**Title: Tuesday, June 4, 2002 FOIP Act Review Committee**

Date: 02/06/04

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning. Welcome, everyone, to the first hands-on working day of the special select committee reviewing FOIP legislation in Alberta. We have an agenda before us that was distributed late last week. Subject to the following changes, with respect to paragraph 4 of that agenda, Date of Next Meetings, we can put on the record that the committee met yesterday and decided that it would meet June 24, June 25, June 26, July 22, and if necessary July 25. I suspect that my understanding of yesterday's agreement was correct. Is that fair? Now, with that change to agenda item 4, could I have somebody move acceptance of this agenda?

MR. MASON: I'll move the agenda with those changes, Mr. Chairman.

THE CHAIR: Thank you, Mr. Mason. Anybody opposed? The agenda as amended is carried.

Today we will deliberate on four questions: questions 7, 8, 10, and 5. Those are the questions, of course, that were in the discussion paper that was approved by this committee, was circulated to interested stakeholders and advertised. We accepted submissions on questions from all interested Albertans and received oral presentations from those who applied. The first question that we're going to deliberate on this morning is question 7: "Are the mandatory exceptions to disclosure appropriate? If not, please explain why and provide suggestions for improvement."

Mr. Thackeray and his technical team have provided a discussion paper, which I believe was just distributed this morning, so no one has had a chance to review it in any great detail. Mr. Thackeray, perhaps you could tell us what the technical team inferred from the submissions that were received.

MR. THACKERAY: Thank you, Mr. Chairman. I'll just make some very brief introductory remarks and then turn it over to Hilary, who will go through in detail the issues that were raised by the 38 organizations or individuals that had a comment and felt that the mandatory exceptions were not appropriate. As you can see from the top box, we've divided the responses to question 7 into three categories. One was "no comment," and that was 48 percent. One was "mandatory exceptions are appropriate" – that was 22 percent – and 30 percent of the respondents indicated that in their view the mandatory exceptions were not appropriate. So we're talking about a minority of the respondents, 30 percent.

Now I'll turn it over to Hilary, who will go through some of the detail of the individual submissions.

THE CHAIR: Just before you go there, I take it, then, that out of the 145 submissions received, a majority of those respondents did not bother to answer this question or answered it with "no comment."

MR. THACKERAY: That is correct.

THE CHAIR: Thank you.

MR. THACKERAY: I should just point out that some of the information that was presented yesterday in the oral submissions has been incorporated into this document.

THE CHAIR: From the petroleum engineers and from the chemical producers?

MR. THACKERAY: That's right.

THE CHAIR: Thank you.

MS CARLSON: Before we go on to that review, I just wanted to comment on the language used to describe these items. In fact, the way I read this is that the majority of those who had enough information to respond felt that mandatory exceptions are not appropriate, and rather than say that 48 percent didn't bother to respond – we don't have that information. We don't know if they didn't bother to respond or if they didn't feel qualified to respond. So I just wanted to put that on the record before we proceeded.

THE CHAIR: In any event, we know that they didn't respond.

MS CARLSON: Right.

THE CHAIR: Thank you, Ms Carlson.
Go ahead, Hilary.

MS LYNAS: Section 16 creates a mandatory exception for information which, if it was disclosed, would reveal certain types of third-party business information that was supplied in confidence to a public body and could also result in a harm, and the section specifies four particular harms that may apply. There have been numerous commissioner's orders on this section of the FOIP Act. In practice the commissioner has interpreted section 16 as a fairly narrow exception to disclosure. In a way it favours disclosing information unless there's a foreseeable harm resulting from the release of the information rather than routinely protecting business information from disclosure.

To apply the exception, the information must meet all three tests set out in section 16(1). Disclosing the information must reveal trade secrets or "commercial, financial, labour relations, scientific or technical information of a third party." The commissioner has defined many of these terms in his orders, and the definitions are also set out in the FOIP Guidelines and Practices manual. The information must fit into one of these categories to continue with the remainder of the three parts of this test. The information must have been "supplied, explicitly or implicitly, in confidence," and orders have addressed the indications of whether confidence exists as well.

