

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 97-017

January 21, 1998

LEGISLATIVE ASSEMBLY OFFICE

Review Number 1286

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I. BACKGROUND

[1.] On March 20, 1997, the Applicant made an access request to the Legislative Assembly Office (the “Public Body”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for a series of expense records pertaining to a certain Member of the Legislative Assembly of Alberta for the period of March 1, 1989 to December 31, 1996. The Applicant’s request can be summarized as follows:

- records relating to temporary and capital residence telephone services for the Member;
- records pertaining to the Member’s capital and/or temporary residence allowance;
- records pertaining to committee allowances for the Member;
- records pertaining to travel expenses incurred by the Member;
- records relating to purchases of crown property by the Member, meal expenses incurred, staff travel expenses and any promotional or miscellaneous expenses incurred.

[2.] The Public Body refused to provide access to the records on the grounds that the records are excluded from the application of the Act according to section 4(1)(k). Section 4(1)(k) reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(k) a record created by or for the office of the Speaker of the Legislative Assembly or the office of a Member of the Legislative Assembly that is in the custody or control of the Legislative Assembly Office;

[3.] On April 11, 1997, the Applicant made a request to me as Commissioner to review the Public Body’s decision. My inquiry took place in two parts: the first on September 9, 1997 and the second on October 20, 1997. The first part dealt with a preliminary application made by the Applicant regarding procedural fairness, which was dealt with in Interim Order 97-015, issued on October 15, 1997. The inquiry resumed on October 20, 1997.

[4.] At the inquiry, the Canadian Association of Journalists and the Canadian Taxpayers Federation were permitted to participate as intervenors respecting the public interest in disclosure of Members’ expense account claims. Although neither Intervenor gave evidence, the Canadian Association of

Journalists made representations during the closing argument portion of the inquiry.

[5.] The inquiry was conducted in public except for an “in camera” session with the Public Body when a review of the records was conducted.

[6.] At the conclusion of the inquiry, I asked the parties to submit supplementary submissions regarding the applicability of the decision, by Barbeau J., in *MacDonnell c. Commission d'accès à l'information*, [1997] R.J.Q. 132, to the records. Both the Applicant and the Public Body provided supplementary submissions.

II. PRELIMINARY MATTERS

[7.] First, at the beginning of the inquiry, the Applicant raised the issue that the Commissioner was a former MLA. I chose to proceed to hear the matter because I do not believe my former experience as an MLA produces a reasonable apprehension of bias about my ability to give the parties a fair and impartial consideration of the matter on its merits.

[8.] Second, the Public Body stated that its appearance and submissions are made on a “without prejudice” basis to the ability of the Speaker of the Legislative Assembly of Alberta to claim parliamentary privilege over the records pursuant to section 26(3)¹ of the Act.

[9.] Third, the Public Body stated in its written submissions that section 4(1)(k) excludes the records from the Act’s application. It then stated: “Accordingly, the public body had no discretion but to deny the request and refuse to release the records.”

[10.] The second sentence of the preceding paragraph is not correct. While it is true that the Act does not apply to records which fall within section 4, there is nothing in the Act which necessarily prohibits the Public Body from disclosing such a record. However, I, as Commissioner, do not have jurisdiction under the Act to review a refusal by a public body to disclose a record which fits within section 4. The Legislature has defined what fits within section 4 and I do not have any discretion to deviate from those definitions, although I do have the authority to determine whether a particular record fits within those provisions.

[11.] Four, if I, as Commissioner, decide that section 4(1)(k) does not apply to exclude the application of the Act to these records, the Public Body reserved

¹ Section 26(3) says: Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege.

the right to review the records to determine whether they are subject to any other provisions of the Act which would except them from disclosure.

III. RECORDS AT ISSUE

[12.] There are two kinds of records at issue:

- The expense account records themselves, which include invoices, leases, bills, purchase orders, residence claims, committee fees and expense claims, and living and traveling expense claims. I will refer to these as the “Primary Records”.
- Three records generated from the “Primary Records”: the daily reconciliations, the monthly member’s reports and the monthly Treasury reports. I will refer to these as “Secondary Records”.

[13.] I will refer to the records as a whole as the “Records”.

IV. ISSUE

[14.] The only issue in this inquiry is whether section 4(1)(k) excludes the Records from the application of the Act. This issue has three aspects:

- Were the “Records” records within the meaning of the Act?
- Were the records in the custody or control of the Legislative Assembly Office?
- Were the Records created by or for the office of a Member of the Legislative Assembly?

