to provide an invoice for their own funds.

In terms of some of the technical and legal functioning of the office, some of the recommendations are not practicable in terms of the actual functioning, but we are engaging in a review of the best practices within the office and working with finance to determine whether or not there may be better practices for the accounting of those

funds that may work towards complying with some of the recommendations.

Mr. Palmer: Thank you. Thank you for that.

I think what you're saying is the spirit of the recommendations will be implemented, but since it's your department and you understand how the department works and the daily function of it, may not be implemented exactly the way the Auditor General had suggested, but the spirit of it will be undertaken.

So is that for all recommendations? All recommendations will be implemented either precisely or to the spirit of the recommendations?

Clare Henderson: I think that would be a fair characterization, yes.

Mr. Palmer: Okay.

Clare Henderson: Any changes that are made within the office, both in terms of the policy and procedure perspective, will be done in consultation with operational staff; with the review of the technical requirements of the legislation, and any newly-imposed legislation when we get to that point; and also with the assistance of finance to ensure, at all times, that we are engaging in best practices.

We also are committed to reviewing those practices on an ongoing basis because as the office evolves, as the needs of vulnerable Islanders change, we want to make sure that the office is responsive to those needs and the changing environment.

Mr. Palmer: Great, thank you.

I think that's important to know on this committee because, as a forward-looking committee that tries to figure out how we can assist government to continue to move forward with best practices, I think it's really important for us to be looking ahead and understanding what the department's responses are to those very important recommendations that come from the Auditor General.

Thank you.

Clare Henderson: I appreciate that the committee is open to the idea that sometimes there are technical, legal requirements and practical functioning that may impact the – I don't even know if that's a word. I was going to practicability, but that may –

An Hon. Member: (Indistinct)

Clare Henderson: – it is now – that may impact our ability to specifically and technically put forward some of the recommendations in terms of office function.

Mr. Palmer: Thank you.

Chair: Kathleen Casey.

Ms. Casey: Thank you, Mr. Chair. Clare, thank you for your presentation.

As you know, this committee would make recommendations to the Legislative Assembly and I'm quite interested in the developing of the changes to the legislative – you're doing a legislative review process and during your presentation you mentioned it's imperative that the operational staff needs to be involved in the developing of the changes to the legislation, but then you also spoke about the tremendous effort from the office when you're working on a new client or when a client makes a call – or not a client, when you have to look after a client in your office.

Is the Office of the Public Trustee in need of more support?

Clare Henderson: Government has recently allocated an additional solicitor position to the office that will provide significant support in terms of office functioning. That position will also provide an additional legal professional that will be available to assist in terms of the policy review and drafting and the day-to-day functioning of the office.

I can tell you that the division is committed to this process and if there is a requirement to allocate temporary resources to assist during the development of both the policy and with the rollout of any potential legislative change, that the consideration will be given to the allocation of those resources and allocation of them, if it is

necessary. We want to ensure that the proper functioning of the office and proper support to vulnerable Islanders is maintained at all times and so there will be ongoing operational review and discussion with the department to ensure that such allocations are made.

Ms. Casey: Thank you. Thank you, Mr. Chair.

Chair: Bush Dumville.

Mr. Dumville: Thank you very much for your presentation.

I'm just curious: Age of the client – you say the client has a lot to say (Indistinct) who you work for. Is there an age limit of what a client – in regards to their interaction with their family? Like, if you have a very young client?

Clare Henderson: So, it would depend on the particular client's circumstance and what the role of the public trustee is in terms of the order that mandates their involvement.

For example, if there is an order that declares someone incapable of managing their finances, but they haven't been declared incapable of dealing with their own personal care, then you have a file where the public trustee is involved, but the public guardian is not.

That person, who has been deemed incapable of dealing with their finances, may be able to make personal care decisions, but require involvement with the office in relation to the day-to-day functioning of their finances.

There is nothing within the legislation that would preclude someone of any age being involved with the office. I mean from a practical perspective, I'm not certain that there would be a circumstance where a young person would be involved with the public trustee, because generally a young person would have a parent or a guardian that would be making financial decisions.

It's 2017; eight year olds have cellphones. I loathe to make a declaratory statement because the world is changing.

Mr. Dumville: Right.

Clare Henderson: But there is nothing that would preclude the involvement of the trustee if an individual was managing their own finances and deemed incapable of doing so. There may be limitations in terms the timing of that operation by the court order.

Obviously, it's an office of last resort. It may be that, at some point, someone is declared, under the trusteeship of the public trustee, but then they have a family resource, for example, who returns to the Island and there may be consideration given to the trusteeship – moving to the family member, rather than the public trustee.

As indicated, the office is an office of last resort. If there is a family member, or a friend, or a resource within the community that is available, the preference is for the practical functioning of the individual to have someone other than the trustee to do that work.

Mr. Dumville: Okay, just another in regards to Chris' question about the practicality and regards – you were talking about the receipt thing, giving them their own money.

Clare Henderson: Yeah.

Mr. Dumville: What do other provinces do? Are you looking at that?

Clare Henderson: Yes.

In a number of other provinces the process that the office on PEI presently uses, which is the funds are given on a schedule, is what we're presently using. Again, we are engaging in a best practice review. It may be that we are meeting the best practice standards of jurisdictions, but we're not taking that as the final word.

We're working with the manager from finance with the records management and with the frontline operational staff to do a comprehensive review looking to – what are the best practices? Again, we're in process. It may be that as a result of the review the current standard changes somewhat, or it may comply with something from another jurisdiction. I can't give you a specific answer presently because we're still engaged in that review.

