10:05 a.m. Monday, June 3, 2002

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning, everyone. I think we should get started. We have a very busy and I'm sure an interesting day ahead of us. For the record my name is Brent Rathgeber. I am the MLA for Edmonton-Calder, and I am chair of this Select Special Freedom of Information and Protection of Privacy Act Review Committee.

First of all, if I could start on my right and have the members introduce themselves for the record and then the technical support team.

[Ms Carlson, Mrs. Dacyshyn, Ms Dafoe, Ms DeLong, Mr. Ennis, Mr. Jacobs, Ms Lynas, Ms Lynn-George, Mr. MacDonald, Mr. Mason, Mr. Masyk, Ms Richardson, Mrs. Sawchuk, and Mr. Thackeray introduced themselves]

THE CHAIR: Thank you, everyone, and welcome. For the record I would also like to note that the briefing material for this meeting was delivered to the members sometime last week, and hopefully everybody has had the opportunity to review it.

An agenda was also circulated. I am assuming that everyone has had an opportunity to peruse it. We have a number of presentations today, all of which have been discussed, and it was agreed upon that we would hear from these individuals and groups. Could I have somebody move acceptance of the agenda? Mr. Jacobs. Anybody opposed? It's carried.

This committee last met on May 13. There were presentations, and some business was discussed. The minutes of that meeting have been circulated. Has everybody had an opportunity to see them? Then could I have somebody move acceptance of those minutes as circulated? Mr. Masyk. Anybody opposed? They're carried.

For the record Mrs. Jablonski is now present.

The fourth agenda item is Business Arising from the Minutes. War Amps of Canada: we did receive correspondence and news clippings that were included in the members' packages that were distributed. It was largely for information purposes. Does anybody have any questions, concerns, or comments regarding the media reports involving the War Amps presentation and their continuing lobbying efforts?

Did everybody read my interview with QR77? [interjection] Oh, we just got it? Okay. I take it, then, nobody has any comments if the materials have just been distributed, but if anybody has anything that they wish to discuss, we can revisit that at a later time.

The next item of business arising is briefing note 2. Mr. Thackeray provided it. This is in response to submissions referencing the disclosure of collision report forms by municipal police services and the RCMP. Tom, do you have anything to add to that, or is your response pretty much covered in the written material?

MR. THACKERAY: This was just done because this issue had been raised by a number of submissions from the public or organizations, and we just wanted to bring the information forward to the committee for their review when that discussion takes place.

THE CHAIR: Does anybody have any questions, technical or otherwise, for Mr. Thackeray at this point, or would it be the members' wishes that we deal with it when we deal with this issue? I take it by your silence that means there are no questions at this time.

New Business, item 5 on the agenda. We've received summaries of written submissions numbered 48 to 125, and that will be the end of them. Of course, the deadline for submissions was May 9. I understand that a few trickled in thereafter and we accepted them, but we will not be accepting any more. I take it everyone has had a chance to at least gloss over them. Are there any questions or concerns arising from the summaries numbered 48 to 125? We of course will be dealing with these on an item-by-item basis, question by question, as pursuant to the discussion paper that we developed, but at this point are there any comments or concerns regarding the summaries? We're just moving right along then; aren't we? We're five minutes ahead of schedule, but I don't think that's a bad thing.

The first presentation today is from the Canadian Association of Petroleum Producers. I'd like to welcome Mr. Pierre Alvarez, Mr. Onno DeVries, Mr. Larry Morrison, and Mr. Ray Hansen. Welcome. We've allotted your group 30 minutes. We would ask that you keep your presentation to no more than 20 minutes so that there are at least 10 minutes for Q and A thereafter. With that welcome, gentlemen, the floor is yours.

MR. ALVAREZ: Well, thank you very much, ladies and gentlemen. Mr. Chairman, I heard the warning about time, and I will stick to that. We've provided hard copy here for you, so for those of you who are having difficulty seeing the screen, you'll have it in front of you. We're going to very quickly just touch on the background of who we are and why we're here today, and we'll go from there.

Just a little bit of background on who we are. We've dealt with many of you in your individual capacities and in a number of SPC roles, and we're very happy to be with the committee here today. Through the association we represent about 98 percent of the production in Canada, and other than the various small producers, CAPP represents the broad expanse of the industry. We work with governments to promote effective regulatory and fiscal regimes to retain Alberta's advantage, because as much as we have seen growth in other parts of the country, Alberta remains the focal point of our industry. Many people talk about kind of a maturing industry, and there's no doubt that the conventional industry is maturing, but it's still spending $15 billion a year in Alberta. In addition to that, oil sands are spending in the range of $3 billion to $5 billion per year. As we move into new areas such as coal bed methane and into the deep foothills, we see a long and very productive relationship with the province continuing.

Just to give you a snapshot of the role of the province in our world, last year we paid $10.6 billion to the province of Alberta, we employed directly 68,000 Albertans – and that is, as you know, subject to a multiplier of a considerable number – and across the country we invest in excess of $25 billion today.

With that as background I want to set the stage for our presentation today, because I think the issue that we're talking about today is a very, very important one. I'd like to speak to kind of the critical policy element from our point of view.

Our industry probably faces more uncertainty and more concern about the public policy environment in Canada than it has in over 20 years. Many of these issues are federal in nature. Clearly, the issue of Kyoto and climate change and how the federal government will possibly proceed, disputes with the federal government over corporate taxes, the Canada/U.S. relationship, and uncertainty regarding resource access, largely from unsettled aboriginal disputes, are bringing a tremendous amount of uncertainty as far as our investments in Canada. That's occurring at a time when we're seeing tremendous growth in the size of our companies and the diversity of the activities. Whether it's the $3 billion to $5 billion per year that is being spent on oil sands or an individual project in the oil sands which is in the $3 billion to $5 billion total, what we're looking for wherever we operate is stability, certainty, and competitiveness. We're here to propose what we believe is a relatively modest amendment to deal with those factors as it relates to oil sands in particular.

10:15

Very quickly, if you look at the chart in front of you, you can see the growth of oil sands. What historically had simply been Suncor and Syncrude, two relatively modest production projects in a historical context but by any means huge research and development projects, has begun to mature well beyond just two projects. You can see that over the number of years ahead of us the growth in the oil supply in this province is going to come from the Fort McMurray, Cold Lake, and Peace areas, and you can see the role being played by the three different types of oil sands. Again, just to be clear, when we're talking oil sands, it is both the big mining projects, which you're used to seeing the pictures of and which account for about 30 percent of the production, as well as what's called SAGD, which is drilling and releasing the oil underground.

By 2010 our expectation is that oil sands production could provide two out of three barrels of oil in western Canada. We're spending in the range, as I said, of $3 billion, $4 billion, $5 billion per year. It has led to significant population growth in Fort McMurray, and we believe that oil sands will be one of the drivers of Alberta's future economic growth. In fact, if you look in terms of tradesmen and high-end skills, the oil sands is driving the fact that Alberta has about 25 percent of the high-end trades development in Canada while we only represent about 10 percent of the population of the country, if you're looking at the opportunity that's driven out there.

Finally, I'd just like to set the issue up for you. In the spring of 2002 the Department of Energy's Mines and Minerals Act amendment gave protection for all royalty data for five years against third-party access via FOIP. We have what we believe is a specific circumstance as it affects the oil sands because of the long-term nature of their projects and because of the competitive environment in which they're operating.

I'll turn to Onno to outline the issue, and then Ray is going to touch on it from an operator's point of view.

MR. DeVRIES: Just in terms of providing some additional insights and perspectives, the amendment that the department put in place this spring protected all royalty information filed and collected for a five-year window. The conventional royalty information collected is substantially different than the oil sands royalty information collected. I wanted to just run through that and give you some appreciation for that, because it's the uniqueness of the oil sands information that makes it stand out.

The conventional business, which historically has been the focus in terms of the royalty side, operates on a physical volume basis. The government takes its royalty in kind, as it's referred to, which means that out of every five barrels they physically take one barrel, and the whole concept of the measurements around the conventional side is on the volume basis. They track volumes from production, and the Crown itself takes the barrels and sells them, so the valuation issue is not an issue from a producer/government perspective.

The oil sands, unlike the conventional business, is based on a royalty scheme that focuses on a percentage of the net profits of an oil sands project. As such, the government has a partnership arrangement in the oil sands projects, and in doing so, they collect royalties on a net profit basis.

The net profit sort of arrangement means that the government has access and requires the companies to file detailed cost information, supporting information around the costs that the project incurs, and, similarly, supporting information on the revenue side. So because of the way that the royalty is calculated, companies have to potentially share all their revenue information, all their cost information so that the Crown can determine what the net profit is and, as such, then apply its royalty rate.

In that process, then, companies are required to provide information on a host of detailed background operational information around the project. They can get into having to disclose patented operating processes and technologies. They certainly need to disclose bid/ask tenders in terms of the contracts that they issue and negotiate. The companies contract and negotiate prices on a variety of things, including pipeline tariffs and tolls. That information supporting those prices they negotiate with contracts needs to be supported, and that information is shared with the Crown. So it's a real host of revenue and detailed production costs, input data. The Department of Energy requires that the companies file all of this as support for the royalty process in such a manner that this information is actually in more detail than tax information.

The next slide makes a somewhat simple but blunt comparison. When companies supply tax information, they provide detailed information on a corporate basis. So they bundle all their activities and submit that on a corporate basis. An oil sands project submits actually more detailed information to the Crown, and it's on a very project-specific basis, so the companies and the information that they share require that there is some certainty around the confidentiality of that, not unlike tax information. The perspective that we're taking here is that royalty data that is filed with the Department of Energy is in fact more detailed than tax information, and as such we think that maybe it should be offered the same sort of protection from access by a third party under the freedom of information legislation.

The issue, just to put it into some context, is something that evolved about seven years ago, when the government introduced a new royalty regime for the oil sands projects back in '95. It was intended to add certainty to the process. Prior to that, with a relatively few number of projects they had negotiated one-on-one agreements with the project operators, and as such, royalties were governed by a one-on-one agreement, and the collection was covered with that as well as the confidentiality of the information.

When the government went to introducing what was referred to as the generic oil sands royalty regime in '95 and '96, there was an expectation by the companies that the information they had submitted as part of the royalties would be maintained as confidential. The Department of Energy at the time in dealing with the companies concurred with that, and in fact for a five-year period we had an interim period where they had the paramountcy conditions in place which actually protected all the information from third-party access. The department in fact saw some weaknesses. If the information was not protected long term under the freedom of information act, it would hamper some of their business in that they often collected on a voluntary basis information from companies to help them in doing their policy work to manage the oil sands side of the government's interests.

With that in mind, the Department of Energy actually came to the previous version of this committee in '98-99 and put forth a position in front of that committee that the paramountcy condition, which was in place for five years, should be continued indefinitely and as a long-term condition. They sought that to help protect the confidentiality and provide the certainty that the companies had before in terms of the prior oil sands royalty agreements. The committee at that time concurred with the department's position, and in fact the 1998-99 committee in its 1999 report put forth as a recommendation the following. It read that the existing, and then in brackets, interim paramountcy provisions established should be continued. The committee saw that there was some benefit in making sure that the oil sands royalty information that was filed should be protected long term.

In 2002, jumping ahead a bit here, when the department put in place the conditions under the Mines and Minerals Act to protect the royalty information, they bundled the oil sands royalty information together with all the other royalty information and put it into a window that limited it to five years. So under the amendment that was just introduced in the spring Legislature, oil sands royalty data that is filed is only protected for five years. After that, it is open to third-party access from a freedom of information request. Granted, that doesn't necessarily mean it was automatically given out, but we feel that there is a definite risk there, and it's a risk that the companies did not bear before. In fact, the five-year window that the department has put on the limited access for royalty information implicitly gives a signal that perhaps after five years the information should be released and that it should be accessible. So it further emphasizes the uncertainty associated with the current circumstances. The process that we've come to to date, to only offer the five-year protection, we feel offers a lot of uncertainty in terms of the potential risk and the consequences of that risk.

With that, maybe I'll turn it over to you, Ray, and you can add some comments on the next section.

10:25

MR. HANSEN: Thank you. My name is Ray Hansen, a general counsel with Syncrude. I was on the joint industry/government committee that created the amendment to the Mines and Minerals Act. As some of you may recall, that amendment was done with some degree of haste because the province was waiting for royalty forecast data so that it could complete its five-year business plan from 2001 on and a number of oil sands developers were not able to release sensitive and confidential information without at least that protection. The point to be made: industry saw that amendment to the Mines and Minerals Act as kind of an interim or temporary fix until we could deal with FOIP.

Under FOIP after five years an oil sands developer is faced with dealing with the uncertainty of two words within section 16(1)(c). "Reasonably" and "significantly" are pointed out on that slide, and in dealing with this issue in the past, as you may recall, we tried to get some rulings to better understand what those words are intended to mean and have been unsuccessful. This has been an ongoing issue for a good number of years since the creation of the oil sands royalty regulation, which created the generic regime for the oil sands industry. As has been pointed out, prior to that, under the section 9 agreement under the Mines and Minerals Act protection was afforded to the oil sands industry. The concern we have is that the business planning cycle for the oil sands industry is a minimum of 10 years, and as has been pointed out, it's because of the long lead times required to develop an oil sands project, anywhere from five to 10 years, and the long return windows for the capital expenditure, which is anywhere from 20 to 25 years, quite distinct from the conventional industry.

The information that we share with the province is essentially business partner information. It's information that goes to the very heart and soul of the business plan and deals with the competitive nature of that developer's business. That can deal with oil sands pricing, contract rates, forward interest rates, exchange rates, oil pricing projections, and if that information is released, it will cause irreparable harm. There's just no doubt about that. As a consequence, for new entrants into the oil sands industry it simply adds additional business risk that didn't exist prior to 1995 with the generic oil sands regime. As has been pointed out, we're simply looking for the same kind of treatment as tax data, and in fact, as has also been pointed out, the information that we provide is far more detailed and far more sensitive than companies would even share with Revenue Canada or the provincial revenue agencies.

So what we're looking to do is add to section 16(2) a provision that simply recognizes, as pointed out on the slide, that information for purposes of calculating, verifying, determining, or forecasting oil sands royalties provided under the oil sands royalty regulations be afforded the same protection that income tax filing information has. The result of that would be to re-establish the certainty, stability, and competitiveness that we had before. It would protect and preserve the business relationship between the province and the oil sands developers in the same manner as it was before and in a manner that would reflect the sensitivity of the information that we provide to the province in its capacity as a business partner and, as all legislative initiatives try to do, balance the benefit of a government that operates in a transparent manner against the cost.

The balance here is an obvious one. There is very little benefit that anyone would obtain in getting this information other than for their own personal interest and to erode the competitiveness of that developer, but the benefit of course, as has been pointed out, both for the province and for its citizens, to ensure that the business relationship between the Crown and oil sands developer is maintained, far outweighs the cost.