The disclosure must reasonably be expected to cause a harm. There are four possibilities listed, as I mentioned earlier. The standard in the first one is: "harm significantly the competitive position or interfere significantly with the negotiating position of the third party." There are three others, but in many cases these are the ones that businesses may be trying to meet in protecting contract information.

Now, in terms of comments from the public, two respondents supported the disclosure of information about government contracts to the public. One indicated that all dollar values in contracts should be available in order to provide the public with the right to know as to how governments are spending taxpayers' money. The respondent seems to favour more openness regarding information in contracts between companies and public bodies. The other respondent said that section 16 should not be used to hide details of contracts or the basis for awarding contracts. One municipality said that the harms test criteria should be eliminated to allow for a mandatory exception when the third-party business information only is released with the consent of the business. This suggestion was made because applying the harms test may require the municipality to obtain legal advice at a cost and could interfere with their other operations. Another municipality said that deciding what is harmful

leaves too much to individual discretion. Another organization indicated that the commercial information of a public body is a broad term and could encompass a lot of different kinds of information.

Now, the processing of FOIP requests does require the exercise of judgment in deciding what information should be released, but there is guidance available through the commissioner's orders and several publications put out by Government Services. It is also easier to process a request that's been made for contract information if the public body has advised the companies in advance, before they've collected the businesses' information, how it will be handled and what the obligations are under the FOIP Act.

Another municipality was concerned about labour relations information that may be excepted from disclosure under section 16. Now, it appears that that comment relates to an investigative process within a public body to do with employee relations type situations, and we are not going to talk about the law enforcement exception today. We're going to deal with that at the next meeting. The municipality also suggested that section 16(3) be amended to allow certain assessment roll information to be disclosed to other government agencies or for use within the municipality to carry out certain municipal functions. This comment seems to be coming from a slight misunderstanding of how assessment roll information is disclosed under the FOIP Act. Again, that's a topic at another meeting, when we talk about issues brought up by municipalities.

Several respondents also indicated concerns with the test in section 16 and whether it provides adequate protection for business information that is in the custody of public bodies. Several comments seem to be around the theme that FOIP should not be a means that business competitors can use to obtain information about other companies. Three oil sands organizations said that this section should be amended to provide absolute protection of confidential business information supplied by oil and gas companies to Alberta Energy under the oil sands royalty regulation, and that was one of the presentations yesterday. Currently this information is excluded from the FOIP Act for five years by recent amendments to the Mines and Minerals Act that create a paramountcy over the FOIP Act. Now, the organizations suggested that a mandatory exception be made within section 16 to exclude the information from disclosure. If that were done, it would carry on indefinitely unless a time limit was also put on that, and if the five-year period isn't enough, Alberta Energy could amend the Mines and Minerals Act to extend that paramountcy for organizations affected by the oil sands royalty regulation.

***11:15***

Another respondent recommended amending part of section 16 to exclude in the list of business information "commercial, financial, labour relations, scientific or technical information of a third party." This association was also concerned that public bodies are interpreting section 16 in different ways and recommended changes to a couple of IMAP's publications, if this amendment were made, to reflect this expanded scope.

Personnel information is likely excepted right now because personnel information is going to include personal information. So if a company provided resumes of their employees to a public body as part of a bid process, that is something that would be excepted from disclosure, normally under section 17.

The other areas are health and safety and environmental information which may or may not fit into the existing wording. One respondent indicated that the section allows proprietary, commercial, scientific, technical information to be disclosed to competitors, so that's the same concern, and one business is concerned that any information or material provided to the government will be accessible to an individual or a corporation under section 16. The company says that it has limited their ability to be as frank as it would like to be with government in providing information, and they would like to see a more restrictive view on the terms that are in that section. They say that it's often impossible to provide a direct causal link between releasing confidential information and the adverse impacts listed in section 16(1)(c), so meeting the harms test can be difficult.