Mr. Dumville: Thank you, Chair.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair. Thanks, again, Clare.

I realize with your short tenure in this position and having been thrust in front of this committee at short notice, as well, that you're in a bit of a difficult situation here.

I want to come back to the issue of the child lawyer and child advocate because I sort of sensed from your response there that your opinion or your understanding is that the child lawyer is very equivalent to a child advocate, or did I misinterpret what you said?

Clare Henderson: I'm aware of the operational differences between the function of a child advocate office and the children's lawyer.

I apologize, I came briefed today to speak about the –

Dr. Bevan-Baker: Sure.

Ms. Casey: (Indistinct)

Clare Henderson: – issues relating to the public trustee office.

Dr. Bevan-Baker: Absolutely.

Clare Henderson: I am not –

Dr. Bevan-Baker: Yes.

Clare Henderson: – in a position to specifically respond. I can tell you that, personally, that I am aware of the difference between the function of a child advocate and a children's lawyer, and I am working to support the Office of the Children's Lawyer within the division in what I believe is very important, very exciting, very frontline going forward helping Island families and Island children so –

Chair: And thank you, Clare, for attempting to answer those questions. I realize it's a little bit beyond the scope of what you were prepared for.

Just to clarify, as well, the children's lawyer

doesn't sit in the Office of the Public Trustee, is that correct?

Clare Henderson: No.

Chair: No.

Clare Henderson: The Office of the Children's Lawyer is within the family law section –

Chair: Right.

Clare Henderson: – of the division of family and court services.

Chair: So, yeah, don't feel that you have to answer questions about the children's lawyer, but thank you very much for that.

Peter, go ahead.

Dr. Bevan-Baker: I'm going to ask a question, anyway, Chair.

Not specifically on this, but because were we to have an office of the child advocate it would have a significant impact on your department.

The point I'm trying to make here is that, in no way – and I don't think any independent observer would claim, and you've said yourself – that the children's lawyer is a replacement or is equivalent to a child advocate's office. A child advocate's office that – the children's lawyer only gets involved with cases before the court, but a child advocate office has a much broader mandate than that. They make recommendations for government, both legislatively and they promote initiatives that they think government should be doing. Those sorts of things can only be done effectively when they are outside of government.

I have concerns at a very base level. Back in 2003, the United Nations had a committee, which made a specific recommendation that the jurisdictions in Canada that did not have independent child advocate offices should install one. That's a long time ago and we still don't have one on Prince Edward Island.

As a civil servant I understand you're not in government; you're a civil servant. I just

think that the lack of this independent office and the impact it would have, I believe, on improving the work that your office does, is an important thing.

While I understand that the questions are perhaps not fair to you, Clare. I absolutely accept that –

Chair: Perhaps –

Dr. Bevan-Baker: – I think it's important that we understand that all things in government are connected, and that were we to have a child advocate office here it would have an impact on, again, I believe, a positive impact on your department. That's the point I'm trying to make here, Chair.

Chair: Thank you, Peter Bevan-Baker.

I think, maybe, Vice-chair Chris Palmer, would you like to make any comments at this point?

Mr. Palmer: I think to kind of keep us on track here of the pieces that Clare is actually here to present and responsible for, may be more appropriate than, kind of, making sweeping statements about some other things, which may very well be important for people to say, but I don't think they're Clare's responsibility, and that's not what she's prepared to come here to speak to us on.

I think, in fairness to our witnesses, we should kind of keep us focused on what she prepared to come and present to us.

Chair: Thank you.

Sidney MacEwen.

Mr. MacEwen: Thank you, Chair.

Thanks, Clare, for your presentation and the briefing back. I'd like to briefly follow-up on what Peter was saying because I appreciate your comments. You said that the child lawyer is doing phenomenal work. You guys are supporting in any way you can; very glowing comments. That's nice to hear. Peter's interactions and things are good.

But I am happy that you did clarify, Peter, that is the job your department is to support

the child lawyer, but an independent office would have the ability to do much more. I do appreciate your clarification.

Dr. Bevan-Baker: Thank you, Sid.

Mr. MacEwen: My question, I guess, is, and you'll have to excuse me for sitting in on this committee today, so I wasn't aware of the replacement.

The fact that the public trustee is not able to appear because they're now – his new appointment is judicial in nature, is that – you tell me if this is a fair question, but is that common across the country? Do we have public trustees that can't appear before standing committees because other ones are in a judicial nature, do you know that?

Clare Henderson: The – Mr. Gallant –

Mr. MacEwen: Yeah.

Clare Henderson: – who is recently appointed Acting Prothonotary of the Supreme Court and the Court of Appeal.

We are in the process of making a recommendation for an acting, public guardian, official guardian and public trustee, who would take over the role as public trustee, public guardian and official guardian during the period that Mr. Gallant is acting as the Prothonotary.

Because of the Prothonotary appointment, and it's in that role that is a judicial officer within the Supreme Court and the Court of the Appeal, because of that role he is unable to appear in front of the legislative branch. It's not in relation to the public trustee, public guardian and official guardian position, but rather his recent appointment as Prothonotary.

Mr. MacEwen: Chair?

Chair: Go ahead.

Mr. MacEwen: That doesn't preclude him from continuing on as the public trustee, though, in the interim?

Clare Henderson: While he holds the interim Prothonotary position?

Mr. MacEwen: Yes.

Clare Henderson: He will not be following the appointment of an acting public guardian, official guardian and public trustee. He will not be acting as public guardian, official guardian and public trustee. He will be the Acting Prothonotary of the Supreme Court and Court of Appeal.