MR. ALVAREZ: We saved an extra three minutes for questions, Mr. Chairman. That concludes our formal presentation, and we once again greatly appreciated the opportunity to be here today and would be pleased to take any questions you or your colleagues may have.

THE CHAIR: Thank you very much.

MS DeLONG: I need a little bit of clarification in terms of the paramountcy here. You know, where does the Mines and Minerals Act fit in with FOIP? Does one override the other? I can't remember where we are with that. I wonder whether anybody at the table has any comments as to who would want this information and whether anyone can think of a valid reason in terms of the transparency of government whether or not that information is actually needed by anyone.

THE CHAIR: I can answer the first question. The Mines and Minerals Act is paramount to the Freedom of Information and Protection of Privacy Act, but I think what these gentlemen are asking for is an amendment to section 16. They've worded it here that "information for purposes of calculating, verifying, determining or forecasting oil sands . . . provided under the Oil Sands Royalty Regulations" be a mandatory exclusion. Did I state your position correctly?

MR. HANSEN: I'd add that when the Freedom of Information and Protection of Privacy Act was passed, there was in effect an interim paramountcy which provided for the transition to deal with these transitional issues, and that interim paramountcy has expired. In its place, at least for a five-year period, all royalty information, whether it's gas royalty, conventional royalty, or oil sands royalty, is given a five-year protection. The difficulty is that in the oil sands industry our business cycle window is a minimum of 10 years, so that level of protection is insufficient to protect both the province's business interest and the oil sands developer's business interest.

With respect to your second question, which I think is a very important one, what valid reason someone would have to access this information, certainly we can't think of any.

THE CHAIR: Other than what you said in your presentation, Mr. Hansen: to destroy your competitive advantage.

MR. HANSEN: Yes. I guess that when I use the word "valid," by the use of that word I exclude that motive.

10:35

MS DeLONG: I'd like just to point out that there is $63 billion in possible investment in Alberta which this does affect.

THE CHAIR: Mary Anne Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. Good morning. One thing that I don't understand is why you have to provide all the information that relates to your patents and your technologies in order to determine royalties. My question would be: why?

The next question would be: instead of exempting all information, is it possible to divide up that information? I suppose that as an Albertan I might want to know some of the numbers that resulted in the royalties. How did we determine the amount of royalties? That might be what I would want to look at. I'm just wondering if there's a way to divide the information so that the numbers themselves are not totally exempted but all the information that relates to what goes on in production from the oil sands, the patents and the technologies, can be exempted. Is there a natural division?

MR. HANSEN: Well, let me answer that in reverse order. The numbers are inextricably bound with the calculation because it's a net-profits interest as opposed to a gross-production interest. So the numbers that we provide are things like our capital expenditure profile for five years, and the reason we picked five is that the province came to us and said: we're moving from a three- to a five-year business cycle, so we need five years' data. If the province said to us, "We're moving to seven-years," we would have to provide seven years'. If they said, "We're moving to 10," we'd have to provide 10.

The data that we provide are things like our capital expenditure profile for 10 years, which is both growth capital and sustaining capital. It's our principal contract rates for overburden, or it would be our projections around interest rates, internal investment at hurdle rates, exchange rates, all the types of information that one partner in a partnership would share with another partner. So to try and come up with a model – and we did look at that – at first instance you would think it would have some merit, but it doesn't, as I said, because of the nature of the relationship and the fact that the numbers are so tightly bound with the calculation itself.

The reason we provide patent and technology information is that for a new developer, when it applies to have its oil sands project defined – you have to come up with a definition of what's included in the project – the province is entitled to look at all of the technology on which the project is based: if it's SAGD, insitu extraction, or open mining; what extraction techniques you are going to be using; right from the beginning, what kind of mining technology, and to the end, what kind of reclamation technology you are going to use; what costs you anticipate; what difficulties; how much robustness there is in the business plan to weather soft oil prices. It's business plan information, so the technology is inextricably bound with the business results, not unlike the numbers are inextricably bound with the royalty calculation.

MRS. JABLONSKI: Thank you.

MR. DeVRIES: Just as a supplement to that, just to clarify that in connection with the way the royalties are calculated, when the companies, as an example, go out and sell the oil and get a value for that, they of course enter into various marketing agreements, but behind that, when they calculate the royalty with the department, they lay out all the costs that are incurred in connection with that sale, including all the operational costs, transportation costs. So anything that they incur – for example, a toll on a pipeline – they have to then disclose as part of the filing with the department. For those sorts of situations the companies will go out and negotiate specific agreements so that they can get, to their best advantage and of course to the Crown as sharing in the partnership, the best price available on these various contracts. So there is a toll, the cost of electricity, the cost of gas.

In order to support the cost data that they supply with their royalty information, they have to provide these backup contracts with the department so that the department itself knows. If they're paying less than, say, a competitor down the road, when the department compares those two pieces of information, they say: oh, project A is paying less or more, depending on circumstances. Because of that, they require both companies to provide all the backup information so that they can justify that in fact all the costs being submitted are legitimate costs and that the government is in fact not being misrepresented in terms of its share in the profit sort of arrangement and is getting its fair due on the royalty. So there is a lot of background information that the companies work with and share with the Department of Energy.

MRS. JABLONSKI: Thank you.

THE CHAIR: We have five minutes and three questions, so I'd ask that the questions be specific and the answers be direct.

Mr. MacDonald.

MR. MacDONALD: Thank you, Mr. Chairman. I believe that this question would be to Mr. Hansen. I have a couple of questions, and I'll make them brief. Has any confidential business data been released to date?

MR. HANSEN: No, because to date we've been working within the five-year window, and with both the interim paramountcy provision and now the mines and minerals provision we have been afforded protection for at least this period of time.

MR. MacDONALD: Mr. Chairman, again: why do you not have confidence in section 16(1)(a) and (b) in regards to the role that the Privacy Commissioner could play? He or she has to balance the issue of information to the public and the issue of privacy. You certainly make mention of section 16(c), but are you not allowed protection under (a) and (b)?

MR. HANSEN: Two answers to your question. First, in dealing with the Privacy Commissioner before, we tried to establish some understanding or rulings around the way in which the Privacy Commissioner would treat our information. We were unable to do that, so we weren't able to get business certainty through the office of the Privacy Commissioner.

Secondly, for a company the size of ours and I know for other oil sands developers, we've had much experience with FOIP. You're right; we are given an opportunity when a request is made for the disclosure of information. Often we look at the information and we say: "Fine. We have no difficulty." Sometimes we've said: "No. We have a concern." It has not been an easy process nor a process with any certainty as to how the Privacy Commissioner's office will rule on a particular matter, and that's why we're here today.

THE CHAIR: Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. To Mr. Hansen. I've got a few here, so I'll narrow them down to probably one, I guess, considering the time. At what point would information be considered obsolete? What I've read today is that in five years' time any development technology is obsolete. Where would the line in the sand be to an investor saying: "Well, we don't want to invest in Alberta because you're disclosing too much. We want to see investment in, say, Africa, for example, or elsewhere"? Where would the balance be there? That's what my concern would be.

MR. HANSEN: Well, if you're Venezuela, which is our biggest competitor – that's the marketplace we look to – they'd like to know what our view of the world is in 10 years. They'd like to know what our view of the world is in 15, and we certainly do have a 15-year business forecast within our organization. In terms of the time frame, because the return on capital is anywhere from 20 to 25 years, where would the cutoff period be? Probably after the return on capital. In some projects the return period could be 30 to 35 years, when you're looking at your mining equipment, for example.

THE CHAIR: Mr. Mason.

MR. MASON: Thank you very much. I'm wondering about some of the information that might be of interest to people who were not necessarily your competitors. I'm thinking of an example being environmental information, what you're planning to do. You mentioned the use of reclamation technology as one example of something that you might want to keep private, but wouldn't some of these issues – technologies, costs, and long-term plans – be of general public interest?

10:45

MR. HANSEN: All the environmental information will be filed. I'm sorry for referencing before in the context of patented information things like tailings handling and reclamation strategy. All of that would be disclosed to the public in the approval process. The type of information that would be sensitive, for example, is the contract pricing. The oil sands royalty regulation doesn't allow for hedging, so as a consequence what you'll find with oil sands producers is that they'll enter into long-term purchase and sale arrangements and they'll have a pricing mechanism around that. It would allow, for example, someone in Venezuela to say: well, what do they anticipate as being the forward selling price for refined crude out of the oil sands or heavy oil out of the oil sands for the next 10 years or 15 years? The nature of our industry, being quite distinct from conventional, is such that pricing information is very long-term information. Similarly, we project what we think will be the price of oil in the future. We provide that to the province because the province then uses that information for its own projections, and of course anyone who wants to erode the competitiveness of our industry would be most interested in that information. Similarly, the return that we get on our capital and the discount rates that we use would be of great interest to anyone, like in our industry, with a very long investment window.

THE CHAIR: Thank you very much. Unfortunately, we've come to the end of our allotted time, but on behalf of the committee I'd like to thank you very much for your very enlightening presentation. I think it was direct and to the point. We understand what your concerns are, and I think we certainly understand the importance of your industry to this province. Please rest assured that we'll be mindful of your presentation as we enter our deliberations. I thank you for your appearance here this morning.

MR. ALVAREZ: Thank you very much, Mr. Chairman.

THE CHAIR: I would like to welcome to our committee Mr. Al Schulz, the regional director for Alberta for the Canadian Chemical Producers' Association. We've received copies of your PowerPoint presentation and your written materials. We're about five minutes behind schedule, but you'll still be allotted the whole 30, and I'd ask that you keep your comments to no more than 20 so we can have at least 10 for Q and A thereafter.

So with that introduction, go ahead, Mr. Schulz.

MR. SCHULZ: Thank you very much, Mr. Chairman. I wasn't sure whether you had copies, so I brought along extra copies of the PowerPoint presentation.

THE CHAIR: Good.

MR. SCHULZ: I thought it would be good to give some indication first of what or who our industry is. Canada-wide it's about 80 companies that produce about 90 percent of Canada's industrial chemicals, and this also involves companies that are involved in the transportation and use and recycling of the chemicals. They still work basically with salt and sand and oil and gas and some of the hydrocarbons that then produce some of the basic chemicals and the intermediate chemicals. Some of these companies are very large companies, as you see on the third overhead. Of those, only about 18 or so are located in Alberta, some of the large ones being Dow, BP, Celanese, Shell Chemicals, and Nova of course.

One of the things that I thought was important was to get an appreciation of and also the commitment that responsible care has, and we refer to that as the old ethic and the new ethic. Over 10 years ago now the chemical industry made a commitment to more open communication, and part of that really meant being open and more transparent with the public. That was a significant shift for a lot of the industry. If you look at the middle ones, especially where the old ethic would have been to downplay public concerns, now it is to seek and address public concerns. Where it was initially in the old ethic to assume product innocence, the new ethic subscribes to the precautionary principles and approach. The old ethic only provided hazard information where it was deemed necessary. Certainly now as part of responsible care the public and employees are deemed to have an integral right to know all.

In the next overhead you see that these practices are also enshrined in codes. Each one of these codes is actually a binder of information. The top one, Community Awareness/Emergency Response, is the one that deals with the interface with the public to a large extent. In the one below that you have the community awareness plans and also the community panels that are set up and the hazard and risk information to the community. These have happened already, and there's ongoing communication to the public. The point that I want to make with all that, too, is that the Canadian Chemical Producers' Association through responsible care really does not want to withhold information from the public. So it recognizes that, but there are some other things. I think that in terms of the technical information, in terms of reprocessed information, it's a smaller sector that can be important and can provide some economic advantage and a competitive advantage tool to other companies. So that is the main part that I think the Canadian Chemical Producers' Association would like to have considered.

10:55

I think a lot of our dealings are within the EPEA, the Environmental Protection and Enhancement Act. In that act there are generally no problems with the disclosure information sections, 35(1) to (3). If you take a look at 35(4), though, basically "the

person submitting the information [would] make a request in writing." So the onus of proof, saying why you don't want that information released, is very much on the holder of the information or the person that submits the information to the government, but that covers a broad range. I think that when you look back to 35(1), in fact it covers everything, and 90 to 95 percent of that information should well be public information, in our opinion, but when you take a look at section 35(1)(a)(iv), it refers to "environmental and emission monitoring data, and the processing information that is necessary to interpret that data." That's where you start getting into a little bit more of the issues where the sensitivity occurs. The processing information basically is the recipe that you make the chemical with and maybe some of the information on how you've achieved your efficiencies in the process. So there's more concern about not releasing that.

If you take a look at the FOIP section 16(1), again I think that a lot of the rationale and a lot of the points in there would be supported by our members. I guess the concern here is again the broad implication that's given to some of the environmental data, that being any environmental data important to the public. Again, you know, if you look in some of the process information, it might be supplemental, it might important to the understanding, but it isn't the key environmental information either, and the public would have a hard time understanding it. Competitors would have an easy time understanding the information that was released.

So I think another point that needs to be made here, too, is that seeking some protection on the release of information does not equate in any way to wanting to withhold it from a regulatory body. You know, the information should be shared openly. In fact, if you don't have some protection mechanism, then there would be a reluctance to share some of that information openly with a regulatory body, and I think that would be unfortunate.

If we take a look at the FOIP division 3, third-party intervention, I recognize that the specific information that the party wishes to exempt or not release is usually just a very small part of the total package of the information that's asked for. The onus provisions seem to be a little better, but I guess at the end it still boils down to the onus being on the third party. The process itself I think for the third-party intervention is a good process. I just wonder, though, whether it would not decrease the load on that if you had a more clear definition of the exceptions. Here I'm wondering whether it would make sense to give more power or discretion to the head of the public body, who then would have presumably a better idea also of whether that particular part of the data would be valid and if it should be valid under 16(1) or not.

In terms of the FOIP part 2, protection of privacy, I recognize that part 2 deals with personal information, and that's very important. I wonder whether there is a basis for considering adding a part or subpart under 2 for corporate privacy or some component of that.

I'd like to come back to the responsible care and just give you an indication of what sustains the ethic. The importance of that is that there is a commitment up front by the CEO of each company, and there is a lot of peer pressure at the CEO level for the commitment. There is an annual recommitment, and there are advocate panels and performance reporting and a lot of public peer verification.

On a final note I would like to thank you for the opportunity to voice our concerns and to provide some input. I want to make sure that the understanding is left that CCPA under responsible care will always be committed to dealing openly with the public, especially the public in the adjacent communities.

Thank you, Mr. Chair.

THE CHAIR: Thank you.

Do we have questions?

MS DeLONG: I'm having trouble trying to understand what kind of data the government would be collecting which isn't actually environmental data. In other words, why do they need the information that has to do with your processes? It seems to me that what the government needs is the information as to, you know, heat produced or carbon dioxide produced or these things that actually come outside of your plant.