V. POSITIONS OF THE PARTIES

A. Position of the Applicant

[15.] The Applicant submitted that the public has a right to records about how elected officials spend taxpayer’s money in the conduct of their duties. The administration of expense account records is part of the Public Body’s role, and the records created in the performance of that role are subject to the Act.

B. Position of the Public Body

[16.] The Public Body submitted that the wording of section 4(1)(k) is clear on its face and serves to exclude from the Act the records requested by the Applicant. This interpretation accords with the intent of the Legislature to

exclude the office of a Member from the Act, as well as to exclude records created by or for that office which are in the custody or control of the servant of the Legislative Assembly, the Public Body.

C. Intervenors' Position

[17.] The Canadian Association of Journalists supported the Applicant's position. It stated that the intention of the Act was never to protect or hide information regarding how MLAs spend public money.

VI. DISCUSSION

A. General

[18.] Before applying the section to the Records, I believe it is important first to review the Public Body's role and function.

[19.] Division 3 of Part 1 of *Legislative Assembly Act*, S.A. 1983, c. L-10.1 deals with officers and staff of the Legislative Assembly. Section 19(1), establishes the Legislative Assembly Office (the Public Body):

19(1) There is hereby established the Legislative Assembly Office which shall be presided over by the Speaker and shall consist of

(a) the Clerk and other officers of the Assembly who are not Members, and

(b) those persons employed to assist in the conduct of the business and affairs of the Assembly.

[20.] Part 3 of the *Legislative Assembly Act* deals with the remuneration of Members - their allowances, expenses, and benefits. One of the Committee's tasks is to prescribe rates for indemnity allowances and expense allowances paid to MLAs.

39(1) There shall be paid to each Member

(a) an indemnity allowance at the rate per year prescribed by the Members' Services Committee, and

(b) an expense allowance at the rate prescribed by the Members' Services Committee.

(2) The expense allowance referred to in subsection (1) is provided to each

Member to pay for expenses of that Member incident to the discharge of his duties.

[21.] In addition, the *Legislative Assembly Act* establishes the Members' Services Committee as a committee of the Assembly and which is defined as:

1(1) In this Act,

...

(g) "Members' Services Committee" means the Special Select Standing Committee of the Assembly on Members' Services.

One of the tasks of this Committee is to prepare estimates needed to run the Legislative Assembly Office (the Public Body).

21(1) The Members' Services Committee shall

(a) prepare and approve in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature toward defraying the several charges and expenses of the Legislative Assembly Office during that fiscal year, and

(b) transmit the approved estimate to the Provincial Treasurer for presentation to the Assembly.

The Committee may also deal with records management of the Public Body.

21.1 The Members' Services Committee may make an order

(a) respecting the management of records in the custody or under the control of the Legislative Assembly Office, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta;

[22.] According to the Legislative Assembly Office 1996 Annual Report, the Legislative Assembly Office (the Public Body) provides various types of support to the entire Legislative Assembly of Alberta, including MLAs of opposition and government parties alike. As the head of the Public Body, the Speaker is responsible for the Assembly's records and for providing services to MLAs. This includes financial administration, purchasing, human resources, office

automation assistance, public education and the library.

[23.] As a committee of the Assembly, the Members' Services Committee regulates constituency office support and members' pay, allowances, benefits and group insurance plans through the Members' Services Committee Orders. These Orders provide in detail the type, amount of allowances, benefits and services Members may claim.

[24.] Evidence showed that it is the role of the Legislative Assembly Office (the Public Body) to administer these expense claims in accordance with the Orders. The Financial Management and Administrative Services branch of the Public Body processes the claims and administers MLAs allowances. This branch also coordinates the development of the Public Body's budget and maintains the official financial records of the Public Body.

B. Application of section 4(1)(k) criteria

[25.] For a record to be excluded from the Act under section 4(1)(k), three criteria must be met:

- a) Were the "Records" records within the meaning of the Act?
- b) Were the records in the custody or control of the Legislative Assembly Office?
- c) Were the records created by or for the office of a Member of the Legislative Assembly?

Criterion (a): Were the "Records" records within the meaning of the Act?

[26.] I find that all the Records in this inquiry are "records" within the meaning of the Act.

Criterion (b): Were the Records "in the custody or control of the Legislative Assembly Office"?

[27.] Evidence was provided by the Public Body to show that the Records were in the custody or control of the Legislative Assembly Office (the Public Body).