Another business said that protecting the information of business should be paramount over the release of information and that the phrase "significant harm" should be defined or dropped. This organization suggested that several new clauses be added to section 16 to exclude information that could provide an advantage in trading stocks or securities, provide a competitive advantage in conducting business with government, place the government at a competitive disadvantage in procuring goods or services, facilitate access to otherwise secure computer or data systems, place the government or any person at risk, or provide a means to gain access to information that it would not otherwise be entitled to without the FOIP Act process. So that's a summary of the submissions that were made on section 16.

Now, I have provided on page 3 some questions that the committee may want to look at. I guess you can decide whether you want to do it on a section-by-section basis or at the end of the question.

THE CHAIR: Well, before we go there, do any of the committee members have any questions of Hilary with respect to the materials that she's provided or her synopsis thereof? Does everybody understand the issue?

MR. MASON: I have one question, Mr. Chairman.

THE CHAIR: Go ahead, Mr. Mason.

MR. MASON: The second bullet in question 7(a) deals with "significantly" in 16(1)(c)(i). Can you just give me a context for that? Is this the harm one, "harm significantly the competitive position . . . of the third party"?

MS LYNAS: Yes, so the test is whether . . .

MR. MASON: It's significant or not.

MS LYNAS: Right.

MR. MASON: So the suggestion being made is that if we take "significantly" out, even an insignificant harm would be grounds to exempt the information.

MS LYNAS: Any harm.

MR. MASON: Even if it was insignificant.

MS LYNAS: Uh-huh.

MR. MASON: Thank you.

MS DeLONG: Could you comment on what the effect would be? To me this looks like a really good idea, because I don't like really vague stuff. If you say significantly harmful, I mean, there's just so much interpretation that has to go into that, whereas if we did actually specify, as is suggested on page 2 towards the bottom there, "provide an advantage in trading stocks or securities," et cetera, if we actually did outline those like that, can somebody please comment on what the effect would be?

MS LYNAS: Yes. I think that in looking at the suggestions in that list of six suggestions, we'd have to have a look at whether they're covered elsewhere, like in some cases I would think that providing an advantage in trading stocks or securities is probably covered by other legislation.

MS DeLONG: So it would be redundant, but what would we be missing?

MS LYNN-GEORGE: Well, a real problem in general for this act is that people do want certainty, and public bodies, you know, would like the definition of personal information, for example, to be expanded to cover every conceivable kind of personal information, because it does provide some certainty. But what you gain from certainty you lose in flexibility. Perhaps the chair could comment more on this as a sort of legal principle. At the moment the way it works is that if there is some new harm that perhaps isn't anticipated, it can be considered. The third party can make the claim that there is a harm, the public body can consider it, can go to review, and then once it's been considered in a commissioner's order, there are some fairly firm guidelines for how to interpret it in the future.

MS DeLONG: Have any other jurisdictions specified things like this, or have they just gone for vague words like "significantly harmful"?

MS LYNAS: The others are worded quite similarly to ours, and I think that "significantly" is an indication that doesn't mean any harm. One of the arguments I've heard when processing a request like this was that one company said that in designing the format of their proposal for a big construction project, even the format and layout of their project on paper was part of their competitive advantage. They didn't want anything that showed their headers and footers and the whole layout out. To them that is a harm in disclosing the information, but the public body, in weighing whether that outweighs the public's ability to know how money is being spent, may say that's not a significant harm. Ultimately the decision would be made at the commissioner's office, if it went that far.

THE CHAIR: Yes. I can concur with that. From a legal perspective you run a great deal of risk if you don't use qualifiers in your definitions. Our law is full of qualifiers like reasonable or exceptionable or significant or undue, because almost any activity that I do might create some minimal harm to somebody else. But the question is: is it undue harm? What is the standard of reasonableness? I agree with Jann that qualifiers almost always are important, and if you don't, then you take away any discretion from the person making the decision to adjudicate a circumstance that was not contemplated when the statute was drafted.