MR. SCHULZ: That's true, but when you're trying to have dialogue between a regulatory body and industry in terms of understanding a problem or an emission problem or something that may have impact or may not have impact in terms of public complaint, sometimes it's important for the government regulatory body to have an understanding of what went on in the process. In giving them that information of what went on in that process, if they give them anything in writing, then that information cannot be protected. Unfortunately, in my sense it kind of impedes that open dialogue, that I think is good in terms of a regulatory/responsible industry relationship.

MS DeLONG: Thank you.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. Thank you for the presentation, Al. Could you just expand on a couple of things for me a little bit? Under section 16 – and this is sort of taking off from where Alana was – some environmental information that in your view would not be in the public interest to release. Secondly, I'm a little surprised on your note on FOIP division 3, third-party intervention. Would you be comfortable with actually giving the director or the head of the public body the discretion to decide if that information is suitable to be released or not? I mean, is there enough protection there in your view for your organization to live with that?

MR. SCHULZ: Well, Mr. Chairman, I guess it's kind of a judgment call on that last one in terms of whether, you know, the comfort is there. Maybe it depends to some extent on the individual that's there as well, but having been in that position in fact with environment, where I was responsible for reviewing that, my feeling was that I had a pretty good sense in terms of whether the company was just trying to be difficult or whether the company had a valid case in terms of saying: look, this information really shouldn't go out.

In terms of section 16 or whether all information is important to the public, I think that when you get more into the detailed technical process information, the public for the most part does not understand it anyway. I think the public certainly has a right to know any emission information. You know, it should be there for the public. Any monitoring information should be there for the public, any problems. You know, that should all be reported, but I think at issue is the technical detail.

11:05

THE CHAIR: Mr. Mason.

MR. MASON: Thank you very much. I would like to ask how you distinguish between the technical detail and the other information which you agree needs to be in the public domain. How do you distinguish it? I'm asking it sort of as a practical question. Does somebody decide, or are there criteria that are established? What

do we do in terms of the legislation to make sure that that distinction is made appropriately?

MR. SCHULZ: I think that in general terms the process information is well understood in terms of what it means for industry, so I think you would be able to define what should be protectable and what shouldn't. For example, any of the environmental data is not process information. That's emission information. But if you're looking from the stack, for example, or from a discharge point, you're going back then into the process itself and defining what happened in there, whether this was this reactor or that boiler, that piece of equipment, and how that was operated during the time that that gave rise to a particular situation.

MR. MASON: I'm not really clear on the answer, because the question is: how do we in practical terms draft something that will distinguish between those things? I mean, you're describing that there's one over here and there's one over there, but somebody's got to make the decision, and it will never be as clear-cut as an example that we use to illustrate it, so how do we deal with that issue?

MR. SCHULZ: I still think you would be able to describe the technical process information in a tight enough frame that you would be able to distinguish it. I think the narrower you can make the focus and the clearer you can define the bounds, the better it would be. If you're accepting any information, then I think that that's my sense. I appreciate the point you're making, that it may be difficult to try to put those bounds in there, but I think it can be worked on.

MR. MASON: If I may, Mr. Chairman, just to follow back the question. Suppose there was a release from one of the plants that was environmentally damaging. How do you protect the company's trade secrets or confidential business information and still ensure that the public has the right to know if it's a particular process that is riskier than another process or if a particular method of operation that's been employed by the company entails greater risks to the public? How does the public have reasonable access to information about its own safety or environmental safety without following back the actual cause of an incident to make sure that it doesn't happen again?

MR. SCHULZ: If you have an incident, under the Environmental Protection and Enhancement Act the department is obligated to go in there and investigate and take whatever action or issue an order for whatever is necessary or initiate prosecution, too, if there was negligence. If that investigation – it's not an inspection; it's an investigation at that time – shows that the process is not suitable or is not operating the way it was approved, then you have an opportunity to correct that situation or look at different ways of avoiding or mitigating that. So the onus I think during that particular case of reviewing it in the public interest is on the department. That's my view. But certainly during that whole time, anytime there's an incident with a potential impact on the public, the public has a right to know any of the environmental monitoring, what's happening in there in terms of control, some of the explanations in terms of what caused it, and have some assurance that there are steps being taken to mitigate that to prevent its reoccurrence.

THE CHAIR: Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. Good morning. I'm interested in knowing if FOIP as it is written now has provided adequate protection for corporate privacy, and if there have been any releases of information that have caused problems, how many problems has it caused the way it is written now and how serious are those problems?

MR. SCHULZ: I'm not sure, you know, whether it has really caused a lot of serious problems, but I think it has impeded the open dialogue with a regulatory body.

MRS. JABLONSKI: Thank you.

THE CHAIR: Anything else? Going once. Going twice.

Thank you very much, Mr. Schulz, for your presentation and for your expertise in answering questions thereafter. Please rest assured that your presentation and your input will be on our minds when we enter our deliberations. Thank you.

MR. SCHULZ: Thank you, Mr. Chair.

THE CHAIR: On behalf of the all-party committee reviewing FOIP legislation in Alberta, I'd like to welcome the Insurance Bureau of Canada: Jim Rivait, who is the vice-president for the prairies, Territories, and Nunavut; Mr. Neil Miller, vice-president for northern Alberta for Wawanesa insurance; and Mr. Don Marshall, claims manager with Allstate. We've reviewed your written materials, and I see that there's more being distributed. You're scheduled for half an hour. We'd ask that you keep your presentation to no more than 20 minutes so that there's a minimum of 10 minutes for Q and A thereafter. With those welcomes, gentlemen, the floor is yours.

MR. RIVAIT: I am Jim Rivait, and I'm with the group representing the Insurance Bureau of Canada. Some people don't know that the Insurance Bureau is a trade association that represents home, business, and auto insurers.

The issue of consent, whether we're dealing with abstracts or material around a motor vehicle accident, is a very significant one for our industry. Today we operate under a standard that works for consumers, and it works for companies that insure consumers. The current approach in Alberta is to operate under a standard to which all other jurisdictions that have private insurers operate under.

Firstly, if we are required to obtain written consent from each and every driver of a vehicle to view the driver's abstract, it will have a significant impact on insurance consumers. We'll have a bit more detail provided by Mr. Miller on that matter.

11:15

Secondly, any difficulty in getting information that allows a timely and fair determination of fault in a motor vehicle accident serves only to protect the at-fault party. Don Marshall will be talking a bit more about that.

The information that I've brought along that is in addition to our initial report is just a summary of our presentation notes to make it a little bit easier. I also brought along the Insurance Bureau of Canada's model of a personal information code that deals with a number of issues but also limits use, disclosure, and retention of data. We've brought along a sample driver abstract – I don't know if you've had an opportunity to look at one – as well as a sample accident report.

So without further ado I'm going to pass it on to my colleagues, firstly to Neil Miller of Wawanesa, and he'll deal with driver abstracts.

MR. MILLER: Good morning, Mr. Chairman. I certainly appreciate the opportunity to address this committee on the issue of signed consents in order to draw up driving abstracts.

The current procedure of obtaining automobile insurance in Alberta I think has served the public well over the years. Essentially, those who are in need of insurance contact an insurance agent or broker and complete an application form. The application asks them to disclose certain information, including information about their driving record both in terms of accidents and driving convictions. It also asks for that information with respect to any other driver in the household. This information is required by an insurance company essentially to properly underwrite or assess the degree of risk with those drivers. I guess one of the fundamental principles of underwriting automobile insurance is that those who present a higher risk in terms of their driving habits should pay a higher premium than those who have a much better driving record. I think that sort of boils down to an issue of fairness. Once the application has been completed, at that point the insurance agent or broker generally has the authority to provide coverage, issue a temporary pink card, and the person can leave that broker's office with valid insurance. Driver abstracts are subsequently ordered by the insurance company to verify the information that has been disclosed on the application, again to ensure that an appropriate premium is being charged for the risk being presented.

Currently the government has been accepting the signature of the applicant on the application as authorization to order driving abstracts on all of the drivers that are declared with that application. The process of obtaining signed consents from each and every driver would certainly greatly increase administration costs for insurers, which ultimately would be passed along to consumers. The requirement as well to obtain signed consents from every driver could delay the provision of insurance coverage for anything from several days to several weeks depending on how long it took to obtain those consents. As I did mention earlier, the current practice is basically that the person, once they've completed an application with the broker, can essentially obtain insurance instantly. There's no waiting period while their application is being furthered reviewed by an insurer. On the other hand, you can imagine a situation where one of the drivers, a son or daughter or spouse, is temporarily away from home. Maybe they're up north working for a period of time. The time involved to get their authorization is what I was referring to as being something that would delay that process and could conceivably result in a situation where the owner of the vehicle would have to wait a period of time before they could have insurance in force. I think it's important to recognize that driving in Alberta should be considered a privilege and not a right, but along with a privilege are certain responsibilities.

One of those responsibilities is that drivers are required by law to carry liability insurance on vehicles. The government does collect certain information, specifically information about driving convictions, which is relevant to the underwriting of insurance, and it is only appropriate that insurers be provided with the information with respect to the drivers that they are insuring. I think the current practice does balance the need to protect privacy against the needs of insurers to provide coverage to Albertans. The requirement for a signed consent serves basically only to protect the individual who wishes to avoid providing that information regarding driving convictions to the insurer who is being asked to insure them. So I think, as mentioned earlier, there are certain responsibilities and perhaps an expectation that if you're driving a vehicle and require insurance, that information regarding your driving convictions will be provided by the government to your insurance company.

I guess you could ask the question: why not simply exclude a driver – you know, provide the insurance, exclude the driver – if you haven't got a signed consent? The problem is that once you've issued a policy, it provides coverage to any operator who's driving that vehicle with permission. Insurers can reduce coverage with respect to a driver that they don't wish to insure or perhaps one that has an undesirable record, but once you've issued the policy, you can't completely eliminate coverage with respect to that individual. There is an endorsement that allows you to reduce your liability limits from whatever they might be – half a million, a million, whatever – down to the minimum statutory limits, which are $200,000. But as an insurer we still have to provide that $200,000 third-party liability insurance even to a driver we don't wish to insure. That certainly creates a bit of a dilemma, and that could lead to insurance companies simply saying: well, we're not going to even issue a policy until we have every signed consent in hand. That again gets back to my earlier comment about delays in providing the coverage that Albertans have come to expect. It's a process that works well. They've come to expect that they can go to see a broker and quickly obtain insurance.

Enforcing the requirement for signed consents not only is going to affect the underwriting of new business but also will affect the administration costs of underwriting renewals. If insurers have to sort of suddenly go out and start getting signed consents from every driver that they currently insure along with those that are coming in on new applications, that would mean approaching somewhere in the neighbourhood of 2 million drivers in a relatively short period of time to start getting signed consents. Of course, the administration costs of that would be tremendous and ultimately be passed along to consumers.

I think the current procedure is consistent with what's done in other provinces. I think it is a balance of fairness there. We would urge the government to maintain the present procedure and make any legislative or regulatory changes necessary to eliminate a need for signed consent on each and every driver on a policy. The wish by the insured to have insurance while operating a vehicle should be deemed to be, if nothing else, implicit consent to allow the insurer of that vehicle to obtain information about their driving record.

I thank you for taking the time to listen to my comments, and I'll turn the floor over to Don Marshall.

11:25

MR. MARSHALL: Thanks, Neil. My name is Don Marshall, and I'm the regional claim manager for Allstate Insurance. I've gotten involved in this principally because I deal on the other end of the insurance spectrum, so to speak. Neil writes the insurance initially and talks about applications and that type of thing. I have to deal with the situation when there actually is a claim, so we deal with lots of customers and lots of third parties when they have a motor vehicle accident. If you have had an accident, you know that a lot of these situations can be very stressful and things happen very quickly. Because of that, as an insurer and to treat our customers properly, we have to get on these things very quickly and be able to deal with them so that our insured can get their vehicles repaired and get on with their lives.

Now, the reason I'm here basically is because of the – maybe what I could do is refer you to your little package. There's a copy of a standard Alberta police reporting form, and on that form there's a little space for witness information. Historically that information was readily available. Most insurance companies had little problem in getting that information from the various police departments in the province up until the introduction of FOIP several years ago. Since that time, various police departments have interpreted FOIP differently, and some police officers provide that information readily and some do not.

My concern as a claim manager is that if that information is not readily available, it really puts a real crimp on the claim process. A

good example that I could give is if you have a damaged vehicle that is not drivable and you can only get a rental vehicle from the company that is at fault, basically that company will not give you the vehicle until they determine you are at fault, and in a lot of situations the only way they can do that is from the information on the police form.

Another good example that kind of throws us off a little bit in the initial stages is if you're seriously injured in a motor vehicle accident. Now, there are certain benefits available through your own policy pursuant to section B of the policy, but in a lot of cases if your injury is catastrophic, you need a lot more money than that, and again the insurance company cannot give you that money until they determine exactly who was at fault.

Another good example where we need witness information readily is in situations where people have rather large deductibles. It's commonplace these days for people to have a $500 deductible on their collision coverage or in some cases even $1,000, and in those situations they cannot get their deductible recovered until the insurance company knows exactly who's at fault.

So in each one of those situations it's vitally important that the insurance company knows who's at fault, and in most situations the only way we can do that is through an interview of a witness.

The next consideration I just want to talk about briefly is a financial consideration, and they come up sometimes when there are catastrophic injuries. For example, if somebody has a very serious injury, an insurance company might have to post a $500,000 reserve on that file or perhaps even a million dollar reserve. If we don't know who's at fault and that information is put down inaccurately, that can cause some real financial repercussions for the insurance company, which in turn can result in either lower or higher prices for the consumers to pay.

Lastly, I just wanted to express my opinion that witness information I don't think should be restricted to insurers. I think witnesses freely give that information to a police officer with the knowledge that they will be contacted by a third party, and I think that information is vitally important for us to proceed with our business. For that consideration, I think it should be provided on all police report forms, and I would ask that the committee consider that when they make their deliberations.

Thank you.

THE CHAIR: Jim, did you want to close?

MR. RIVAIT: Mr. Chair, I just might have Don or Neil address the driver's abstract that was passed out too.

THE CHAIR: I was curious how you got a copy of my driver's abstract without my consent.

MR. RIVAIT: Well, we blacked out your name.

THE CHAIR: I see. Well, thank you.

MR. MILLER: Yes. If I just could draw your attention to the sample abstract in your package for two reasons. Number one, I mentioned that one reason that insurance companies draw abstracts is to confirm the information on the applications, and in this particular case I understand that the individual declared that he had no convictions.