Criterion (c): Were the Records "created by or for the office of a Member of the Legislative Assembly"?

[28.] There are essentially two issues which arise from the second criterion: first, whether the Records were "created *by* or *for* the office of a Member", and second, what does "office of a Member of the Legislative Assembly" mean?

[29.] I will deal with the second question first. Once it is determined what constitutes “the office of a Member”, I can then proceed to review whether the Records were “created by or for” the office of a Member.

(i) What does “the office of a Member” mean?

[30.] The Applicant submitted that the Records are not related to the “office of the Member”, and the Members can carry out their duties without the benefit of the Records. Therefore the Applicant says that these Records are peripheral to the Member’s duties and functions and therefore do not meet the second criterion.

[31.] The Public Body stated in its written submissions:

...in order to give meaning to the word “office” in section 4(1)(k), it must be interpreted as meaning more than the physical dimensions of a room occupied by the Member. It is submitted that the term “office” can be taken to refer to the Member’s official capacity as a Member and the functions and duties associated with that position. The term “office” would include the Member but must have been intended to be broader or the term “Member” would have been used. It is submitted that “office” means the functions carried on by the Member qua Member which includes the Member but may also include other persons performing duties associated with the office. Records created by or for the “office of a Member of the Legislative Assembly” would, accordingly, include matters or records created in pursuance of the Member’s duties and functions.

[32.] In my opinion, the Applicant’s test is narrower than section 4(1)(k). Section 4(1)(k) does not distinguish between legislative and other functions of Members and does not apply only to records relating to the Member’s participation in the legislative process. I agree with the Public Body’s submission that section 4(1)(k) refers to a broader category of records created by or for the office of a Member.

(ii) Were the Records created “by or for” the office of a Member of the Legislative Assembly?

Submissions of the Applicant

[33.] The Applicant submitted that the Records were created primarily “for” the

use of the Legislative Assembly Office (the Public Body) and not “for” the office of the Member because the Public Body’s role is to administer Members’ expenses to ensure that Members expend money properly. In doing so, the Applicant submitted that the Public Body created the Records for its own use and that the Records are therefore subject to the Act. The Applicant also submitted that without the Members’ Services Orders, a cheque could simply be cut out at the beginning of the year for each Member to spend at his own discretion without accounting through the Legislative Assembly Office. A Member would then be able to carry out his duties without the Records. Therefore, the Records are not created “for” the office of a Member but rather “for” the Public Body.

[34.] The Applicant also submitted that the Primary Records are not truly created “by” the office of a Member. In order for the Public Body to fulfill its role as required by the Member Services Committee, certain information must be provided. While expense account forms go to MLAs to be completed, it is simply a part of the process required by the Public Body. The most practical way for that information to be provided to the Public Body is to have a standard form completed by the Member but that does not mean the Primary Records are truly created *by* the office of a Member.

Submissions of the Public Body

[35.] The Public Body submitted that all the Records are created by or for the Office of a Member and within the scope of section 4(1)(k).

Decision

[36.] In Order 97-007, I dealt with the interpretation of “by or for”. I said that I interpret “for” to mean “on behalf of”.

[37.] For criterion (c) to be satisfied, it is necessary that either the records be created “by” or “for” the office of a Member. Records often serve multiple purposes. If the record is created “by” or “for” the office of a Member, criterion (c) is satisfied, even if the record is also used by someone else or for some other purpose.

Primary Records

[38.] While no evidence was presented regarding how each Record was created, the Public Body provided a series of nine sample documents of the Records. Evidence was given by the Senior Financial Officer, Director of Financial Management and Administrative Services of the Public Body, regarding how each sample was created and processed by the Public Body.

[39.] The Senior Financial Officer stated that Members are reimbursed for expenses incurred by them in the discharge of their duties as Members. There are two ways to claim expenses. To claim such expenses as personal expenses, residence claims, committee fees and expenses claims, and living and traveling expense claims and purchases, a Member or a Member's staff is required to fill out a standard form as set out in the Members' Services Orders. In completing these forms, the Member must submit supporting documentation such as invoices and receipts. Alternatively, the Public Body directly arranges payment for some expenses such as telephone expenses. These are all Primary Records.