Mr. MacEwen: But right now he is the public trustee and the acting in the new –

Clare Henderson: Yes –

Mr. MacEwen: Okay.

Clare Henderson: – while steps are being taken to appoint an acting public guardian, official guardian and public trustee. There is no quick way to say that.

Mr. MacEwen: No, and I appreciate it.

I understand it's because we've got acting and acting and acting. I'm just wondering – it's just very odd to me that we don't have someone in place that can appear as a public trustee here. You would think that would happen – another person would be appointed acting public trustee in the interim, I guess is my question.

Clare Henderson: Government is moving to do that. Unfortunately, not unfortunately –

Mr. MacEwen: Yeah.

Clare Henderson: – the timing of the appointments to the Supreme Court were such that the vacancy in terms of that office, the timing of it was unexpected.

As you may have seen, there were some delays in the appointment of superior court judges. It happened quickly and government is moving to respond quickly to appoint an acting public guardian, official guardian and public trustee.

Mr. MacEwen: Chair, I have another question.

Chair: (Indistinct)

Mr. MacEwen: Thank you, Chair.

Clare, in some of the progress that your second bullet talked about that 0.6 FTE from justice and public safety –

Clare Henderson: Yeah.

Mr. MacEwen: Does that position stay with justice and public safety, or is that a position in your department now, or your division?

Clare Henderson: The intention is that that would be within my division. That 0.6 of that position would be dedicated to the support of the public guardian, official guardian and public trustee office, and would also provide support and overview for the court services division, as well.

Mr. MacEwen: Sorry, you say ‘intentioned’ –

Clare Henderson: At present, because we’re engaged in an operational review, the manager of finance for the department of justice is seconded to my division about three days a week. We also have an officer from finance that’s assisting the office.

Mr. MacEwen: Yeah.

Clare Henderson: The intention is to allocate that resource going forward to provide support to the PGOGPT office – that’s quicker – on a go-forward basis.

I’m working with human resources and talking to the department to take steps to allocate those resources. Again, we’re presently involved in an organizational review in terms of the recommendations from this audit and looking to ensure that we’re putting forward best practices before making permanent allocations, or requests for permanent allocations.

Mr. MacEwen: Chair?

Thanks, Clare. In the section under the condo sale, where there was significant concern raised by the AG –

Clare Henderson: Yeah.

Mr. MacEwen: – in relation to the sale of that condominium.

In your third paragraph, there, you say: “Steps have been taken to prevent this from occurring again.”

Could you speak to those steps, maybe more specifically?

Clare Henderson: In relation to this particular sale, effectively what happened was there was documentation in the file. There was a request for that documentation from a third party for a review process that had nothing to do with the office. There was a request from a law society for information relating to the real estate transaction as a result of issues arising not relating to the public trustee office.

Unfortunately, when the documents were removed to be copied they were not filed back properly. This was a filing error. The office acknowledged the filing error to the auditor. The documents were located, misfiled in April and the auditor was advised.

Part of the ongoing review of file management practices in the office seeks to ensure that that type of thing doesn’t happen again. It was an unfortunate error. We’re working to take steps to ensure file management practices are supported so that that type of thing doesn’t happen again.

The transaction was properly documented. The funds were allocated as set out. It was unfortunate that an inadvertent error in filing resulted in the miscommunication relating to this issue.

Mr. MacEwen: Thank you. Thanks, Chair.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: Thank you, Chair.

I’d like to look at the 2017 auditor’s report, paragraph 3.50 where she talks about – she describes an inadequate accounting system, which is, as I understand it, at least at the time of her report, was still manual in terms of keeping track of individual ledger accounts of the 300 or so clients.

I’m wondering whether there has been any progress made on computerization within your office at this time.

Clare Henderson: That is presently under assessment in terms of the needs assessment process. We have identified that a number of the functions within the public trustee office and the public guardian and official guardian are actually similar in terms of practical functionality as currently happens within the court system.

We're engaging in a comprehensive needs assessments process for the court case management system that will include the office of the public guardian, official guardian and public trustee. When developing a case management system for the court it would encompass, in terms of functionality, the PGOGPT office.

We are looking to include, in terms of the necessary accounting system for both the court and the PGOGPT office, as part of that needs assessment system for the recommendation for a new case management system that would function for both the court and the PGOGPT office.

Dr. Bevan-Baker: I'm sorry, Clare. I didn't quite follow that. The question was regarding the computerization of records –

Clare Henderson: Yeah.

Dr. Bevan-Baker: – and how that would facilitate accuracy.

Given that in the Auditor General's report over 10% of the monies held in trust were shown to have errors in their accounts. It's whether or not the accounting system is still a manual one where you manually enter into the ledger and transfer from one to the other or whether it's now computerized.

Clare Henderson: My understanding – and I apologize, I don't know specifically – my understanding is that the office does have a computer system called Computrust that they use for the technical accounting for the office.

Again, as part of the needs assessment that we're engaging in, we're looking to see whether or not there are functionalities that are not included within that system that ought to be included in the procurement of a new system that would be part of the case management system that would have a financial functioning going forward.

We are working to identify any deficiencies or opportunities for improvement in terms of the – both the accounting system and the case management system for the office generally.

Dr. Bevan-Baker: Chair.

Chair: One more.

Dr. Bevan-Baker: Thanks, Chair.

Just to be clear; you're not sure that whether the accounting system has indeed been fully computerized at this point?