The other point to be made, or the bit of information from the abstract, is basically just to give you an idea of the kind of information that is on an abstract. It's basically information about convictions. It doesn't show charges. That's important to notice. It only shows up on an abstract once they've actually been convicted. In fact in the case of, say, an impaired driving conviction or other conviction if they do appeal it during that appeal period, I believe the information about that conviction will essentially disappear off the abstract until their appeal is heard. If they're subsequently convicted or they lose their appeal, then that information goes back on the abstract. So it's important to note that it is convictions that show, not simply charges.

THE CHAIR: Okay. We'll open it up to questions. Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. In the insurance industry I think it's fair to say that every time you underwrite a client, you take a gamble, and it appears to me, based on your comments, that you're trying to take the risk out of the gamble. The information, as I understand it, that is being collected by the Alberta government on the abstracts of drivers was initially put in place in order to monitor the number of demerits and offences to regulate whether a driver's licence is valid or not, and it was not collected for the purposes of underwriting. I'm wondering if you can perhaps indicate to me: why should the information that is collected for one purpose be disclosed to another party for other purposes? The second part of my question is: you provided us only with part A of the police report, but there are witness statements which are readily available to both insurers and counsel who represent parties in an accident.

MR. MILLER: If I can address your first comment, yes, anytime that we provide insurance, we are taking a gamble, as you put it, or a risk, and we accept that risk. There is no perfect predictor, obviously, of who is going to have an accident and who isn't, but certainly past driving behaviours do give some indication of the degree of risk. Again it gets back to the concept that those drivers who present a higher risk should pay an appropriately higher premium. There's nothing that says who is going to have an accident. All you can do is look at what kinds of predictors there are that would indicate a higher risk. In the absence of being able to obtain that kind of information, insurance companies still have to collect the premium. If we can't vary the premium to some extent depending on the degree of risk that somebody is presenting, then the overall premium that insurance companies must collect has to be spread over everybody. So, again, I guess it's an issue of fairness. Should everybody pay for somebody who has consistently shown that they have poor driving habits?

I guess in terms of your question as to why the government should provide that information, basically the government, through the records they keep, is the only source through which that information is available and can be used to verify the information on the applications. Again the sample abstract we provided is certainly one example of why it's important to be able to verify that information.

MR. LUKASZUK: Thank you.

MR. MARSHALL: Perhaps I can speak a little bit to your question on the accident report forms. As I mentioned before, various police departments interpret FOIP differently, and some police officers release all the information they have. They'll give you the witness statements, as you mentioned, or they'll give you the witness names, but many more officers now will not. I was just at a meeting with the Edmonton Police Service, and they were of the opinion that they should take the safe route and not release anything without anyone's consent. So it varies greatly by police officer, but it's coming up often enough that it really is impeding our ability to serve our customers and do our jobs properly.

11:35

THE CHAIR: If I can jump in on that point, Mr. Marshall, as you may know, I have some experience with these matters. When I look at the collision report form that you provided to me, on this specific one in any event, I have a difficult time understanding why you would have to interview any witnesses to determine who was at fault for that accident.

MR. MARSHALL: Well, that particular one you wouldn't. It was just an example of where the witness information was for some of the committee members that were not familiar with the form, but there are many situations – for example, a left-hand turn situation, an overtaking situation, a situation where perhaps somebody was impaired – where it would be necessary to contact witnesses to verify exactly who was at fault.

THE CHAIR: Okay.
Mr. Mason.

MR. MASON: Thank you, Mr. Chairman. I have a couple of questions, and the first one is just for I guess my own clarification and has to do with the difficulties that requiring signed consent might pose to your industry. What I'm not sure of is: when someone applies for a policy, why can't you just build permission into the policy to obtain the driver's abstract and keep it current? Why can't that consent just be built right into the policy as a condition of obtaining the policy?

MR. MILLER: That basically is there now with respect to the actual applicant for the insurance, whoever goes in and signs the application. The problem is with respect to perhaps other family members who aren't accompanying them, obtaining their signatures as well. So it's easy enough with respect to the individual that's applying for the insurance, but they may have kids at home or, as I mentioned, temporarily away from home who regularly drive those vehicles who aren't with them who don't sign the application, and you have to track every one of them down to get their signatures. That's the problem delaying the whole process.

MR. MASON: Do the names of these other drivers have to appear on the policy?

MR. MILLER: Yes, and the individual that's applying for the insurance is required to disclose, to their knowledge anyway, what the driving record of those individuals is in terms of accidents and convictions. The problem is that they don't necessarily always know for sure. They may know, although in the example in front of you, the person wasn't willing to disclose it, but assuming that they honestly disclose their own convictions, we've seen situations where their 18-year-old son has a couple of convictions on his record that he hasn't told mom and dad about.

MR. MASON: And it wouldn't be possible to require those permissions to be given at the time that the policy is taken out?

MR. MILLER: Well, again, you can give them forms and so on to sign. The problem is getting those back in a timely manner and the dilemma: do you provide insurance in the meantime, or do you simply say that until we get all these forms back, we're not providing any insurance?

MR. MASON: That might be prudent.

MR. MILLER: It may be prudent. I guess the problem is: is it serving the best needs of Albertans who have come to expect that they can arrange insurance essentially instantly?

THE CHAIR: Mr. Masyk.

MR. MASYK: Thanks. Neil, thanks. With insurance it's on the computer screen. I'll tell you a little story personally with mine. I reinsured my truck, and they wanted to know if my wife was a second driver. I said: yeah, an occasional driver. She has her own vehicle, but once in a while she does use mine. They pulled up her driver's abstract immediately on the insurance screen. They asked for convictions, and I didn't know what she was convicted of. I had no idea of what her . . . [laughter] Conviction on motor vehicles. Anyway, it was right there. They pulled it right up on the screen. They were able to tell me exactly what it was going to cost.

Another instance was that because my primary driving was in Edmonton, my insurance automatically went up by $114 just by geographic location. I mean, is that fair to a perfect driver?

MR. MILLER: Your convictions aren't the only element that go into rating a policy, and as I alluded to, where that vehicle is being used is also a consideration. Rates in Edmonton generally are higher than in rural Alberta because of the concentration of traffic and the higher frequency of collisions within the city. So I don't want to try to indicate that convictions are the only consideration. They are one of a number of things that affect the premium you ultimately pay.

You mentioned that the broker was able to bring your wife's abstract, her convictions up on the screen. I'm assuming that you may have gone to somebody who has a registries office and through the registries office has access to that. It's currently anywhere from probably about a 24-hour to 48-hour turnaround time from when we order an abstract to when we get the information back. We don't have direct access to the motor vehicle records. They do in Ontario, and that's something that the government worked out with the industry there several years ago, and my understanding is that it's worked very well. But in Alberta it's a batch process, where requests are sent to the government and the information is sent back, and we certainly pay a premium for that information.

MR. MASYK: For my colleagues, it was a clean record. It didn't cost me anything extra. The date of birth was all I gave them, and it was right there on the screen within seconds. They actually turned the computer screen, and I could see my wife's driving record. It happened just from her date of birth. It was that quick. [interjections] Well, she doesn't know; I never told her.

MR. MILLER: Yes, as I said earlier, I suspect that may also be somebody that is a registries agent as well that has the tie-in in that direction, in that manner.

MRS. JABLONSKI: Well, this puts a whole new light on this discussion. I've been trying to convince my husband for years that I'm a perfect driver, and if he can go to my insurance company, that's also a registry, and pull up my driver's abstract – gee, I don't know.

Throughout your presentation you mentioned fairness to drivers who drive with good records, and I just find this comment very interesting. I can't resist making this comment. It seems to me that there is no fairness applied to young male drivers under the age of 25, who are all lumped in the same category and are all charged the same sky-high rates whether or not they are careless or careful. That's my comment.

Now my question: in asking for a signed consent exemption for driver abstracts for insurance companies, are you asking that this exemption, this exception be granted to insurance companies alone?

MR. MILLER: Well, my issue is strictly with insurance companies. I'm not sure what other bodies you may be referring to. I guess my perception is that we are providing the insurance for those drivers, which is required by law, and do have I believe a legitimate need for that information.

MRS. JABLONSKI: My concern was only that if we provide this exemption or exception for insurance companies, who else would we have to provide that for, as we would be setting precedent? That was my only concern.

11:45

MR. MILLER: I guess that's a valid concern. I guess I can't speak for any other organization that may feel that they have a need for access. I think that whether or not signed consents are required, the requirement for a driving abstract is essentially a fundamental requirement of providing the insurance. So there is a direct need for that information between the insurance company and the government that has that information. I'm not sure why other organizations would have that same need. Even if you consider an employer who is hiring somebody, if they are concerned about their costs of insurance and they want to ensure that they're hiring only low-risk drivers, they have the opportunity of obtaining that signed consent from the individual saying: look; before you come to work for us, we're going to require an abstract. The individual then has the opportunity of deciding whether they want to work for that company or not and provide that information.

MRS. JABLONSKI: Thanks very much.

THE CHAIR: I guess the last question or comment goes to the chair. Mr. Marshall, I want to revisit this thing about witness statements. In the collision report that you've provided to us, it couldn't be more clear who's at fault for this accident, but you indicated that in certain circumstances, if impaired driving for example is involved, that information would not be available on form A, and I agree with that. But do you not agree that that information is available to third parties such as yourself by doing searches at the courthouse and determining whether or not a conviction has been entered?

MR. MARSHALL: In some situations it is. My primary concern is not with finding impaired driving witnesses but is with motor vehicle accidents. I'd say that about 50 percent of all those accidents are fairly straightforward, like the rear-end collisions or things that can be easily sorted out, but probably 50 percent of them are not. Unless we sort that information out very quickly, as I said before, we don't know where to give the deductible. So a person is waiting before they can get their car repaired because they can't pay the thousand dollar deductible. They don't have enough money to rent a car, so they have to get the liable party to pay for a rental car.

So the immediacy is there, and unless we get that witness information immediately, it's very, very difficult for us, and you compound that by the number of claims we handle. Like, each year we handle thousands and thousands of claims, so potentially if everyone is delayed by four weeks or six weeks or two months or perhaps even three months, it's a real inconvenience to our customers.

THE CHAIR: Do you really believe that in 50 percent of collisions you can't determine fault by a simple perusal of the police report?

MR. MARSHALL: Yes, I do. We deal with them daily. Our inside auto reps have to talk to insureds and to third parties. One party has one version of the collision and another party has the other, and in a lot of cases the third party or the insured doesn't want their rates to go up. So we have to get an impartial source to tell us exactly what happened in the collision. I think it's vitally important that we have that information immediately.

THE CHAIR: Don't you regard the police as an impartial source?

MR. MARSHALL: I do. Quite often, though, they will not release the information like they did two or three years ago. They simply say, "No, we cannot release that information," and it's left at that. So our customer is left in the lurch, and we have to keep things pending for about a month or two months before we can get the insured's car fixed.

THE CHAIR: Okay.

My final question is: what is it that you're looking for? Are you looking for the names and addresses of the witnesses, or are you looking for the actual statements that are attached as appendages to the full collision report?

MR. MARSHALL: Ideally, both would be great, but if we just had the witness's name and a phone number, that would be ideal. We could contact them and just verify the events of the collision.

THE CHAIR: Thank you.

Any further questions or questions arising?

MR. MASYK: On this sample abstract when you look at this driver who's 20 years old, would you say: this is just when he got caught? Would you sit behind and say: "How bad is the driver? He got caught this many times in a period of five years."

THE CHAIR: What does it have to do with FOIP? Go ahead and answer the question if you want.

MR. MASYK: I'm just curious. That's okay. I upset the chair.

MS DeLONG: Just a quick question. Right now the Edmonton police and the Calgary police would be covered under provincial regulation, and then the RCMP are covered under federal regulation. Is that right?

THE CHAIR: For the record Mr. Marshall nodded in the affirmative.

Thank you very much for your presentation here this morning. It was interesting and I think informative, and we definitely will be mindful of your comments and concerns as we enter our deliberations. Thank you.

MR. MILLER: Thank you very much.

THE CHAIR: That's the last presentation before lunch. However, I have a suggestion. There are some brief business items that we are supposed to address at the end of the day after our final presentation. I would suggest that we deal with them now and then can adjourn immediately after the final presentation. Does anybody have any grave concerns with that?

I met with Tom and Hilary last week regarding the process for deliberations, a process that commences tomorrow as we start dealing with the 19 questions that were posed in the discussion paper, and subject to the committee's approval I think we have sort

of a plan of attack. Tom, if you want to briefly outline for the members what that is.

MR. THACKERAY: Thank you, Mr. Chairman. As you found out earlier today, there were 125 written submissions made to the select special committee. You have received summaries of each of them and actual copies of the submissions if you requested. Back in the office of information management, access, and privacy we've been going through the submissions and selecting common and/or key issues for the committee's attention. What we are proposing is that the deliberations of the committee start with access issues, then privacy issues, go to some of the general issues, talk about scope, and conclude at the end with the role of the Information and Privacy Commissioner. That means that we will not be dealing with questions 1 through 19 in that order but jumping around. I think there was notice given that hopefully tomorrow we can start dealing with questions 7, 8, 10, and 5, which are the questions primarily on the access side of the discussion paper.

What we are proposing is that tomorrow morning when you come to the meeting, there would be a summary sitting in front of your chair which would talk about the number of submissions that had a comment on this particular question, whether they had an issue or whether they didn't. We have tried to highlight the public's comments on the document that you would be handed and would also provide a commentary on the public's suggestions that often includes some background facts on the issue raised by the public. Sometimes the public isn't entirely clear as to what they should be talking about, and there are some specific errors in their submissions that either should be corrected or show that another statute is responsible for the type of issue that they're raising, not the Freedom of Information and Protection of Privacy Act.

We would also be proposing some questions that could be used to address significant points raised by the public and also start the discussion amongst the committee members. Do you want to add anything, Hilary?

MS LYNAS: No.

MR. THACKERAY: So that, Mr. Chairman, is what we're proposing.

THE CHAIR: Any questions to Mr. Thackeray regarding the proposed timetable and the order in which the issues will be addressed? Mrs. Jablonski.

MRS. JABLONSKI: Thanks, Brent. Tom, I just assume that each one of the presentations that were sent to us, each one of the submissions will be covered under the categories that you mentioned. Every one will be covered.

11:55

MR. THACKERAY: Yeah. Even if one person raised one issue, it will be covered in the summary, and it'll be up to the committee to determine how much weight you put on one submission that had one issue.

MRS. JABLONSKI: Thanks, Tom.

THE CHAIR: Any other questions, comments, concerns? Okay. That will be the way that we will address the issues, based on that timetable and based on that draft ordering that was provided to the members previously.

Now, we're meeting tomorrow, June 4, from 11 o'clock till 4. There are no presentations tomorrow. There will be more oral presentations on June 24 and June 25 and a technical review on June 25. That will be the end of the oral presentations. We will have to meet in July and maybe in August with respect to our deliberations, and I've asked all members to bring their calendars. I know that somebody probably didn't, but hopefully we'll be able to get to some consensus.