[40.] The *Legislative Assembly Act* and the Members' Services Committee Orders made pursuant to the *Legislative Assembly Act*, deal with the type of claims a Member is entitled to make as a Member of the Legislative Assembly. A review of the Records shows that the Records have been claimed pursuant to the following provisions of the *Legislative Assembly Act* or the Members' Services Committee Orders:

- a) section 41 of the *Legislative Assembly Act*, which provides that a Member may claim an allowance "...where it is reasonably necessary for the Member to live in a temporary residence in or near Edmonton for the purpose of carrying out his duties as a Member...";
- b) section 42 of the *Legislative Assembly Act*, which entitles a Member who serves on a committee appointed by resolution of the Assembly to be paid an allowance in respect of that service and to receive an allowance in respect of his living expenses and reasonable traveling expenses, all at the rates prescribed by the Members' Services Committee;
- c) section 1(a)(iv) of the *Administrative Services Order*, RMSC 1992, c. A-1, which authorizes the purchase or rental and installation of telephones in Members' temporary residences maintained pursuant to section 41 of the *Legislative Assembly Act* "on the condition that they are related to and reasonably necessary for the performance of their duties as Members";
- d) section 45(1)(a) and (c) of the *Legislative Assembly Act*, which provides that the Members' Services Committee may by order authorize "the payment of allowances and expenses related to the establishment and maintenance of constituency offices of Members" and "the payment of other allowances, benefits or expenses to or on behalf of Members...if they are related to the performance of their duties or to their service as Members";
- e) section 6 of the *Constituency Services Order*, RMSC 1992, C-1, which

authorizes the Member's Services Allowance to be used to pay for the purchase of

- (a) pins, flags, or other things suitable for the Member's constituents and others, or
 - (b) items suitable as gifts to be given in the course of the Member's duties;
- f) section 7 of the *Constituency Services Order*, which provides that "there may be provided to each Member the office supplies and equipment necessary for the operation of the Member's constituency office";
- g) section 3 of the *Constituency Services Order*, which entitles the Member to apply the Member's Services Allowance to the cost of "reasonable living and traveling expenses for staff working for the Member to travel to Edmonton or to the Member's constituency on not more than 3 occasions in a fiscal year".

[41.] Because the *Legislative Assembly Act* and the Orders contemplate that a person holding the office of a Member of the Legislative Assembly may make these types of claims, I find that the Primary Records are created by or for the the "office" of a Member.

[42.] I am satisfied that the Primary Records are either created "by" or "for" the office of a Member based on the Public Body's evidence that documentation is necessary to ensure that Member's expenditures comply with the Members' Services Orders passed by the Members' Services Committee of the Legislative Assembly and to enable the Member to be reimbursed for expenses paid to carry out the various duties of a Member. It is clear that the Primary Records would not exist but for the person being a Member of the Legislative Assembly.

Secondary Records

[43.] The Public Body generates three types of reports from the Primary Records: a daily reconciliation, a monthly member's report and a monthly Treasury report. These are the Secondary Records.

[44.] It is clear that the Members do not have any involvement in the creation of the Secondary Records. The evidence showed that not all of the Secondary Records are even sent to the Members. Therefore, in order for the Secondary Records to meet criterion (c), they must be created "for" the office of a Member. As I found in Order 97-007, "for" means "on behalf of".

(i) Daily Reconciliation Report

[45.] According to the Public Body, the daily reconciliation report is an accounting or internal auditing document that is produced by the financial system to ensure that any information that has been entered from the Member's office is entered accurately and processed appropriately. It is a compilation of the information that has been provided by the Member with respect to expenses. It also may be used by the Auditor General for audit purposes.

[46.] Evidence was presented at the inquiry to show that the daily reconciliation reports serve a dual purpose: first, as a monitoring function to enable the Public Body to administer the funds in accordance with the regulations passed by the Members' Services Committee, and second, as a mechanism to alert the Member in the event there is a discrepancy in the expenses or the records.

[47.] Therefore, while a daily reconciliation record may not be generated to be reviewed by a Member, I still find it is made "for" the office of a Member because one of its purposes is to identify mistakes for the Member; therefore, the daily reconciliation report meets criterion (c).

(ii) Monthly member's report

[48.] The monthly member's report is produced for the Members and is sent to them on a monthly basis to inform the Member of the percentage of the year elapsed and the percentage of the budget spent. It also has a built-in device that will flag an item that is over-budget. Through the monthly member's report, the Members can review the transactions that have been entered against their budgets to determine whether the information has been entered accurately. Like the daily reconciliation report, the monthly member's report is produced from the information contained in the Primary Records.