***11:25***

MR. LUKASZUK: You have, Mr. Chairman, basically indicated what I was about to say. Any time in legislation that you start drafting lists, by virtue of including items on a list, you're excluding those that you may have by error or omission not included, and then that takes away from the flexibility. Perhaps considering another qualifier such as unreasonable or undue harm would address the issue, but trying to tighten up that section by way of listing potential harms could in itself cause more harm to the industry and to those who deal with this particular section than leaving it alone.

THE CHAIR: I couldn't agree more.
Mr. MacDonald.

MR. MacDONALD: Yes. Thank you. In regard to section 16, to date has there been information disclosed as a result of a FOIP request that any business in this province has considered to be detrimental to their commercial interests? What cases exist now?

MS LYNAS: Well, we don't really know, because there's no sort of requirement for people to report the harm after information is disclosed.

I don't know, John, if your office hears anything.

MR. ENNIS: Well, we have had one case that resulted in an order, where a major corporation felt that it would be harmed if information was released. The public body in that case had decided to release the information to the applicant, judging the information not even to be technically about the company that had drafted the information. The commissioner ordered that the information be released to the applicant and in that order said that the information actually – although harm was argued, that there would be a harm from the release, the commissioner found that the information wasn't even about the company. It was the company's views about another company, so it was really about the applicant company that had originally made the access request.

That's as close as we've come, I think, on the issue of harm. There hasn't been a case in which the commissioner has quantified harm or come out with any formulas about harm. We've seen in other jurisdictions that the impact of having a word like "significantly" allows a commissioner to say that a dollar lost for a small company might be significant, but a dollar lost for a transnational, large company may not be of significant harm. So the ability to judge the harm relative to its impact on an enterprise is enhanced by having the word "significantly" in the section.

THE CHAIR: Is it on the same point, Mr. MacDonald?

MR. MacDONALD: Yes.

THE CHAIR: Go ahead.

MR. MacDONALD: In that case, the commissioner's order would be final; correct?

MR. ENNIS: That's right. Commissioner's orders are final.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you. I, too, would be quite concerned if we removed the word "significantly" from the legislation. I think that then a case could be made to never disclose anything by anybody. However, I wouldn't mind seeing some addition added, perhaps in terms of the criteria that have been used in the past to decide what "significantly" would mean so that companies and individuals have some sort of a framework to determine themselves whether or not they believe it fits the "significantly" criteria or not.

THE CHAIR: Go ahead, Hilary, and then Brian.

MS LYNAS: Okay. The guidelines and practices manual for FOIP does have some information for FOIP co-ordinators on how to work through this. Of course, we do have a training program available as well for FOIP co-ordinators, so if they're having problems in processing a specific request, they can also call for assistance.

One of the things we're looking at for the future in our training program is offering some more advanced workshops, and we're actually considering this as one of the topics that we would do early on so that people that feel uncomfortable processing requests with

a third-party notice requirement would be able to come to a workshop and sort of work through it and sort of develop some of the information. They need to make these decisions.

THE CHAIR: On this point.

MS CARLSON: Thank you, Mr. Chairman. That's great, but I was thinking of it more from the public perspective. Individuals and organizations also need that information available to them.

THE CHAIR: I think also from a legal perspective – and we all have to appreciate that FOIP legislation is very much in its infancy in this province. Over the course of time, as decisions get made by the commissioner and those get written and those get filed, a body of jurisprudence develops that eventually gives us some guidance as to what "undue" means and to what "significant" means, and the law over time becomes more predictable.

Mr. Mason.