Do you have a proposal?

MRS. DACYSHYN: I don't. I don't know if Tom does or not.

THE CHAIR: I think it's going to be very difficult to meet in the first two weeks of July and perhaps the fourth week of July with Klondike Days, so I would like to meet on the third week of July.

Brian, you're gone starting tomorrow, but then you're back; right?

MR. MASON: Before the next meeting.

THE CHAIR: What does your summer look like, Broyce?

MR. JACOBS: I don't have my calendar here.

THE CHAIR: I knew that somebody would not follow the direction of the chair.

MS CARLSON: What was wrong with the original proposal for the 8th and 9th?

THE CHAIR: The 8th and 9th are Stampede, and that's going to be very problematic.

Alana, do you have your calendar? What about the 10th and 11th of July? Do you Calgary MLAs have Stampede festivities all week?

MS DeLONG: It's usually pretty busy, yeah.

THE CHAIR: Tom, I see you squinting too.

MRS. JABLONSKI: What about the last week of July?

THE CHAIR: Well, is that too late, Tom? I think we have to pick two days before the last week of July. I mean, we may have to meet the last week of July and at least one day before then.

MS CARLSON: What happened with the 22nd and 23rd?

THE CHAIR: The 23rd is the Premier's Klondike breakfast.

MS CARLSON: What about the 22nd then?

THE CHAIR: The 22nd I think is available to me. How about the 22nd and 24th?

MR. THACKERAY: We may want to look at three days that week if possible. You know, we were looking at the 8th and 9th originally, then the 22nd and 23rd, and then again perhaps the week of the 29th on the original tentative schedule in order to get through all of the questions.

THE CHAIR: What's your feeling on overload, burnout, and absorption rate? Do you think it's practicable to meet three days in a row to get through this stuff? Maybe it is. Maybe that'll require a level of absorption and focus that'll help all the members deliberate.

MS DeLONG: We've got caucus on the 23rd.

THE CHAIR: I'm aware. That's the Premier's Klondike breakfast.

MS DeLONG: So the 23rd is gone.

THE CHAIR: The 23rd is gone.

I mean, I'm serious about that. Should we find a block of three days and go hard, or should we split this up so that we don't burn out?

MS CARLSON: I have a comment I want to make. I arranged to take title of a house on the 24th because originally the proposal was the 22nd and 23rd.

THE CHAIR: I see. Okay.

MS CARLSON: At least not the 24th. But I have to go to a conference call now. Sorry, but you'll have to excuse me.

THE CHAIR: It's 12 o'clock. Why don't we chat informally about this off the record over lunch? Maybe we can figure it out at 1 o'clock. Does that make sense?

We're adjourned for one hour.

[The committee adjourned from 12 p.m. to 1:06 p.m.]

THE CHAIR: I'd like to welcome Ms Judy Kovacs, the secretary of the Alberta Society of Archivists. Thank you for attending before our committee, and we're interested in and curious about your presentation. It's about 1:06, so we'll give you 30 minutes, and we'd ask that you present for no longer than 20. You can present for shorter than 20, if you want, but we'd ask that you leave a minimum of 10 minutes for Q and A thereafter. With that welcome and that introduction, the floor is yours.

MS KOVACS: Okay. Well, I'd like to thank the committee for the opportunity of being able to present on behalf of the Alberta Society of Archivists. Just so you have a vague idea of what we do, the Alberta Society of Archivists responds to and helps with training, a little bit of maintenance, and a lot of advice on the running and the maintenance of archival facilities and archives all over the province. They run programs helping archives learn how to do their job better and also how to deal with the holdings that they have. Many of the holdings are municipal archives, health care organizations, and regional health facilities, so a lot of the documents that they have in their care do fall under the act or have fallen under the act in the past.

As for who I am, my day job is not actually as an archivist. I teach in the office and records administration program at NAIT and have been trained as an archivist and as a records manager and teach FOIP as well.

The primary issues that the ASA would like to present are from a survey that we sent out to our members. As you know, a lot of surveys don't have vast amounts of responses to them, so we're dealing with the responses of the people who responded. There were – it might sound a lot – nine primary issues, but they're not big primary issues.

The first primary issue that came up as a result of this survey had to deal with organizations that are covered under the scope of the act. Certain organizations, especially things like regulatory agencies and some research organizations that do have a connection with provincial funding, are not being captured in the same way that documents and records coming from regular provincial, municipal, and health care organizations are.

One of the problems is that these documents are not being captured, they're not being brought to archives, meaning that the long-term storage of these records is in doubt and the long-term accountability of these organizations can often be in doubt. If they are given to archives, then because they're not directly under the act, they're often placed under very, very stringent access and privacy constraints, which makes it difficult for anyone to actually access and research these records, if at all possible. Now, I'm just bringing up the concern. How this is going to be solved, I have no idea. I just bring it forth.

The second area we looked at is exclusions from access. There's an issue when you have public body records that are deposited by private individuals. It does happen sometimes. They're in people's garages, and public organizations are not aware that these things have been in people's garages for long periods of time. One of the examples that we've come across are things like school boards that no longer exist, and the records have been kept with one of the school board officials for many, many years. The school board doesn't actually exist anymore, so they give it to the archives. The question becomes: how are those records covered under the act? Are they covered under private records, which is a different thing, or are they covered under the FOIP Act as a public record? The act should cover records as the records' originators, not necessarily the records' depositors.

When it comes to obtaining records, we all have a duty to, number one, process the request as quickly as possible, and we do have a time limit, which is for most cases a very reasonable time limit, the 30-day limit. Sometimes we get requesters who are – I'm not quite sure if demanding is the word; sometimes just confused. Sometimes you get requests such as: I would like to see all the records that relate to the Alberta infrastructure over the past 50 years. Well, if they would like to pull up a truck, we would be happy to push all of the records into the truck and then they could do it. Sometimes it's very difficult to clarify and narrow down what people actually want, because in many cases there's a certain sort of serendipity to research. You troll through lots and lots and lots of records in related areas in the hope that you will be able to narrow down what you're looking for. What you can find depends on how well they were stored and how well the records were kept in the first place. If the originators didn't keep the records very well, then it's going to take you a while to be able to figure out where those records are. So sometimes the extensions are not just because people are being obstructive. It can be quite difficult to have to go through reams and reams of records in order to try and clarify a request and to help the researcher.

One of the issues we have had – and it comes with two areas – is being able to locate the public body responsible for records. Now, the public information banks do help, but sometimes what happens is that because of organizational change within an organization, people within the organization don't even know where their records have gone. They have sort of been shifted from one person to another and they don't know, so research is finding that they're being sent on a bit of a round-robin. There have to be either more restrictions as to you have to really keep track of as to where these things go or more training involved in letting people know, especially after a reorganization, where some of these records and where some of the departments have been shuffled so that they can lead researchers.

An issue that comes out of that is what we've termed sort of training complacency. The act has been in place for a number of years now. Sometimes one of the best ways of going about it is to train the trainer, who will then train people within an organization. What is happening in some cases is that training is becoming diluted as it goes further and further down the line. In organizations what will happen is that "Well, you can't see that because of FOIP" is becoming a bit of a catchphrase instead of having more aggressive training or refresher training or some sort of requirement to revisit or review the training every X number of years, which is a bit of an administrative headache I will admit. We have to go for refresher training as well. But it would alleviate some of the problems where

you have people who are actually some frontline staff who are administering parts of the act and who do not actually have a complete understanding of what the act will allow people to see and what it will allow people to have to apply to see. That is becoming a problem in some areas, especially some of the larger organizations.

We have some issues where the definition of privacy is becoming increasingly narrowly interpreted, and the cases that have come to our attention again involve school boards and in particular – it may sound sort of strange – yearbook issues. In an archives yearbooks are very valuable resources. It's one of the larger things, when it comes to school boards, that researchers want. Now schools are getting to the point where they say: "Well, it's got somebody's pictures in it, and it's got a name in it. We can't show it to you because it's under the FOIP Act." The fact that every student and their dog has had a copy of this and it's been spread around the city doesn't seem to matter. I think that in some areas, again either in the FAQs that have been posted on the web, something along those lines, or bringing it more to people's attention that just because a document has a name in it or a picture in it does not mean that the act has to be applied quite as strictly – you know, sort of more reasonable access has to be taken into consideration.

The area of researcher access is important to many of the people who are in archives, because that's predominantly what they're there to do. Most of the researchers who go to an archives are there to do genealogical research, which means that they're trying to research personal information. The other area is more historical research, and they could be researching anything from the history of a particular town to the history of how an organization came together to trying to look at epidemiological research. The research can be quite broad. One of the requirements in the act is to destroy personal identifiers after two years. In many cases in long-term research this is just not practical. Research doesn't often take place during just a two-year period. It can take place over two, four, six, 10 years. Now, I understand that you do not want personal information sitting around for vast amounts of time, but there has to be some way of getting around the fact that research cannot always be wrapped up in two years. Many archives are finding this very difficult, and many researchers are beginning to shy away from certain areas because they can't guarantee that they will be able to destroy this information within two years.

1:16

The next area was the cost-sharing area, and it's a bit of a misnomer that costs are actually shared. The archives association does support the application fee, because it does prevent the sort of frivolous requests that have been seen in other areas and in other provinces.

One area that the society is beginning to be worried about is the records management area that feeds into the archives, that is also under the act: stronger penalties against records destruction that is done either unwarranted or before it should be done. We are essentially worried that within a number of years there will be within an archives large gaps of documents that should be there but aren't. People don't want this information to get out, so they say, "Oh, well, we'll just destroy it now," or documents can't be found. We have seen that happening federally, and it happens in other areas as well. Not that that would happen here, we think, but the fear is that with an overaggressive look at certain aspects of the act, records will be destroyed prematurely, and that will leave an accountability gap and an historical gap in the records. We don't see that now, but within 10 years we will see it.

I used to work for an automobile organization. We used to refer to them as the dumpster gaps. Every time they moved buildings, there were large gaps in the records. People just threw them out. They ended up in the dumpster, so they were our dumpster gaps. We don't really need provincial dumpster gaps every time, you know, new versions of an act come out.

The very last one – and I'll just be fairly quick, so I'll be done here in a minute or two. With the Health Information Act and the FOIP Act there is some confusion out there. The harmonization of the act is not necessarily coming across out there on the front lines. Sometimes we have records that have personal information; sometimes they have health information; sometimes they have all sorts of information all blended into one. What would be really handy, and I realize that this is a large undertaking, especially with the PIPED Act coming in and the Electronic Transactions Act a little bit later, would be some sort of a document, a research or educational document, that would be able to harmonize some of the sections of the act sort of like a section of FAQs – if you have this, this is what part of this act applies to this type of information – a grid or something, because it can be quite difficult when you have a number of layers of acts that can possibly apply to the same kind of information.

I took way less time than I thought I was going to, so that's probably good for you. That's all that we've come up with at this time, and I'd like to thank you for the opportunity of presenting it. Any questions, just fire away.

THE CHAIR: Thank you, Ms Kovacs.

MR. LUKASZUK: On a lighter note, since there is a federal leadership race, would you tell us which federal departments have those dumpster gaps?

MS KOVACS: It was a private organization I worked for. It was an automobile association.

MR. LUKASZUK: Thank you.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. My question has to do with accessing records in archives that are relating to genealogical information, people trying to find information about families and people who have gone before. One of the things they tell me is that it's much easier to do this in some of the other provinces in Canada than it is in Alberta. I'd like you to tell me if that is in fact the case. Secondly,as you assess this situation, do you personally feel that it would not be reasonable to allow these people more access to this kind of information? If not, why not?

MS KOVACS: I'll address the first question first about whether genealogical research is more accessible in other provinces than in Alberta. It really depends on where the information is being accessed. The archives that we have here in Alberta are fairly small and many times have part-time staff, and part of the problem is that there are too many people going after the same information and it takes them a while to get to the information. Some other provinces have more of the information available electronically. They have more databases that they can tap into. That's beginning to happen here in Alberta with an initiative called the CAIN initiative, which is to get descriptions of records up on the Net.

MR. JACOBS: So that has nothing to do with FOIP, then?

MS KOVACS: Not really.

MR. JACOBS: It's just other circumstances?

MS KOVACS: Other circumstances in many cases. Not all, but much of the information that genealogical research would access in, let's say, the Millet archives would be private records that have been brought in. Although a lot of the research does involve things like land records, land records are a bit of a problem when it comes to FOIP and interpreting exactly what people can and cannot see. That's been one of those areas where the training has become a bit muddled over certain departments.

What was your second question?

MR. JACOBS: I had been led to believe that it was FOIP that was causing the problems. So I guess my question was related to the context of FOIP. Why would we want to limit people or make it difficult for people to do genealogical research?

MS KOVACS: As I said, the genealogical research that FOIP would sort of affect tends to be land records. You know, they want to see homesteader records and things like that. Other records that we see, things like immigration records, have a tendency to be federal records, which is out of our purview. The area where that becomes a problem again is that the training is a little bit confused. I mean, obviously land records are going to have a name, and they're going to have an address. They're going to have certain information. They say: well, you know, the act says that I can't give this out. So they're being overly cautious about what they can give out without sort of thinking of the broader circumstances. I mean, does it really matter if somebody knows who owned a property 60 years ago? Just because we have a name and an address, it's not really that big of an issue, but that's one of the areas where FOIP is beginning to be very narrowly interpreted because people are afraid of, you know, some sort of retaliation and they want to be very, very careful, which I think could be addressed with more training with the FAQs. You know, nobody cares who owned the land 60 years ago. Just give me the information.

MR. JACOBS: Thank you.

THE CHAIR: Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. Judy, you mentioned that one of the concerns is privacy, that the definition is becoming too narrow or too strict. I know that at the beginning of your presentation you said that you didn't have the answers, but in your experience you must have an idea of where you want the definition of privacy to go, and I was wondering if you would share that with us.

MS KOVACS: Well, it's not necessarily the definition as it is in the act. It's the interpretation of the definition that is becoming more and more narrow because people are looking at it as a way of protecting themselves: if I interpret this and I am very careful and I am very narrow in my interpretation of this, then nobody can possibly come back at me for saying that I gave out information inappropriately. You know, once something has been enacted for a certain period of time, especially something like the FOIP Act, where there's a fair bit of training that has to go into it, you have to learn how to interpret the act. You have to learn how to apply it to the various documents and such that you are looking at. I think the training issue again has to be revisited. There has to be a way of going out and saying: "Okay, let's see how you've been interpreting this. Well, maybe we have to do some refresher training so that you don't interpret things so narrowly, because you don't have to interpret them so narrowly."