[49.] I also find that the monthly member's report is created "for" the office of the Member because it permits the Member to know how much of the Member's budget has been spent on a monthly basis. Although the monthly reports are also created "for" the Financial Management and Administrative Services branch of the Public Body in order to administer funds and monitor expenses accounts, it is sufficient that one of the purposes of the monthly report be "for" the office of the Member in order to meet criterion (c).

(iii) Monthly Treasury report

[50.] The monthly Treasury report is produced by Financial Management and

Administrative Services branch of the Public Body. The Public Body's evidence was that the monthly Treasury report is a report that is sent to Alberta Treasury so that Treasury may produce the information that is found in the Public Accounts. The monthly Treasury report is titled "Legislative Assembly of Alberta MLA and EC Year to Date Expenses By Account". To create this document, the Public Body stated that the information comes from a variety of sources including expense claim records, payroll documents, and committee fee claims.

[51.] The evidence did not show that one of purposes for which the monthly Treasury report was created was "for" the office of a Member. Even though the information contained in the monthly Treasury report is about the Member's expenses, it would be too great a leap to find that it is a record created in pursuance of a Member's duties. Therefore, I find that it is not created "for" the office of a Member.

[52.] The information contained in the monthly Treasury report is published in the public accounts on an annual basis in aggregated form. In its written submissions, the Public Body included excerpts from public accounts for the years 1989-1996. The 1996 report was titled *Report of Selected Payments to Members and Former Members of the Legislative Assembly and Persons Directly Associated with the Members of the Legislative Assembly*. I have compared the information contained in the monthly Treasury report and the information published in Public Accounts. I note that the two documents are the same except that in the published report, the information is aggregated and presented on an annual rather than on a monthly basis.

Conclusion as to the application of section 4(1)(k) criteria

[53.] I have found that the Primary Records meet the three criteria of section 4(1)(k).

[54.] The Secondary Records also meet the three criteria, with the exception of the monthly Treasury reports.

C. The relationship between section 4(1)(k) and sections 1(1)(p)(iv) and (vii)

[55.] In dealing with this review, I also considered sections 1(1)(p)(iv) and (vii). Many of the same records would be in the hands of both the office of a Member of the Legislative Assembly and the Legislative Assembly Office (the Public Body). However, while section 1(1)(p)(iv) states that the Legislative Assembly Office is a public body, section 1(1)(p)(vii) states that the Office of a Member of the Legislative Assembly is not a public body and therefore not subject to the Act at all. Accordingly, if the Applicant had applied to the Member for access to

these records, I would have had no jurisdiction under the Act to review a refusal by the Member to disclose records in his office.

[56.] In the present case, the application for access was made to the Legislative Assembly Office (the Public Body) for disclosure of records in its custody and control.

[57.] Although it was not argued before me, had the Public Body invoked section 1(1)(p)(vii), I think I would have had to consider whether to apply Order 97-008. In Order 97-008, I applied the principle of statutory interpretation about “Avoiding Absurd Consequences”. In that case, I said that once the information is created by the Ombudsman (who is outside the Act), it remains excluded even though copies may be in the custody and control of other non-excluded public bodies. A party cannot do indirectly that which it cannot do directly. Therefore, records of the office of a Member would be excluded and remain excluded even if copies of the records were in the custody or control of another agency such as the Public Body.

[58.] Because section 4(1)(k) is included in the Act, and therefore must have a purpose, it must be interpreted to apply to records which would not be excluded by section 1(1)(p)(vii).

D. The relationship between section 4(1)(k) and parliamentary privilege

[59.] The issue of parliamentary privilege was mentioned several times in the Public Body’s submission. The Act refers to parliamentary privilege in two sections. Sections 26 (privileged information) and 62(4) (right to ask for a review) provide:

26(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,

...

(3) Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege.

62(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the commissioner to review any decision, act or failure to act of the head that relates to the request.

...

(4) This section does not apply

(b) to a decision by the Speaker of the Legislative Assembly that a record is subject to parliamentary privilege.

[60.] The Public Body argued that section 4(1)(k) reflects the parliamentary privilege of the House's ability to control its own proceedings and manage its own affairs. The Public Body stated in its written submissions:

While the issue of whether the records are subject to parliamentary privilege is not being addressed at this time (see Part II), the broader issue of the existence of parliamentary privilege and the division between the branches of government is important in understanding the intent of the Legislature.

[61.] During the closing arguments, the Public Body submitted:

In summary on this section, it is submitted that the exclusion found in Section 4(1)(k) is in keeping with the Assembly's jurisdiction over its business and affairs, including its records. It is our submission that this ancient and inherent right of Parliament underlines the exclusion and should be given a meaningful interpretation.