Clare Henderson: I'm not aware that there's been any specific changes. We haven't acquired a new system since the auditor made her recommendations. We are engaged in a process that will identify the needs of a new system, but the system remains what it was in terms of – at the time that the auditor engaged in her process. We are, again, working with finance and the division to identify where improvement need to be made based on the recommendations of the auditor.

Chair: Thank you.

Chris Palmer.

Mr. Palmer: Thank you, Chair.

My questions are along the same lines as Peter's. In 3.5 my notes here, from the last presentation, was that this is a very manual process.

As part of the review you're doing are you looking at other jurisdictions outside of PEI to see what tools they have and see if there are ways that we can implement those? Or is this a we're-going-to-customize based on the way we do things today?

Clare Henderson: We absolutely engage in jurisdictional reviews and scans in terms of best practices from other jurisdictions.

For example, in other sections within the division we have actually, previously, procured software from other jurisdictions. Then, made the requisite changes to allow for proper functioning under PEI legislative regimes and practical realities.

We are, absolutely, looking to identify best practices from other jurisdictions in terms of both software and process. That is specifically a part of the needs assessment process. They are engaging in a jurisdictional review to ensure that we are not reinventing wheels that may be working nicely elsewhere.

Mr. Palmer: Chair.

I think we may have already asked this, but do you have any timeline of when that review will be completed and we can start looking towards implementation?

Clare Henderson: The needs assessment process is going to be, hopefully, subject to any type of operational issue that arises, completed within the next six months.

Mr. Palmer: Okay, thank you.

Chair: Thank you.

I do have a question as Chair. I do believe that the concerns that were raised by the Auditor General were very serious in nature, as indicated by both the standing committee and the AG.

I think it's important that we understand some of the specific responses to the audit concerns. In particular, the unclaimed asset transfers is one that I've been looking at, and I think is important from the office perspective that we, as a standing committee, understand that and the public, in general, do.

I was wondering if you could go over the unclaimed asset transfer and explain some of your response to it.

Clare Henderson: Absolutely.

The unclaimed asset transfer information is highly technical as it sets out in the response. The \$545,000 that was transferred was actually as a result of funds that had pooled as a result of a legislative change that was initiated in 1994 that basically made the public trustee office a holding pool for a number of unclaimed assets throughout government.

These included things like traveller's cheques, gift cards, funds on account with

utilities. The pool of funds was not entirely made up of funds held by the public trustee office for clients of the public trustee. What appears to be a very large number is actually over 30 years of unclaimed assets from a range of places, and that pool was created on the basis of legislative change that was made on the basis of recommendations of the Auditor General over the period of a number of years relating to how government held unclaimed assets.

A lot of that legislation was repealed in 2013. If you go back to the *Public Trustee Act* that was in place pre-2013, there was an entire section in that part of the legislation that set out a laundry list of funds that would be pooled within the public trustee office. That is no longer the case.

Now, going forward, the unclaimed funds that are held by the public trustee are funds of public trustee clients. One of the important things to note is that the transfer of these funds to government in no way precludes the ability of people making claim to those funds to make claim for those funds going forward. There is a timeline set out in the legislation that can be up to 30 years from the date that the funds are transferred.

If you look at the document of the \$545,000 that was transferred, over 50% of the funds had been dormant, unclaimed for more than over 20 years. From the date of that transfer, depending on which portion of the legislation the funds relate to, an individual making claim to those funds has anywhere between 10 to 30 years from the dates the funds were transferred to make application to get those funds back. The transfer of the funds does not preclude the right of individuals who may have claims of getting those funds back.

Also, this fund transfer, there is a review of all of the funds within the public trustee for dormancy each year because the transfer of the funds is in compliance with the legislation to happen when those funds are dormant for five years.

Each year, there will be new sets of funds that are potentially dormant, or have been dormant for five years. That review happens on an annual basis. Upon our review it looks as though we're looking at about \$30,000 a year in terms of unclaimed assets.

Those assets, following transfer, may be still subsequently claimed 10 to 30 years, depending on the specific legislative provision that applies to those particular funds, by anybody making claim.

Chair: Thank you for that clarification.

I think it's extremely important to understand that. That this money is not something that came in from 2014 through 2016, but it was actually an accumulation from the previous 30 years.

Thank you for clarifying that.

Clare Henderson: If you look –

Chair: It helps me.

Clare Henderson: When I say it's about \$30,000 per year, that's an average. If you look, we, in terms of the schedule for 2018, if those funds remain dormant in 2018 only \$679 and some change would be transferred, so depending on the year there is a range and I would anticipate that because we have now transferred, based on the recommendation of previous Auditor General reports, the holding pool that accrued over 30 years, that number should never be of quite the size that it was during the transfer that was flagged.

Chair: I have another question for you.

This is related to guardianship of people who cannot make decisions for themselves. For example, I have constituents who experience some form of dementia and they are taken from their homes into hospitals. Then, they stay long-term in hospitals beds because they want to return to their home, of course, they would be better placed in long-term care. However, the family may have power of attorney, but they need guardianship in order to make the decision for that person to move to long-term care.

I was wondering in your – sorry, I should say, it's not good for the person to be in hospital for that long time, especially when they're trying to escape and return home. They would be much better placed in long-term care. There is a significant fee associated with the family becoming the guardian.

I was wondering in your legislative review process, I know if there was no family, you would become their guardian, but I was wondering if you're going to make any recommendations on how legislation could change to more easily allow families to make that decision for their loved ones without incurring that financial expense of becoming a guardian.