MRS. JABLONSKI: Would a junior archivist, say, be instructed to take a decision to a more experienced archivist on whether or not this was a question of privacy, or does each one have to make that determination in their job without the experience of more senior positions?

MS KOVACS: Usually if there's a question, they would go to the person who was senior.

MRS. JABLONSKI: But they're not required to.

MS KOVACS: It would sort of depend. I mean, a lot of the FOIP requests are very routine, and you become very good at doing the very routine ones. In many organizations there's only one person who does that. Unless it's someplace very large, where they would have more people doing that, usually it's only one person who deals with FOIP. If there are sort of stickier issues or if for instance FOIP is dealing with a municipality, then it often goes through someone higher up before it goes out.

MRS. JABLONSKI: Thank you.

THE CHAIR: Any other comments or question?

1:26

MS LYNN-GEORGE: I just wonder where this period of two years in researcher agreements originates from.

MS KOVACS: I thought that was actually from the act, somewhere in the researcher agreements, either that or it was in researcher agreements that people had been using. Again, that could be another misinterpretation: this was what we had been told. A lot of misinterpretation going on.

THE CHAIR: Anything else or anything arising?

Any concluding comments, Ms Kovacs? You have a couple of minutes left.

MS KOVACS: Yes. Well, I think that one of the larger issues that we're looking at is that because the act has been in place for a little while, we need to revisit the training of the people who are actually working with the act, the people who are interpreting it and the people who are going through it, and making sure that they are aware of any changes that have been made, you know, either requiring or presenting some sort of a refresher course so that we don't get to the point where you just do something for the sake that it's been done that way for the past three or four years. You may not have been doing it right from the very beginning.

We'd again like to thank the committee for the chance to present on behalf of the Alberta Society of Archivists.

THE CHAIR: Thank you very much for your presentation and for your willingness and expertise in answering the questions. Please rest assured that we will be mindful of your comments when we enter into our deliberations. Thank you.

MS KOVACS: Thank you very much.

THE CHAIR: Staying on the same theme, the next presentation is from the university archivist, the information and privacy co-ordinator, Ms Jo-Ann Munn-Gafuik. We'll just give her a couple of minutes to get set up, and then we'll go right into the next presentation.

Welcome to the committee. We have allotted 30 minutes for your presentation, but we would ask that you leave at least 10 minutes at

the end for some questions and answers. I'd just ask that you get right into it.

MS MUNN-GAFUIK: Okay. I want to begin with a short story. Four years ago I was conducting a FOIP general awareness session in the faculty of engineering for the dean and his department heads, and there was some grumbling around the table about some of the workload and resource implications of the FOIP Act. The dean looked at the group assembled before him. As you know, probably with an engineering group it was a multiethnic and a very diverse group. He said: we have all known governments that are not accountable, that are not transparent to their citizens, and we don't want to live there; let's work on solving some of these problems. The room was silent for a couple of minutes, and then when the discussion continued, it was in a much more constructive tone. So I can say with as much certainty really as you can in a university environment that the four universities endorse the fundamental principles of the Freedom of Information and Protection of Privacy Act.

For faculty the access provisions reinforce their right to inquire, to investigate, to research, and to analyze, and I think that's important for some of the comments I want to make later on about research. For administrators the concept of accountability is stakeholders. To students the community, government, partners, and others is not new. The University of Calgary recently confirmed its commitment to openness in decision-making and communication in its new academic plan, Raising Our Sights. I think you can see in the process that's set up for students in hearings and academic appeals and so on that that whole procedure around accountability is embedded right in the policies of the university. As well, the concept of privacy has long been embedded in university policy. In fact, the policy on student confidentiality was crafted many years ago at the University of Calgary, and when the FOIP Act came into place, it didn't require revision.

Now, issues arise when this law or any new legislation or policy or flavour-of-the-month management concept – and not to say that the FOIP Act is equal to a team-based process improvement or anything along that line. When any of these things add to the administrative burden or conflicts with time-tested and time-honoured tradition or require resources from an increasingly limited resource base, there are problems.

I've already submitted a brief, that you've had a chance to look at. I'd like to focus at this time on some of the issues where more detail would be of benefit, I think, issues in particular relating to academic letters of reference – you probably saw that one coming – research, discretion in managing personal information, and harmonization of separate but related legislation.

First of all, letters of reference. You're probably aware that as a result of a ruling by the Information and Privacy Commissioner on a University of Alberta case last spring, students can now have access to letters of reference written on their behalf in support of their application for admission to an academic program. All other types of letters of reference or confidential evaluations can be excepted from disclosure at the discretion of the head of the public body under section 19 of the FOIP Act. To my knowledge no other Canadian jurisdiction makes a distinction or separates out one type of letter, in particular these academic letters of reference, when considering access under the law. In fact, the B.C. legislation doesn't even have a section 19 equivalent, yet the letters of reference are treated in the same way regardless of the procedure it applies to.

The four universities are unanimous in the belief that providing access to letters of reference written about a student's performance and commenting on their ability in comparison with hundreds or even thousands of other students often defeats the purpose of the process. One prof told me that although knowing that the student could have access to a letter she writes about her or him should not materially affect the content of what she writes, she doesn't think that the reader will be equally confident that she wasn't exaggerating for the benefit of the student. Another professor commented that her faculty was considering dropping the requirement to produce three letters of reference because it was a waste of the selection committee's time to read nonconfidential letters of reference.

In faculties such as law, medicine, and architecture in particular, where only a small number of the applicants are accepted into the program – we've got something like 60 who are accepted out of 1,300 who apply at the University of Calgary; those numbers could be much larger at the U of A – the reference information becomes a very important factor. It's only one, but it's required in order to give the selection committee a good understanding of how well the student performs, how well prepared the student is for advanced study in the particular field, and how strong the student is in relation to his or her peers. And that's an important factor: ranking the students against other students that the prof may have met in the course of his or her career. A bland or neutral letter written by someone who wants to avoid conflict, challenge, or in some cases harassment – and these are real issues – is useless for the purpose. All letters written under these conditions then become suspect.

The solution, then. I've talked to the four universities, and they agree that the U of C process for handling letters referenced in the last three years would be acceptable to all concerned, so I'd like to describe that for a second. What we did with these particular letters when we had access is exactly what we would have done in any other kind of situation where we receive letters in the employment situation: we go back to the referee, ask if they consent to the disclosure, and if they consent to the disclosure, then the letter goes out. The head makes a discretionary decision to approve the disclosure. If the referee doesn't agree, we look to see if it's possible to sever any comments that might identify a writer. The student is asked for three letters. That makes it easier. In one case I just provided a list of all the evaluative comments, extracting those comments from the letter so that it wouldn't be possible to identify the writer.

At the University of Calgary – and we can't compare to the U of A because the U of A adopted, as you know, a much different process. They simply said no to every access request that came forward. We didn't have any comparable requests at U of Lethbridge and at Athabasca University. At U of C in the year 2000-2001, our first complete year under the act, letters were requested in three cases. In all cases the authors of the reference or evaluation letters were asked to consent to the disclosure, and in all those cases in that first complete year consent was readily provided. In the last year, the year just completed, we had four requests for letters of reference. Six of the 10 letters requested were disclosed with the consent of the writers. With the other four we did something else; they weren't disclosed in their entirety.

First of all, it becomes apparent that the vast majority of students simply aren't interested in seeing their letters or else respect the fact that the process is confidential. Second, most referees are willing to provide disclosure, the ones that I talked to, if they get a heads-up. Knowing that the student is going to see the letter and having a warning ahead of time often gives them just enough time to be able to prepare for a question should it come forward. In one case this past year, one of the four that wasn't supplied, the prof actually asked that I not provide it to the student. He said that he would provide it himself because then he has an opportunity to have a chat with the student.

1:36

What is not obvious from the stats is that most applicants who choose to file an access request have a good reason for needing to see the letters. I know that we don't have to have the reason, but it's generally readily apparent why someone wants the letter, and in fact most people supply that information of their own accord. In most cases you've either got somebody who doesn't want to go back to the writer to ask for a second letter that they need almost right on the heels of the first letter – and those are the cases where we almost always would get permission to disclose – or, in other cases, where there is clear and obvious conflict going on. So in effect it's not just idle curiosity, and the evaluation process maintains its integrity. It is challenged when necessary, but essentially it remains a confidential process. In fact, I've got a new access request sitting on my desk where that's exactly the case, where the applicant says that she is convinced that there was some kind of interrupt in the process. Someone who she thought would be a good referee – there was conflict after the letter was requested, and she is afraid that's what jeopardized her chance to get in. So where there's conflict and where people feel that they need to challenge the writer or challenge the system, they have access to the process.

All four universities agree that students should have a right of access to a letter written on their behalf but would like to retain the discretionary right to refuse access to the letter. Decisions about access would be made on a case-by-case basis, as they are for references submitted in the employment context.

On to research, another very important issue for the universities. You've already had some discussion about classes of applicants, people who by virtue of their position should have greater access to information, and I'd like to talk about another so-called class, the academic researcher. Good government requires the participation of citizens. Citizens need to be well informed in order to participate effectively, and this means access to the facts about government activities. Access to information inevitably leads to a more open, transparent, and accountable government, an obvious benefit of this legislation for the citizens of the province. A good government, a progressive and democratic government, also requires the participation of those who are interested in analyzing the effectiveness of official decisions, policies, appointments, and legislation. Civil servants, who already have ready and complete access to the records of the government, are somewhat constrained in their ability to critically review actions and decisions. Academic researchers are not. They are free to study, to inquire, to investigate, to criticize, to suggest alternatives, at least on an intellectual level. They're not free if they don't have access to the information.

In the long run Albertans will not be part of the international debate on how to solve some of our social or environmental problems or even promote some of our solutions. Our scholars will focus and have admitted that they are focusing on American issues, where they have better access to government records, or researching global issues without reference to the Alberta perspective. The universities accept that the government may not be willing or even able to provide academic researchers with open access to records. It is possible, however, to allow access but retain some control over the outcome. Researcher agreements signed by the academic and enforced by the universities' ethics committees would ensure that government retained the necessary control over the dissemination of information it considers to be confidential. Both U of A and U of C have worked on some researcher agreements, one at the University of Calgary and I understand several at the U of A, where profs did research under such agreements, and neither institution has reported any difficulties with the process.

One advantage to this is that if an archives or a government body is required to review records line by line, it causes a great deal of expense for the researcher and for the public body. Instead of a line-by-line review, if the public body removed those files that were obviously not meant for public discussion, like legal files where there is conflict between people or any kind of human resource issues, if the obvious ones are removed and the person has access to the remainder without the line-by-line review, then the ability to do appropriate academic research would be met.

The third issue I want to talk about is discretion in managing information. I mentioned two or three items in the brief, but I'm not going to deal with all of them. I was just going to talk about one in particular. Changes in the technology are beginning to transform the public sector, as it is in government and as it is in universities, with the move to more electronic delivery of public services and the increasing ability of public services to make effective use of large amounts of electronic data. At the same time, the protection of privacy of the personal information in our custody or under our control is paramount, but we do need to ensure that the legal framework that's established doesn't lock in data use to particular organizational forms. The framework needs to be flexible enough to respond to new priorities and changes in organizational structure. Section 40 provides that flexibility to some extent. However, you've already dealt with a couple of the gaps; first of all, your own access to names and addresses of graduates in your own ridings and the access of the War Amps to registry data.

We are dealing with our own apparent inability to communicate with our alumni to the extent necessary to carry out a healthy alumni program. In the university's view there are a couple of clauses which should be added to section 40, and they are outlined in the brief, but on the whole too many exceptions or too specific an exception would unnecessarily clutter up the act. It really should be possible to permit disclosure of personal information contained in a public registry or another personal information bank, always subject to a codified list of tangible safeguards and adequate scrutiny, with the specific approval of the head of the public body operating on the advice of appropriate experts.

The example I provided in the brief I think is an important one. It's the University of Manitoba Act, which comes behind our act. I think that in the last two years their act was proclaimed for universities. When I spoke to my University of Manitoba counterpart asking how they managed to communicate with alumni, she said that it wasn't a problem there because they had this one exception which allowed them to – and it was never a delegated authority of the heads; it was always the head that had to approve this kind of massive mail-out, for instance to all of the alumni – for a purpose that's not directly related to the section that's already in the act, which is gratefully appreciated, the whole section allowing us to do fund-raising. But fund-raising isn't the total of the contact that we have with our alumni. So section 46 of the Manitoba act, which deals with permitting disclosures for specific circumstances in special cases where the owner of the personal information would have the ability to control its dissemination, would be one solution to the problem where you've got specific needs that don't need a specific section.

Harmonization of the acts is something you've looked at in a couple of other sectors. Universities, too, are complex organizations and are inevitably subject to a broad range of laws and regulations from the Income Tax Act to the Universities Act, from health and safety regulations to the FOIP Act. In matters relating to access and privacy, we will conceivably be dealing with

the Health Information Act because we have health clinics, hospitals, sports medicine clinics, and there are records in all of those places which come under the Health Information Act; the FOIP Act, which deals with our administrative and operational records; and the Personal Information Protection and Electronic Documents Act, which will conceivably pull in the alumni kind of mailing list information and potentially technology transfer, the corporate kind of entities that exist both on the U of A and U of C campuses, and eventually probably its provincial counterpart, where we have records of research institutes which may not be interprovincial and which will come under whatever legislation is contemplated for the private sector within Alberta.

So this inevitably places a heavy training and consequently a financial burden on the universities, and I heard Judy Kovacs talking about the inconsistency of training. I think that problem will only get worse as time goes on if people have to understand layer after layer of legislation that's slightly different. We do a vast amount of training at the university, and I'm sure they do at the U of A as well. But it's really difficult with the high turnover – we experience at least a 25 percent turnover of staff all the time – and then to get the nuances and the difference between various pieces of legislation is very difficult.

I also think the applicants will become more confused than they are already, and I'd like to relate one short story again. I had a woman write to me last month. She was looking for her husband's hospital record. He died in a hospital in Calgary, but he was treated first in Strathmore, and she felt that he had been held there too long before being transferred to Calgary. He ultimately died, and she wanted to know a little bit more about what he died of and what the diagnosis was, what kind of treatment was provided to him. She provided all of that information to me in that initial letter, so that's a lot of personal information that she didn't need to disclose to me. I don't run the Strathmore hospital; I work at the University of Calgary. She figured that she was entitled to this information under the Freedom of Information and Protection of Privacy Act. I never did quite figure out how she figured I would be able to help her with that, but someone had directed her to this piece of legislation instead of to the Health Information Act. I think that Strathmore didn't quite know what their obligations were under the act, and there was a bit of confusion. The fact is, though, that she gave me a lot of information. I was able to help her, but it was a real, albeit inadvertent on her part, invasion of her privacy. In the end I think this example speaks to the risks of creating an unnecessarily complex legal structure.