[62.] In the present case, the Speaker has not made a determination under section 26(3) of the Act that parliamentary privilege applies to the Records. If the Speaker had made such a decision, under section 62(4) I would have had no jurisdiction to review the Public Body's refusal to provide access to the Records. Further, even if I had found that section 4(1)(k) did not exclude the Records from the Act, the Speaker could still make a determination that parliamentary privilege applies to the Records.

E. Other Jurisdictions

[63.] The only other province which has a similar provision to Alberta's section 4(1)(k) is Quebec. The National Assembly in Quebec is considered a public body by the Quebec *Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information*. However, section 34 of the Quebec Act states that no person may have access to a document from the office of a member of the National Assembly, unless the member deems it expedient.

[64.] There have been a number of decisions regarding the interpretation of section 34 of the Quebec Act. In the most recent decision, *MacDonnell c. Commission d'accès à l'information* [1997] R.J.Q. 132, Barbeau J., considered whether documents dealing with expenditures of members of the Quebec

National Assembly fell within section 34 of the Quebec Act. Mr. Justice Barbeau of the Quebec Superior Court (equivalent to the Court of Queen's Bench of Alberta) held that the documents did not fall under section 34, thus reversing the Quebec Privacy Commissioner's decision, which had been upheld by the Court of Quebec. Therefore, the records were subject to disclosure under the Quebec Act.

[65.] Mr. Justice Barbeau interpreted the Quebec Act to find that in principle the information requested - documents dealing with Member's expenditures - were documents to which the public should have access. He made this decision on the basis that the documents were not "for" the Members but rather for the Assembly. Since the documents were sent incidentally to the Member to advise him of the exact expenses he had incurred, Mr. Justice Barbeau held that the documents were not part of the Members' parliamentary duties as a legislator, and restricted section 34 to apply only to documents produced for a member in the course of actually carrying out his legislative duties.

[66.] This decision is under appeal to the Quebec Court of Appeal which has not yet rendered its decision.

[67.] I am not following Mr. Barbeau's decision in the *MacDonnell* case for four reasons. First, I have held that documents related to a Member's expenditures are prepared "for" the office of a Member. There is no justification for these expenses other than for the Member to fulfill a Member's duties as a Member of the Legislative Assembly.

[68.] Second, I believe I would be restricting the reference to the "office of a Member" if I interpreted section 4(1)(k) to refer only to documents relating primarily to a Member's legislative function. In accordance with the statutory presumption of Consistent Expression, if the Legislature intended that "office of a Member" in section 4(1)(k) meant only the Member's legislative functions under an Act, it would have said so. For example, section 4(1)(c) provides that records related to the exercise of an officer's *functions under an Act* are excluded; The Legislature, however, did not restrict section 4(1)(k) to apply only to the legislative function of a Member.

[69.] Third, the structure of the Quebec and Alberta Acts is different. Most importantly, the National Assembly is specifically included as a "public body" in Quebec. Therefore, documents of the National Assembly itself are accessible. In Alberta, neither the Legislative Assembly nor the office of a Member are public bodies.

[70.] Four, the various courts in the *MacDonnell* case have decided different ways and it remains under appeal at the time of the writing of this Order.

VII. CONCLUSION

[71.] After considering the evidence, and submissions from the Applicant, the Intervenor and the Public Body, and based on the above reasons, I hold that all the Records (except the monthly Treasury reports) do meet the criteria of section 4(1)(k). Therefore, the Records, except the monthly Treasury reports, are excluded from the application of the Act.

[72.] However, the monthly Treasury reports are subject to the Act. With respect to the monthly Treasury reports, as the only issue before the Commissioner in this inquiry is whether the records requested are excluded from the Act under section 4(1)(k), the Public Body will now have to review the monthly Treasury reports in order to determine whether they are subject to other exceptions from disclosure under the Act.

VIII. ORDER

[73.] I make the following Order under section 68 of the Act.

1. I find that section 4(1)(k) excludes the Records, except the monthly Treasury reports, from the Application of the Act. Consequently, with the exception of the monthly Treasury reports, I have no jurisdiction over the Records.
2. The Public Body must respond to the Applicant as to what exceptions it says apply under the Act to the monthly Treasury reports within 30 days of receiving a copy of this Order.
3. I ask that the Public Body notify me within 30 days of receiving a copy of this Order that this Order has been complied with.

Robert C. Clark
Information and Privacy Commissioner