Clare Henderson: I can tell you that government is committed to reviewing the legislation to make it more responsive to the present needs of vulnerable Islanders and their families and there is a comprehensive review that's happening in terms of what best practices are, and what makes legislation more responsive to the needs of families. That process is ongoing.

Issues like that, the one that you've raised, are certainly things that can be identified in terms of making the process more responsive for families.

As indicated, the Office of the Public Trustee, Official Guardian and Public Guardian are offices of last resort. In the same way that the public trustee office takes steps to identify family and support persons that can take on the process, so too does the public guardian. They're always looking for resources within families so that the person is supported within their community.

I would certainly suspect that is something that warrants consideration and will be considered during the legislative review process.

Chair: Great.

Clare Henderson: I'll make a note of it.

Chair: Thank you very much.

Does anyone have any other questions at this time?

Go ahead, Sidney.

Mr. MacEwen: Sorry.

Thanks, Chair, and thanks, Clare.

Just one more clarification about the judicial officer of the courts and unable to appear:

Why can't a judicial officer appear before a standing committee?

Clare Henderson: Because judges and judicial officers are subject to the constitutionally protected principle of judicial independence. The judicial branch being separate from the legislative branch and the executive branch is the cornerstone of judicial functioning in Canada.

Mr. MacEwen: Yeah.

Clare Henderson: In order to preserve the principles of judicial independence as set out by the Supreme Court of Canada, as constitutionally entrenched in Canada, in terms of conventional principles, it is not – absent very exceptional circumstances – it is not appropriate for a judicial officer to be seen to be called in front of a legislative committee because it calls into question the independence of the judiciary, who are sometimes called to make decisions that government and the legislative branch may not necessarily agree with.

In order to preserve the constitutionally protected principles of judicial independence, Mr. Gallant, as a judicial officer, was unable to attend.

Mr. MacEwen: That's quite –

Ms. Casey: (Indistinct)

Mr. MacEwen: Pardon?

Ms. Casey: There's a –

Chair: Sorry, Kathleen Casey.

Ms. Casey: Thank you, Mr. Chair.

Hon. member, if you read up on the Latimer House Principles, it would explain the three –

Mr. MacEwen: I left it at home.

Ms. Casey: – branches and the –

An Hon. Member: You can borrow my copy.

Ms. Casey: – independence of each branch to good governance. I just offer that to the hon. member for some nighttime reading.

Chair: Thanks for your intervention.

Sidney MacEwen, anything further?

Mr. MacEwen: Yeah.

That regards any subject, then. If someone of a judicial nature was coming in on any topic, if we were talking about agriculture or anything like that, they do not appear at standing committees across the country.

Clare Henderson: I'm not aware. Again, I don't like to speak categorically –

Mr. MacEwen: No –

Clare Henderson: – but I'm not aware of a circumstance where any member of the judiciary or a judicial officer would appear and respond.

Mr. MacEwen: Thank you. I appreciate it.

Clare Henderson: Judges speak through their judgments and written decisions, and directions to government in terms of responses to matters that are before them.

An hon. Member: Thank you.

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: I, too, don't have Latimer's on my bedside table, but I am acutely aware of the rationale behind separation and I'm just wondering whether Mark – I mean, he wears several hats, both within your office and outside – so he would have had the autonomy here today if somebody asked him a question that was inappropriate in his role as Prothonotary to say: That's not appropriate for me to answer that.

Whereas all of the questions regarding his other hats attached to your office would have been in my mind entirely appropriate. So I'm still not quite sure why Mark couldn't be here and make that quite simple, in my estimation, distinction between two types of questions.

Clare Henderson: I am hopeful that I have answered all –

Dr. Bevan-Baker: Oh.

Clare Henderson: – of the questions that the committee had, and –

Some hon. Members: (Indistinct)

Dr. Bevan-Baker: Please don't interpret that as a –

Some hon. Members: (Indistinct)

Chair: I think maybe we'll take that as more of a statement (Indistinct)

Ms. Casey: Yeah, absolutely.

Dr. Bevan-Baker: No, I want to be clear. In no way was that a criticism. You've done a fantastic job, Clare, in all respects, but especially considering the short timeframe that you had, and that's not the purpose of my question here.

My question is: Mark as an individual wears several hats, one of them absolutely associated with the judicial branch of government; but the questioning here this morning was not related to that aspect of his work, so I still am a bit baffled as to why Mark could not appear – not that he would have done any better job than you.

Chair: Thank you, Mr. Bevan-Baker, for raising that concern.

I should point out that we did receive a letter on November 2nd from justice and public safety acting deputy minister Karen MacDonald regarding the appearance of Clare Henderson in place of Mark Gallant, and we did have the opportunity to respond to the clerk.

I should say 'we'. I wasn't actually part of the committee at that point, but I'm aware of the history. It's great we're raising these concerns now. Some of them may be valid, but we did have the opportunity to raise these ahead of time as well.

I know, Sidney, you're also sitting in as a proxy on the committee today, so thank you for raising those concerns.

One thing – if there are any other questions – I did want to give you a chance, because this is an opportunity for you to bring forward to the Standing Committee on Public Accounts any recommendations you

would like to see us bring forward in our report to the Legislative Assembly. I can't promise we will, but at least you can get any asks on the table that you might have on behalf of the department.

Clare Henderson: I am just grateful that the committee gave us the opportunity to come and respond and provide further information in relation to some of the concerns that the committee had.

The division and government are looking forward to moving forward and improving constantly the support that's being provided to vulnerable Islanders, and so I'm grateful for the opportunity to appear. I wasn't aware that I was permitted to bring a wish list. I'll know better next time, but I do very much appreciate both the questions and the feedback and the opportunity to appear today to provide further information.