1:46

So if it's not possible – and I can see where there would be difficulties in harmonizing the various pieces of legislation, especially when there are some you're not responsible for – there should be the ability to at least consider harmonization in language, form, and process. In fact, at the University of Calgary what I've been trying to think about as time goes on here, if you have some time to put it all together, is to just forget about the various pieces of legislation and provide training on, for example, the CSA code of privacy protection so that people understand the basic principles that are embedded in the act and then leave only those who need to be responsible for actually processing access requests with the detailed knowledge of the various pieces of legislation. I think that if there is some consideration of the language that's used in the various pieces of legislation – and if you look back to the research provisions in the Health Information Act, they're far broader and much more permissive than they are under the FOIP Act – there might be some consideration to looking at access within the perspective of all the legislation that's going to apply.

One last issue I'd like to mention is the whole issue about frivolous and vexatious inquiries or things getting to the point of inquiry when they have really no merit. I'll just make it a short point. Some cases get to mediation and should be stopped there because there really is no merit. In one case that we dealt with, the issue was not even at this point any longer a FOIP issue, but the applicant was still not satisfied, and she insisted on going to inquiry. We had no recourse. So it pulls us into a process that's very expensive, because it takes a lot of staff time to write the briefs and so on, and there really is no recourse but to follow through. There should be some ability at some level for the portfolio officer or another officer who deals with the mediation to say that this is a case that doesn't require or doesn't merit an inquiry and ask the applicant to withdraw.

We see at the universities – actually Lethbridge has not had any access requests, and I wasn't able to get much information on Athabasca. At the U of A and U of C the majority of our access requests, the vast majority, are internal to our own process, so they're faculty students and staff who want access to more information about a case that they may either be in conflict with or just something they want to know more about. Most often, though, it relates to a process where there is some conflict. So typically, if it's a student, the student will have already gone through or be in the middle of or be operating in tandem with an inquiry process within the university, so an appeal process, and is tracking along that process. They may have a human rights complaint, may even have a lawsuit, and then are doing a FOIP request at the same time. Often the sense of adversarial conflict with the university or with the administrators is very high, and the FOIP Act becomes just another avenue. Sometimes there needs to be someone who says that this is not the right avenue, that you need to stay in the university process or whatever. So that would be our last point.

I'd like to thank you for the opportunity to be able to provide some detail on these issues facing the universities and welcome any questions you might have.

THE CHAIR: Thank you very much for that very informative presentation.

MS DeLONG: Jo-Ann, I guess I'm a believer in open and accountable government, and I cannot understand why a professor who is hired by the government to educate people doesn't want to be accountable, even to the people he's educating.

I guess the other thing is: why should anyone be able to write a letter about someone else, have it within the government, and that person that this letter is written about not be able to get the information? I'm just surprised that it even comes up as a question, that it wouldn't be open and accountable.

MS MUNN-GAFUIK: So you're talking about the letters of reference issue?

MS DeLONG: Yes.

MS MUNN-GAFUIK: The letter of reference becomes an issue partly because it's one of those time-honoured traditions, but also the letter of reference written on behalf of a student who has applied to a graduate program at the university is set aside as something different from the letter written to anybody applying for a job at the university, applying for a job in the government, or even a student applying for a scholarship. So section 19 protects those kinds of things, protects the professor who's applying for tenure, for instance, or applying for promotion. Those kinds of letters we can

refuse to disclose, or we can anonymize them before they are disclosed, take out any identifying comments. It's only that one letter that's separated out in the act. So the act already gives the university or the government the right to refuse to disclose certain types of letters.

MS DeLONG: It's the refusal that I'm concerned about, in that if I write a letter that runs down someone or essentially if I'm writing a letter about someone else, I just see that I'm responsible for that, and the person that I write the letter about should know about it. I mean, to me that's part of a public society.

MS MUNN-GAFUIK: Most professors say that when this act first was proclaimed, there was a lot of upset about the whole letters of reference issue. Then when it came into effect, you can see how many access requests we had; there weren't that many. So it didn't stay a large issue until the U of A case came down. Then it said that the process could no longer be confidential. It wasn't the fact that nobody wanted the letters to be disclosed under certain circumstances. It's just that they wanted some control over the process so that it would still remain confidential but that if you had an issue – and we don't need to know what the issue is. If you come forward, generally speaking, because the FOIP process is a bit of a bureaucratic step – you know, you have to come to somebody, file a request, and we have to write letters and so on; it takes a bit of time – then you're likely to have a reason for wanting to ask for those letters.

MS DeLONG: So why does it have to go to you? Why can't someone just say, "Okay; people have the right to this information in the first place," without them actually having to go through a formal process?

MS MUNN-GAFUIK: Even after the U of A case, when the commissioner said that students should have access to those letters, we decided after much consideration that we ought to leave it at that kind of process anyway because there is a chance – and it's not a small chance – that professors or anybody who writes a letter of reference is going to say: you know, when this student was in my class, I did this and that. So he may talk about himself. He may provide some personal information to provide some context to the letter. He may talk about three other students that he supervised right at the same time, because the letters frequently need some comparison. You need to say: this student ranked in the upper 10 of the number of students I've taught in the last three years. They may, if they're supervising six students, say: I was supervising six students last year; this student ranked second amongst the six that I supervised.

They may include information about other people or themselves that needs to be severed out. I've only had that happen once out of the number that I've dealt with, but there is that risk there, and the graduate faculty decided it was too high a risk to put in the hands of the administrators, and we still haven't sorted out that the process is not confidential yet.

MS DeLONG: Is there any penalty at all for not releasing information?

MS MUNN-GAFUIK: In this particular case?

MS DeLONG: Just within the university. Is there any penalty at all for not releasing information?

MS MUNN-GAFUIK: For letters of reference, you mean?

MS DeLONG: For anything.

MS MUNN-GAFUIK: No.

MS DeLONG: But there are penalties for releasing information that you shouldn't.

MS MUNN-GAFUIK: Well, the FOIP Act imposes penalties for releasing information we shouldn't. There has been information sent to the *Herald* that shouldn't have gone there, and there were no penalties. I don't know if there's any kind of policy that says that you shouldn't disclose certain types of information, not at this point anyway, except in legislation like the FOIP Act.

THE CHAIR: Jo-Ann, I listened quite curiously to your concerns. I appreciate the resources that need to be allocated to defend or intervene in what you consider to be a frivolous or vexatious FOIP request, but I'm curious, and maybe you can help me out. How do you submit that a referee or a FOIP officer can make a determination as to whether or not it is indeed a frivolous and vexatious application until they actually get into it? Presumably the university, if they're intervening or if they're defending or resisting the application, is going to put together briefs or put together submissions in order to help that referee or FOIP commissioner make that decision.

1:56

MS MUNN-GAFUIK: Well, I think that maybe there's a slight misunderstanding here. I'm not saying that the university or the public body should have any ability to say when something's gone beyond where it should go. I was saying that the objective third party ought to.

In the case that I'm thinking about, it was very clear to all parties except maybe the applicant that we had gone beyond the capability of what the FOIP Act was able to solve, that it was outside the scope of the FOIP Act, and that the student in this particular case was in some difficulty but that the FOIP Act had no authority over the process. This was something that could only be handled either internally, within the university, and, if not there, then through the courts. It's at that point that the objective third party might be able to write maybe even to another officer within the commissioner's office and say that in the portfolio officer's opinion this enquiry should not be permitted to go forward.

THE CHAIR: Any further questions? Does anybody from the team have any questions?

Well, on behalf of the committee, thank you very much for that very information-filled presentation and for your ability to answer the questions thereafter. I appreciate your attendance here today, and I apologize if I mispronounced your last name.

MS MUNN-GAFUIK: Thank you.

MS CARLSON: I have a question on process.

THE CHAIR: The chair recognizes Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. I was just hoping that for the next meeting we could have the submission number beside the submissions attached on the agenda, because it took me some time, given the bundle that we've got, to run these down, and I never did find the one on behalf of the Universities Co-ordinating Council.

MRS. SAWCHUK: They're separate. They're totally separate.

MS CARLSON: Yes, but if we have a submission number that went beside it, that would just help me. I couldn't find this last one, actually, in the bundle.

MRS. SAWCHUK: Yes, I understand.

THE CHAIR: Karen, do you know what Member Carlson is concerned about?

MS CARLSON: For instance, Ms Tara DeLeeuw: her submission number is 14. If that had been just put beside it, that would have been easier for me to find.

MRS. SAWCHUK: Okay. That makes sense.

MS CARLSON: Thank you.

THE CHAIR: Okay. So we've sorted that out.

As the committee clerks distribute documents, I'd like to welcome to our special committee Dr. Dieter Remppel from Canmore, Alberta. Welcome, Dr. Remppel. I see that you've been here the majority of the day, so you know how we operate. It's fairly informal. I see that your written materials are being distributed. We'd be happy to listen to your oral comments for a maximum of 20 minutes, and then you can leave a minimum of 10 minutes thereafter in case any of the panel members have any questions regarding what you have to say. With that welcome, the floor is yours, Dr. Remppel.

DR. REMPPEL: Thank you. I really appreciate having the committee accept me as a member of the public to speak here. I have listened to quite a few of the submissions earlier today, and I must admit that the whole FOIP issue is much more complex than what probably a citizen at large would anticipate. I really appreciate the difficulty also that this committee is being faced with, as well as the individuals who also drafted the initial FOIP legislation, in finding a fair balance between the interests of all of the parties involved. I don't know whether I would want to volunteer for that.

I am probably a representative of the largest interest group, which is the public. I can only speak from my own experiences. However, having spoken to many other people about this, I realize that I'm not alone with my concerns, which I want to share with you. I thought that in order to warm up, maybe I just want to comment a little bit on the fee issue. I refer to the document which I have downloaded from the web. On page 7 it says that fees are established basically to try to strike a fair balance between the fees or the costs incurred by the government versus those of individuals or parties who make requests. Number one, the fees the government incur are largely a part of how well the government is organized. If the government was well organized, the fees probably would be minimal. I have a concern that the government downloads on the applicant the cost for retrieving documents which are probably difficult to access because of a sloppy documentary process in the past.

We all probably agree that the biggest obstacle in this country to a functioning democracy, if you wish, is the general apathy of the public. Now, here are a few individuals who do something, and they're being faced with sometimes substantial fees. I believe you have a submission from another gentleman from Canmore, and he was faced with a fee of $1,600, I believe, just for copying. Having said that, I still consider that at least if members of the public make inquiries, this is a cost well spent in order to ensure a public, an open, a transparent, and eventually an accountable government.

If we put this in perspective, if I remember, just prior to the last election the provincial government took out radio time and probably newspaper ads and whatever to advise the public of Alberta that they had lowered taxes and that health care was improving and all kinds of things. Their point was that they have a mandate to inform the public. But lowering taxes does not constitute an emergency, and I've never heard an ad from the government, you know, that the taxes are going up and the taxpayer had better budget for that.

All I wanted to say is that in terms of fees they should be reconsidered so as not to be an obstacle for those few individuals out in the public who are willing to carry the ball and do something. I assure you that by the time I drive up here and book a room for a night and meals and the time spent, I probably have spent more money than the government ever will on some of my requests for information. Even before I am able to put in a reasonable request for information, I have spent a lot of time to familiarize myself with the issue, and that probably should go into the equation and be balanced against what the government will have to do to provide me with the information I've requested.

One proposal. Let's say if I'm in a rush and I want something within two or three weeks, I may pay, and if I'm patient, I may sit maybe for 40 or 50 days to get it because the government will not spend any additional dollars for me making a request. The secretary will just put it into her schedule as she sees fit.

Anyway, this was for the fee schedule. Now I refer to page 4 of the Internet document, where it says that section (4) of the act lists certain classes of records and information. So the wording indicates that FOIP even differentiates between records and information. Now, obviously a record is information, but information is not necessarily recorded, and that's one of my biggest concerns. I got involved with FOIP when municipalities became subject to FOIP, and that was back on the 1st of October in 1999. I had made numerous requests before under the Alberta Municipal Government Act, section 7 I believe it is, access to information. If the town manager said no and council would not interfere with the town manager's affairs, that was the end of it. So I really appreciated, you know, that municipalities were finally made subject to FOIP, and things started to unfold.

2:06

In a quote from I think it's page 44 – I don't know whether it's the current version of FOIP or what – it is not acceptable to withhold a record simply because an examination reveals possible embarrassment or liability to the public body or the government as a whole. The way I see the situation right now in the town of Canmore is that the past has kind of caught up with them, and they are trying to keep a lid on a can of very ugly worms, if you wish.

I have three – now, the first one is in terms of records versus information. We all know that Crime Stoppers pays an award for any information leading to an arrest and on and on and on. So if I phone the police and tell them, you know, who I saw that did it and they catch the guy, I get the reward not because I have generated a record but I have provided them with information. The act is the freedom of information and protection of privacy rather than free access to records.

What I wanted to demonstrate with this is what happened back in 1993. The submission starts, "In view of this and numerous other like instances I ask the committee." The administration drafted a confidential memo. Again, all this was made available to me after October 1, 1999. They obviously drafted a confidential memo to have my house under construction demolished in order to uphold the town's building permit bylaw. Now, I did receive a copy of the building permit bylaw, and I could not find any reference, so I wrote to the CAO, Mr. Dyck. I asked him: "Look; you know that the

administration suggested to tear down my house to uphold the building permit bylaw. My question is: which provision of the building permit bylaw was supposed to be upheld by tearing down my house?" Well, I've not even received a response. My suggestion is that there is no record, but it is certainly information in the possession of the municipality; right? So what I'm trying to say is that even if there was no provision and if it was outright maliciousness, the fact that there is no provision in the bylaw, the information is in the possession of the town. My question is: why can I not get such information?

Independent review and the role of the commissioner. What I would like to suggest is – now, I'm also getting conflicting information from various FOIP co-ordinators. Some suggest that FOIP is information driven, and some suggest that FOIP is document driven. So if it is document driven and the information exists, we are kind of at an impasse. I have no means at this point in time to get the information in the possession of the town. My suggestion is that the commissioner be given the powers to order the town to put the information, which must be in the possession of the town, in the form of a memo and then convey the memo to me, if it is document driven.

Long before I can request a copy of a document, we have another problem. I don't know how much this is within the scope of this committee, but it's certainly something that needed to be brought up. That is that a record has to be generated in the first place, and if a record has been generated, it has to be complete and accurate. What I mean with this is – you have another copy of some correspondence which says that last year, in February, I was served with an order to remedy unsightly premises. So I wanted to appeal to town council. Now, because of the long-standing issues and differences between the town administration and council and myself, I did not consider Canmore town council to be unbiased. What I have done is I have copied my presentation to town council, which concludes, "Based on Council's past performance in dealing with issues relating to me, I object to this panel hearing my appeal," not being unbiased.