MR. MASON: Thank you, Mr. Chairman. Sort of the same point I wanted to make. I don't object to the idea of more closely defining what "significant" means if you can do that in a way that doesn't require you to anticipate in the legislation every possible case. The weakness of that approach, I think, is that if you try to nail down the definition very specifically, then you have to sit around the table and imagine every possible thing that could happen. The time to make those decisions is not when drafting the legislation but when applying it, and I think the legislation needs to provide for that to occur in a fair and balanced way.

THE CHAIR: Theoretically, if you could define the legislation precisely enough, you could do away with the person of the commissioner because there would be no discretion. Every outcome would be predicted and concluded by the legislation.

MS RICHARDSON: This is really just to respond to the general questions but also to Ms Carlson. I think she was addressing the issue of the difficulty that third parties find themselves in when they are trying to decide, because the onus is on them to sort of show the harm. What a lot of co-ordinators do is they send them the pages from the guidelines and practices manual, and that's something that is suggested in the training so that the third parties can actually see what is in the commissioner's orders, and it gives them some help in working that through. There's also a brochure that's produced for contractors that kind of sets out generally, you know, what kinds of things they're looking at when they're contracting with government, what the requirements are. There's an appendix to the FOIP guide for contract managers, which also is something that can be provided to third parties and particularly to contractors, that kind of sets out the sorts of things that would normally be released by a public body. So those are all things that can be used to assist public bodies, but the onus is definitely on the third party to show the harm.

THE CHAIR: Ms DeLong, did you have something to add to this?

MS DeLONG: I know that usually in legislation we don't use the words "for example," but is this a place where we could use "for example" and have a list?

THE CHAIR: Well, I loathe the words "for example." I prefer "include," something includes the following. But I guess they'd mean the same thing.

I saw some hands go up.

MR. ENNIS: Just if I could make a couple of comments, Mr. Chairman. Yesterday when we had a presentation from the Canadian Association of Petroleum Producers, the general counsel for I believe it was Syncrude made the comment that they've been trying to get a case that comments on this area of the law. Maybe there's a good reason why it's been difficult for a case to come forward, because when cases come to the commissioner from third parties who feel they are going to be harmed by disclosure, the mediation process which the commissioner adopts and which is created in the act brings a certain amount of communication to bear between the applicant and the third party, and the harm is usually articulated in that communication by the portfolio officer or whoever is conducting the mediation. We find very often that applicants will be very accommodating. They're often not out to harm anybody, and they may not have been conscious of the perceived harm that the third party has. So in the end the final position of the applicant and the final disposal of the case usually has some kind of consideration in it for the third party so that the harm never comes about, but we have found that the harm is often expressed as a fear of loss of market share. That's often the way people express harm, but it can come in a number of different ways. It isn't until you get into the case that you really know what the third party is most concerned about. We've had cases where third parties have been very concerned about an aspect of the file that would surprise any other party looking at it, but it's their view of what might harm them in the outside world. By and large, these cases are settled in mediation and rarely can get to the point where they have to be decided upon in an inquiry situation. So as a result, we have no orders to show in this area.

***11:35***

THE CHAIR: Thank you.

MR. MacDONALD: Well, Mr. Chairman, it was quite interesting yesterday to hear from CAPP, and I would urge all members of this committee to review these possible exemptions to section 16 in light of the fact that at some point we are going to go from collecting 1 percent of royalties from synthetic crude production to 25 percent for the province. It is of strategic public interest in my view that this royalty be collected.

The investment schedule now is quite generous. We see gas production declining; we see conventional crude oil production declining in this province. This is going to be a significant source of revenue for the province in the future, and I don't think we can make mandatory exemptions in light of the fact that at some point someone may look at, as the gentleman said yesterday – I believe his name was Mr. Hansen – the net profit of these enterprises and how that net profit will affect their royalty rates. We have to be very, very careful with this, and I would caution members of this committee to examine the potential royalties that this province may get in the future.

THE CHAIR: I'm not sure that I understand your point.