Chair: Again, thank you, if there are no further questions, Clare Henderson, for coming forward today. You did a fantastic job on short notice.

Mr. Palmer: Yeah.

Chair: And I wanted to thank Mark Gallant as well as the office of the Public and Official Guardian and Public Trustee for the work that you've done.

I know that there were serious concerns raised in the Auditor General's report and we asked serious questions here at standing committee. That's all part of our democratic process; but I believe it doesn't reflect on the job that you do as individuals, because I think you do a fantastic job working for the people of this province, so thank you.

Clare Henderson: I do hope that some of the concerns have been alleviated, and I do echo the work that the staff and the public trustee and the public and official guardian office do is significant, and they very much take to heart the support that they provide to vulnerable Islanders, and they very much appreciate the opportunity that's been provided by the committee to respond and alleviate the concerns.

So thank you very much.

Chair: Thank you.

Mr. Palmer: Thank you.

Chair: All right. Moving to item six on the agenda, this would be a consideration of any motions that may have arisen from the debate today and the discussion.

I have been trying to take some notes and I don't believe there is any information that we wanted to be provided in addition. Anything? I'm seeing people shaking their heads around the table.

Perhaps I'll move – are there any motions brought forward or any new business that wants to be discussed?

Mr. MacEwen: Chair?

Chair: Yes, Sidney MacEwen.

Mr. MacEwen: I'd like to – and I might get some frowns around the table here – but I'd like to bring forward a motion. It has to do with e-gaming again, it has to do with witnesses again, and it's because as an MLA I continue to get questions about it.

So in light of our new alignment here and new members of the committee, I'd like to put a motion forward that we move to call: former Premier Robert Ghiz, former finance minister Wes Sheridan, former chief of staff Chris LeClair, Bill Dow, Garth Jenkins, Paul Jenkins; the e-gaming working group members, Mike O'Brien, Gary Scales, Kevin Kiley; and former deputy ministers Melissa MacEachern, Michael Mayne and Tracey Cutcliffe; and also the securities commission officials Steve Dowling and Katherine Tummon, to explain further their role in e-gaming.

Chair: Well, thank you Sidney MacEwen.

Is there any discussion? Yes, Kathleen Casey.

Ms. Casey: Thank you.

Sidney, during the Auditor General's very thorough presentation, she was asked numerous times about bringing these individuals before this committee, and she was also asked if she received sufficient information from her discussions with these individuals; and she said yes, she had already received enough. She was satisfied

with the information that she had received, that there wasn't a need to bring these individuals.

So I would not be in support of that motion, Mr. Chair.

Chair: Okay.

Any other further discussion?

Chris Palmer.

Mr. Palmer: My comments are similar to Kathleen's. The Auditor General had interviewed – and I just forget what the number, 53 or 54 people – and she did say that she had asked all the questions and was satisfied with the work that she had done on the file and was very comfortable that she had all the information that was available, so I am not in support of this.

We've been down this road. We're a forward-looking committee. I know some people don't like it when I talk about that, but it's – I think we should be advancing the working of the provincial government and move forward and the Auditor General comes back, does yearly reviews, talks about things that we can do better. Management then makes decisions about which pieces they will move forward and which pieces they won't move forward.

I think we should be focusing on the pieces that the Auditor General is making recommendations about, that management will implement. I think that's the forward-looking nature of this committee. It's important work. The AG does great work and I'm not going to support this. I think we should get on with the work we're doing.

Chair: Any other discussion?

Dr. Bevan-Baker: Chair?

Chair: Peter Bevan-Baker.

Dr. Bevan-Baker: I appreciate everybody's comments on this and the motion from Sid, and we have to remember that the AG report was strictly a financial report. It wasn't an entire investigation into the e-gaming file; and while she was satisfied with the information she got related to the financial

aspects of this, e-gaming extends far beyond an Auditor General's review of the files.

So I am supportive of Sid's motion, as I was when – well, it was Darlene at the time and myself brought forward repeated motions for witnesses to come forward, not just to look into the financial aspect of the e-gaming file but the management and the decisions that were made around that.

And we still – we may have been down that road before, but there was a pretty large roadblock placed in the way and we've never managed to get very far down that road, so I would support the motion.

Thank you, Chair.

Chair: Thank you.

As Chair, I believe I'm allowed to comment on the motion as well. Is that correct? That's what I understand from the clerk.

I just wanted to say that in my conversations with Islanders across Prince Edward Island – I was fortunate enough to be able to travel the Island this summer – this issue, e-gaming, is still top of people's minds and there are lots of outstanding questions.

There's some that have suggested steps such as public inquiries that will cost a lot of money to hold to get to the bottom of it. I just want to say we have the power at this standing committee to call witnesses and compel them to come in under oath to discuss this, and so this may be a prudent thing to consider and I believe it's a very valid motion that's being brought forward on the floor.

Before we continue, (Indistinct) any further discussion?

The clerk – Ryan, you had some comments?

Clerk Assistant: Yeah.

Actually, just from a procedural perspective, the long list of witnesses proposed in the motion, I didn't quite catch every single one of them but I know several if not all have actually previously been proposed in motions before, and the committee came to a decision on those.

Actually, to make the motion in order, the committee would have to rescind its previous decisions on all of those and then proceed with the question on whether it wants to invite those members in, because it really can't make contrary decisions within the same session without rescinding the first one.

Mr. MacEwen: Chair?

Chair: Go ahead, Sidney.