So what happened – if you go to the last page and you look at the council's minutes, it says:

Unsightly Premises Order upheld.

Moved by Mayor Casey that, following the review by Council the Order is upheld in writing.

First of all, my name hasn't been mentioned. Secondly, there is no wording that I have refused to present my appeal to council as not being unbiased.

So in terms of generating records, there seem to be some shortcomings. I don't know if this would meet the requirements, but as it stands, there is no record in the town's archives that I have refused to present my appeal to council. Now there is because I have made a request that the minutes be amended. This was denied. So this is the only reference that is in council's archives which documents that I've refused council as being biased. This is in my opinion very serious in terms of, you know, if I am restricted to records and the records are not generated appropriately in the first place, all of FOIP doesn't help me much.

Third parties. There are so many things. Another thing in terms of the bodies covered by FOIP – there was a list somewhere. My concern is – and I have been in touch with – was it Mrs. Marylin Mun, FOIP co-ordinator? I don't know her capacity. No; it was somebody else. She suggested that there was a FOIP review, a previous one, and it was considered to have self-governing professions made subject to FOIP, but eventually that was dropped. It was not pursued, and there was a recommendation that self-governing professions draft their own access to information and protection of privacy guidelines.

Now, I'm a member of APEGGA, not by choice but legislated. I've had a number of inquiries, and APEGGA would not even tell me that they did not have any FOIP equivalent. I had to find out through Alberta Labour, who at the time I think was in charge of monitoring, especially APEGGA. Now, because I don't have a choice and I have to be a member of APEGGA, I also suggest that APEGGA, just like other authorities, health authorities and municipalities, should become subject to FOIP.

2:16

The reason I'm so concerned about this is that a number of years ago the town wanted to purchase a new sewage treatment plant. They hired an engineering firm, a consultant, and I managed to get my hands on that report. I would probably have hidden in a gopher hole, you know, if I'd had to sign that. It didn't take any engineering ingenuity or anything, just common sense, because the company was contradicting themselves from page to page. So I suggested to the town: look; this process is being sold as the cheapest alternative of a short list of alternatives, and this is going to be the most expensive one. Eventually they steamrollered me, and I filed a complaint for professional misconduct with APEGGA against the consultant. It was ruled that it was not unprofessional. I said: well, why not? They said: well, you can appeal. I said: I certainly will, but I need to know the reasons why so I can prepare my appeal. "You can appeal." That was the end of it.

So I appealed, and I said: the whole spectacle will just repeat itself, and it certainly did. I presented my case. An engineer came up and said: you presented your case very well. I said: well, I hope I'm going to get the rationale and the reasons for whatever decision the committee is going to strike. He said: I'm not sure if I can promise that. Sure enough, I never ever, ever got the reasons for the decision. Then it turned out that the sewage treatment plant had a cost overrun of 50 percent.

So all the information was with APEGGA, and I'm sure there are some smelly fish hidden there. This is public, and I suggest, you know, that at least some aspects of FOIP should be extended because monitoring certain professions basically is a responsibility of the government, and the government by the professions act or whatever has just delegated this responsibility to the self-governed professions. Therefore, I believe that they should be subject to some equal scrutiny, as is the government.

One last thing. I see I'm running out of time. I admit that I do have a long-standing dispute with the town of Canmore, and it's not a secret. Many departments up here in Edmonton do know, and probably some wish me to hell. Now, rather than address the issue, the town is still trying to keep the lid on the can. In terms of doing this, on the 29th of January of this year they filed a request in Court of Queen's Bench to have my house demolished. It's almost finished, but the town doesn't care because they have the authority. So they have consulted with their lawyer, and I made a request under FOIP to see all the documentation. Now, obviously it was denied. The FOIP co-ordinator quoted the sections of the FOIP Act which would authorize her to deny me information that was exchanged between the town and their lawyer, which may or may not have some merit. What I wanted to suggest is that those records should not be locked away forever. Once the issue has been resolved, I should have an opportunity to go back and see those records. It's law enforcement or bylaw enforcement, and it says in here somewhere that information that's crucial or necessary or which may impair law or bylaw enforcement is confidential and cannot be released. Once the issue has been resolved and my house has been finished, I should have an opportunity to go back and see

what the advice was and what the questions were that the town was asking in terms of establishing that they have acted responsibly.

Just as a scenario, the lawyer may have told them, "You're out to lunch," and the town has still filed that request in court. I call it government by intimidation. An open, transparent, and eventually accountable government should stand up to the decisions they have made in the past. So if it is not a law enforcement issue anymore, those records should be made available.

I guess I'm out of time. I have many more issues.

THE CHAIR: Are there any questions for Dr. Remppel?

Well, I'd like to thank you on behalf of the committee for traveling up here from Canmore. I can guarantee you that we do not wish you to hell. Thank you for your presentation. We appreciate it. Thank you.

DR. REMPPEL: I see that I, too, have a few minutes. You were on radio a little while ago, just recently. Just a suggestion. That's not why I came up here. It has to do with the War Amps and that they had access previously to the addresses of all the registered vehicle owners. What I wanted to suggest – and it may be applicable to other situations as well – is that you may think of some kind of, I would call it, a filter. I heard this morning the representatives from the insurance industry and others.

Just very simple. I drive down the road and I see a licence plate, and I want to get in touch with that driver. I take a note of the licence plate. Now, I cannot get in touch with the driver or the registered owner because this is privacy. What the committee could consider, or whoever is in charge of drafting some kind of proposal, is a filter. For example, in this instance I write the letter I wanted to write to the driver, put down the licence plate, and I turn it over to one of the registries. I pay $2, $3, or $5, whatever. The registry then enters the licence plate, and the printer spits out the address. The registry puts on a stamp and mails it. If the driver wants to get back to me, it's fine, and if not, it's equally fine and I may pursue some other options. So just a filter whereby I can get in touch with whomever I want without necessarily knowing what's classified as personal information. I just wanted to offer this as food for thought, if you wish.

THE CHAIR: Well, thank you for that, and thank you once again for your presentation.

Ms DeLeeuw, on behalf of the all-party committee reviewing FOIP legislation in Alberta welcome to our committee. We have received your written materials and reviewed same.

MS DeLEEUW: I'm a great speller; eh.

THE CHAIR: Yeah.

As with all other presenters you have an allotment of 30 minutes, but we would ask that you keep your comments to 20 or fewer so that we can have at least 10 minutes at the end to ask any questions of you that we might have. With that introduction and welcome, the floor is yours.

MS DeLEEUW: I'm not sure how many of you here know me, but I'm an advocate for rural people. That was my first introduction to the act. Also, a personal encounter introduced me to the act. It is obvious that I have a different understanding than this gentleman before us with the act. I consider myself a proficient information collector. As a result, I come before you with a wealth of knowledge and experience and use of the information act. The information I have collected I know very well, as I have done five years of research and study and have skillfully collected a wealth of information. I am the Canadian people's expert regarding this act. The small amount of information I am allowed to provide in this short time will give credibility of great relevance to the future of the act. I hope it does. Hopefully it will provide a better future for the Canadian public.

2:26

As you will note, there will be reference to desired agendas and desired outcomes. When I did my research on this topic, I asked myself: what are my desired agendas and outcomes for such a large amount of time consumed for information collected? I concluded that it was for my fellow Canadians, particularly rural Canadians and rural Albertans, to isolate them. I wanted them to have accuracy and knowledge regarding this act. I wanted the unsuspecting to become suspecting. My information collection research is diligent, skillful, legitimate, sincere, intelligent, emphatic, important, and true. The review committee must consider this expertise I've brought before you in compiling this information for all Canadians, particularly rural Canadians.

The method to determine the facts was doing a history of the act. I used the act over and over again with various departments. Interacting with the act, using the act, and becoming familiar was a learning process, and it was an abusive process. It was a process that opened my eyes and changed my world tremendously. While getting to know the act, I also had to look at policies and agendas of the governing political party, which is PC Alberta. Assessing the role and service of the commissioner's office for the public was very interesting as there are different positions to be played in right-wing politics, as there is with access to the information act.

The act is extremely powerful. It can with assistance exercise many abilities, and it accommodates so much. The research I gathered indicated that the act is becoming increasingly discriminatory for access. It with assistance discriminates. It protects discriminatory acts. There is a strong correlation between party rule and declined access to the act. Not all government agencies have equivalency on their discriminatory – it depends what you're asking and it depends whom you are asking too.

It greatly affects so much. It can and does rewrite and falsify history. It can falsify circumstances. It can and does have the ability to create information. It has the ability to misinform, misguide, to shape thought, impress as the truth, influence what and how we think. This can be for a variety of agendas. It depends on whom it serves and how it serves. It can project outcomes for desired agendas or desired outcomes for desired agendas. It can project the future. It can ensure with certainty desired outcomes and agendas. The act has the ability to confine, agitate, and demonstrate no mercy on the innocent. It can assist with financial, political, and personal profit. It can and does interfere with other acts and legislation, particularly justice.

The research I did would indicate that it's difficult under this act for party relationships and other public bodies to get access as impartial.

Last but not least is my favourite, which is probably what started my research. The act is capable of encapsulating corruption. It protects corruption. It allows corruption to flourish. So quite a powerful act. It accommodates so much. My information collection, which I have numerous of if anybody is interested after – I'm the true holder of the information – indicated that there are two important factors and facts which influence and contribute to the abilities of this act to demonstrate, as I can, bigger access to the people of Canada rather than the act itself. Number one was administration and the administrators of the act. Two was that the political party policy and delivery of the act are very, very closely related. These two factors had great influence on the abilities of the

act but are not alone on influence. I will touch on a few in my scattered presentation.

In my research I followed actions, behaviour, and verbal of administrators. There were correlating factors, similarities of demonstrated delivery of the act both in character and abilities to administer regardless of the request. It depended on what it was going to disclose. It was quickly indicated that administrators were not chosen for their intelligence or their abilities but were more there to serve party policy agendas and desired outcomes. It also was indicated that not only were they not chosen for their intelligence, but they had to have some inadequate characteristics, assisted also in the access or nonaccess. Access and availability are in correlation with party policy and agendas. My gathered information indicated that the ministries must serve party agendas even above public safety or the public's interests. I'd like to stress that safety is not something that is at the forefront when party policy is at the forefront.

Administration and party policy agendas have strong correlations in information collecting. If they do not collect it, they don't have it. You have to have access to receive it. If you can't get access, you can't have it. There are very much some introduced tactics along with the administration of this act. To view the evident corruption of a public body, I urge my fellow Canadians to play the freedom of information game. Evidence would say that the more rooted corruption there is in a public body, the more evident it is among the administration.

The administrators of the act hold the power; the information collector holds the advantage. The pen is mightier than the sword. The person that gets to write gets to hold the power, and they get to direct what angle they want that access to go and how it's to go. There also is a dependency for corruption. It needs assistance of other agencies and boards. Information gathering, desired agendas, and outcomes need assistance.

At first I was very puzzled with the information I gathered. I was stumped. Then the information became indicative that there was one common bond, and that would be party policy. All boards, agencies, commissions, and commissioners are linked to party policy. Impartiality is only available within party policy. Regardless of public or safety interests, the act is discriminatory, and access is only available through party policy. It certainly has surpassed public interest. Most people think that the act is to provide accountability and transparency. It is actually the opposite. It is to protect from being able to be accountable.

Another thing I wanted to stress is that with the act we've become a society, a community that believes that our government's management is not transparent at a glance. Every year there's an increase of fees, hoops to run through, and this and that, and we become compliant. We have assimilated this act as part of our everyday existence. I always wondered: when we go to the polls, how do we decide who our elected officials are if we can't see the management or the agendas that they have? Of course, we know that it's just pure manipulation when election time comes around. It has nothing to do with management. I have done some other extensive research and information collecting, if anybody is interested. I have titled some of the papers just a bit: How Far is Too Far Right? This is another one that's very personal to me.

When you give part of the information or you misinform or you refuse access or you introduce tactics to stir and agitate and confine and all that, particularly misinform, when you intentionally do that, when the administrators intentionally do that and then basically the person that receives the information makes some very important choices on that – the person giving the information, knowing that that would sway the choices in their favour, is that considered fraud? Or is it okay to provide misinformation? There seems to be a trend happening here.

I'll give you an example of one of the most appalling things that I've seen in my most recent research. I had a cousin killed in a house fire, and the circumstances right from the beginning were very questionable. Of course, there was advantage taken of grief, which I know very well, which was repeated to ourselves, and misinformation was provided to our relatives on that house fire. Basically, at that time the choices were taken away from her to make choices if she wanted to pursue justice. So people intentionally gave her and him wrong information, knowing that the outcome would affect their choice. I had the same thing happen to me. I was provided with misinformation, wrong information, and basically was confined in an act, knowing that my choices would be limited. That was done with the PC Party's agenda.

2:36

Another paper I have is called Rule Management and the Freedom of Information. Another one is called That Water Stinks: How Did It Get That Way? Who manages private contracts? Who manages the consulting contracts? Who manages? The numbers in the Freedom of Information and Protection of Privacy Act: who has the right numbers? There are so many numbers. Everybody holds the right numbers, but who has the right numbers is the question. Don't worry about the War Amps having monopolized lists. I'm not worried about them. Those are ministered pseudo issues of the act. Yearbook pictures, War Amps: now, come on; let's get real.

Scatter the information. Bury the information. The information doesn't exist. Funnin' in the act. I call it funnin' in the act. Shared behaviours escalating within the act. That's usually done by the administrators.

Another one is titled Who Cares if History is Falsified? Who cares? Who profits if history is falsified? Self-doubt, confusion 101 are certainly introduced tactics of the administrators of the act. How to overemphasize your words for desired agendas and outcomes: paint the picture with words; play subjectivity to influence. The person holding the pen has the power. Keep things inefficient so we don't appear corrupt. Inefficiency always looks better than corruption. If we don't collect, we don't have to acknowledge. No access, no claim. Don't have procedures or policies or guidelines. It will expose our corruption. The act needs to be scattered. Vulnerability at the mercy of the information collector.

Would our courts be impartial? My information says that they would not be impartial, furthest thing from it especially in Alberta, where you have 30 years of monopolized rule. It's a little difficult. When I did provincial, I noticed that there was a difference in how long the party rules and the administration of this act. The act needs time to provide desired agendas and outcomes, particularly when there is threat of exposure, a party's policy being exposed over public safety and public interest. The act needs time, particularly when there's corruption involved.

Now, I think that's about it. Any questions? Remember, I am the expert.

THE CHAIR: Any question for the expert in Canada on freedom of information and protection of privacy?

MS DeLEEUW: There's got to be some. Come on.

THE CHAIR: Thank you, Ms DeLeeuw, for your presentation.

Can I have somebody move that we adjourn? Mr. Mason. Anybody opposed? We're adjourned.

[The committee adjourned at 2:41 p.m.]