Mr. MacEwen: Thank you.

Thanks for your clarification, Ryan. Is that the same when those motions were put forward in response to the e-gaming, the AG's report on e-gaming? If we're on to other business, so to speak, is that still –

Clerk Assistant: Well, my understanding (Indistinct) –

Mr. MacEwen: – going forward forever, regardless of the topic?

Clerk Assistant: Yeah. I understand previously they were put forward on the e-gaming topic, and that's what you're proposing here.

Mr. MacEwen: Yes, yeah.

Clerk Assistant: (Indistinct)

Mr. MacEwen: Well, it's on the topic. The ones before were on the report specifically. Mine are in general just to the e-gaming file in general, not specifically to the report. Does that still rule it out of order?

Clerk Assistant: I'll put it to the committee's decision as to whether they're in order or not, but (Indistinct) –

Mr. MacEwen: No, I understand the procedure. So, technically I would have to put a motion forward to rescind the decision on the former motions.

Clerk Assistant: Yes.

Mr. MacEwen: And I'll do that now.

Chair: Yes, Bush Dumville.

Questions?

Mr. Dumville: Can I ask the clerk: Can we actually do that?

Clerk Assistant: The committee can rescind previous –

Mr. Dumville: We can?

Clerk Assistant: – decisions.

Chair: We've seen that in the past on motions of a very similar nature, in fact.

Clerk Assistant: I would also clarify that it's decisions within the session as well, so we're still technically in the second session of the 65th general assembly.

Mr. MacEwen: That's true, you're right.

Clerk Assistant: All the decisions are consistent. In a new session, the committee can make new decisions.

Mr. MacEwen: Yeah, that's (Indistinct)

Chair: Okay, so just to be clear: Sidney, are you –

Mr. MacEwen: I'd like to put a motion forward to rescind the decision on calling those witnesses to come in.

Chair: Are you withdrawing your initial motion to put forward another one or –

Mr. MacEwen: Yes. I withdraw the initial motion and put forward a motion to rescind the decision to call in those witnesses in relation to e-gaming.

Chair: Okay. Any debate on the new motion on the floor?

All right. Does everybody understand the motion?

Mr. MacEwen: Yes.

Chair: Bush Dumville.

Mr. Dumville: So if we vote not to rescind it, then there's no new motion that can come forward.

Chair: I will maybe refer that one to the clerk.

Clerk Assistant: Yes, if the committee votes not to rescind its previous decisions, then those decisions, those motions, can't be made again.

Chair: And to be clear –

Mr. MacEwen: (Indistinct)

Chair: – this is a motion to rescind previous decisions related to witnesses to e-gaming?

Mr. MacEwen: That's correct, Chair.

Chair: Okay. So it's not all previous decisions? Just to be clear here.

It is specific to witnesses –

Mr. MacEwen: I think the committee's comfortable with the intent of my motion to rescind.

Chair: All right. Is everyone comfortable with the intent of the motion?

An hon. Member: Yeah.

Chair: All right. All those in favour of the motion, respond by saying 'aye'.

Some hon. Members: Aye.

Chair: All those against respond by saying 'nay'.

Some hon. Members: Nay.

Chair: It appears that the nays have it.

Mr. MacEwen: Thank you, Chair.

Chair: The motion is defeated.

Thank you.

Are there any further motions? Any new business that people would like to bring forward today?

Mr. MacEwen: Chair?

Chair: Yes.

Mr. MacEwen: Just a clarification, if the clerk could provide it, on calling witnesses.

I am still curious on the role of the judicial nature and do we have the power to subpoena someone to appear, just for clarification purposes, in future? Or can someone actually refuse based on judicial grounds?

Clerk Assistant: Well –

Mr. Dumville: Chair?

Chair: Bush Dumville.

Mr. Dumville: (Indistinct) Sidney's thing, quad-judicial entities, you know? The sensitivity around those? Because the government, we all basically know we're not supposed to interfere with the judicial system or its independence, but there are quasi-judicial entities such as IRAC et cetera.

I'd like that clarification on that, too.

Chair: Thank you, Bush.

Maybe we can even clarify on the two parts; just the ability to compel witnesses in general and the ability to compel witnesses that may be part of the judiciary branch.

Clerk Assistant: Sure.

Thank you, Mr. Chair.

The committees of the Legislature and the Legislature itself have the power to call witnesses. Typically first by inviting, but as you mentioned, by summoning them if necessary. That power has only a few exceptions such as the Lieutenant Governor cannot be compelled to appear or the sovereign.

In terms of the power to call members of the judiciary, we did, as a clerk's office, look into this because the response from the acting deputy minister citing independence of the judicial, executive and legislative branches of government, we certainly recognize that that independence we were hoping for citation of a particular statute of decision indicating that members, judicial officers of the court, are – simply cannot appear before a legislative committee. We didn't receive that. Perhaps further clarification could be sought on that regard.

From our perspective, we don't know of such a limitation of a legislative committee or the Legislature itself to compel the attendance of a judicial officer of the court. The independence of the judicial branch from the legislative branch is typically upheld in the form of something called the Sub Judice Convention, which is a voluntary restriction that the Legislature and its committees put upon themselves to not look into matters that are before the courts.

It's not, from the research we have done, it does not cover the officers of the courts themselves. It would also be noted that, in this case, the committee was seeking the appearance of the public trustee to talk about the public trustee role, not to talk about the role of the Prothonotary, which is, in my understanding, an officer of the court.

Mr. MacEwen: Thank you.

Clerk Assistant: That is my understanding.

Mr. MacEwen: Chair?

Chair: Yes, Sidney.

Mr. MacEwen: Thanks, Ryan.

Like I say, I didn't – it was my understanding that you're right, that the LG was the only exception and we don't talk about matters before the courts. I didn't want to get into a debate because I certainly don't know the rules, but I appreciate your clarification today that it appears that we are well within our rights for that person to come here.

But also, maybe, as to follow-up with that citation with the government, I guess we should just get permanent clarification going forward so that, in this case, I don't think it was a serious matter, but it very well could be. We don't want a government department using that excuse if it's not a valid excuse going forward in this certain situation.

Chair: All right. You're happy with that request, Ryan?

Clerk Assistant: To seek clarification from the acting deputy minister on the particular –

Mr. MacEwen: Well –

Clerk Assistant: (Indistinct)

Mr. MacEwen: – I like your clarification now –

Chair: Yeah, just to confirm your clarification, basically, I think.

Mr. MacEwen: – and if the committee has to follow-up (Indistinct) to say: Actually that's not a valid reason and next time we would appreciate – you know, unless the committee feels that they still want Mr. Gallant to come in, we could request that. Otherwise, just going forward we know that we're well within our means to ask that person to appear and they don't have that reason they can't appear.

Chair: Thank you, Sidney.

Kathleen Casey.

Ms. Casey: Thanks.

Just a – I don't think, just following on Sid's comment about maybe the committee might want Mr. Gallant to appear, I don't think there is anything – I think Clare Henderson did a tremendous job this morning answering the questions that we had for her so I don't see a need.

I do, actually, see the need for the clerk to make sure that we know what the rule is and that this committee is clear as to who we can, who can and cannot appear before the committee. I would also seek his advice.

Chair: Thank you, Kathleen.

Just let the record show you support the request to have the clerk confirm his interpretation of who we're allowed to bring forward.

Mr. MacEwen: Chair.

Chair: Yes, Sidney.

Mr. MacEwen: I agree. Clare did a good job, but to be fair she's in the month – in the position 2.5 months.

A question was raised about past recommendations going back decades, which, perhaps, Mr. Gallant would have been able to answer, whereas she said: I can

only speak to the last two, two-and-a-half months, unfortunately. In that case, having Mr. Gallant here might have been of a benefit with that in particular.

Personally, I don't see much more reason to go down that road and request from the committee, but I just want to make that point that we had someone who was here in the position to two-and-a-half months and couldn't go back further than that corporate knowledge.

Chair: Kathleen Casey.

Ms. Casey: For somebody who has been in the position for just two-and-a-half months, I was thoroughly impressed with her knowledge and her answers to this committee. We're very lucky to have young employees in the province who can step into a role with less than three months experience and answer all of our questions with expertise.

Mr. MacEwen: Agreed.

Chair: Moving on then, is there any intent for the Public Accounts standing committee to meet at all during the sitting of the Legislature that starts next week?

Clerk Assistant: There would be a report drafting meeting, probably.

Chair: Right.

So we talk about when that meeting will be scheduled now?

Clerk Assistant: If you'd like.

Chair: I would like to speak of it now instead of having to go through the long email thread trail.

I know, Clerk, can you make a suggestion, not to put you on the spot, of a day that you think may be good to do that?

Clerk Assistant: Oftentimes, committees, during the session, will meet on a Tuesday or a Thursday between the afternoon and the evening session to review the report. That's an in-camera meeting. So next Tuesday, of course, is the Speech From the Throne followed by the Speaker's Reception.

Perhaps next Thursday might be a good (Indistinct) to suggest.

Chair: Kathleen Casey.

Ms. Casey: Thank you.

Mr. Clerk, can you, before we – maybe before we set the actual date, could we have some sort, is there a collection of recommendations or motions that this committee has made that we could see in a list that we could add. So that we can be prepared before we were to come to a meeting just to see what we've discussed. There have been a lot of materials that have come through this committee. If we could have, kind of, a list of what either the committee has recommended so we can review before the meeting.

Chair: Bush Dumville.

Mr. Dumville: Just to add to Kathleen Casey's, what about a preliminary report as the clerk sees it – he has all the information. He gathers it all up. He can do the report up to this stage. Then, what we do is we come here and we add to it, or whatever, or readjust it. Why not let the clerk go with a preliminary report before our next meeting?

Chair: I don't know, Ryan. Clerk, what would you say to that?

Clerk Assistant: I can do both. I've been keeping track of the committee's recommendations, things suggested as potential recommendations, motions, requests for information. I can provide that.

Typically, that – yes, as we go into a session, the clerks will begin drafting a report and seek suggestions from members, too, about particular recommendations they would like included.

Chair: Bush Dumville.

Mr. Dumville: Especially considering, Chair – thank you, Chair – that this is an interim report and it's just an update on our activities so far; compiling what we've done so it's not like it's the final report or anything.

Chair: Thank you, Kathleen, for raising this point.

This is something that I'm going to put on my to-do list is meeting with the clerk to discuss how we keep track of our recommendations and perhaps how we can have an ongoing list of recommendations provided to committee members going forward.

Because, of course, immediately after hearing a witness come to the committee is generally when the information is fresh in our mind; when it's probably the best time to consider any recommendations.

I wanted to work with Ryan to see what sort of operations policy or procedure we could put in place to make that happen.

Thank you for raising that and thank you, Bush, too.

Any further new business?

Ms. Casey: Motion for adjournment.

Chair: Motion for adjournment accepted.

Meeting adjourned.

The Committee adjourned.