MR. MacDONALD: The point, Mr. Chairman, would be that if there were to be mandatory exemptions for producers of synthetic crude, citizens would have no way of knowing in this province whether they're getting full value for that production or not.

THE CHAIR: You're aware that section 16 deals with disclosure?

MR. MacDONALD: Yes.

THE CHAIR: Not with the collection of data, with the disclosure of that data.

MR. MacDONALD: Yes. But section 16 in this member's view would also be relevant. It could be affected by the oil sands royalty regulation. If you as a concerned citizen wanted to, let's say, FOIP the Department of Energy to see exactly what company A or company B was paying in royalties, whether they're paying 1 or 25 percent of production, I think that's your right. I think that can be done without revealing trade secrets. Certainly you would have to have production numbers or production values, but I think it can be done. Leave this to the discretion of the commissioner.

THE CHAIR: I disagree, but I thank you for the comment.

MS DeLONG: Actually, that was one of my concerns during the presentation yesterday. We are moving from 1 percent to 25 percent for each of these projects, and, you know, we do have to be comfortable that we really are collecting all the money that we're supposed to be collecting. So my . . .

THE CHAIR: That's not the issue, Ms DeLong.

MS DeLONG: I realize that.

MR. MASON: Mr. Chairman, interference in people's questioning and arguments is inappropriate.

THE CHAIR: Go ahead, Ms DeLong. I apologize.

MS DeLONG: The question that I didn't get to ask yesterday was: does the Auditor General still have access to all this information? Does the Auditor General still get to check, say, the big Shell project and the finances of that Shell project?

THE CHAIR: Well, as I understand it – Tom, you might be able to help me out here – the Auditor General's role is to audit the books of government agencies, boards, commissions, and Crown corporations. So the Auditor General will audit the books of the Department of Energy and the books of the Department of Revenue but not the books of Syncrude.

Mr. Jacobs, do you have something to say?

MR. JACOBS: Not at this point.

MS CARLSON: I think you're correct in that interpretation of what the Auditor General does. Therefore, that information would not be available to the Auditor General unless it showed up on the government side of the books, which it should at some point. But that information is never fully made public, and to the extent that it is made public, it is only available in the year following the time period that the audit is made. So there is some significant time lag. I don't see where we would have access as members of the general public or the opposition or government members to that information under any of the scenarios that we've seen explained. So I would like to know, Mr. Chairman, why you disagreed with Mr. MacDonald's comments.

THE CHAIR: I'll answer that in one second.

Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. What I heard the people from the petroleum association say yesterday is that a lot of the things that they do are sort of long-term planning, that they have longer time frames for planning than in conventional oil. A lot of the things that other people might be interested in was their view of the world, where they think interest rates are going to go, where they think oil prices are going to go, and that sort of thing. The big competition was from Venezuela.

So my question is for Mr. Thackeray or the other members of the administration. In terms of disclosure of information that might be collected in order to verify production and royalty, what things does the government need to collect in order to do that as opposed to the broader issues that were raised by the gentleman from the petroleum association? I didn't understand why we need to collect a lot of that information from them in the first place. I mean, it has no bearing on what we need in order to determine royalties. Do you follow me at all? I'm not sure I follow myself.

THE CHAIR: Well, let me take a shot at that. The royalty on tar sands is calculated not on the revenue, as it is in conventional oil. It's on the profit of the plant, which allows them to depreciate their capital investment, because this is a huge capital investment, and other matters that a conventional oil producer cannot do.

So to answer Ms Carlson's question regarding why I disagree with Mr. MacDonald, I do think that most of that information, if not all of it, is necessary to properly calculate the net profit of the plant. I fully agree that the government should collect the data because of the unique nature of oil sands development and the huge capital investment that's required and the time lag before there's any payoff. It's an incredibly unique industry. Therefore, I don't think it's appropriate to base the royalty on revenue as opposed to profit, and therefore the capitalization plans and the share structure of the organization or the corporation are all relevant to making that calculation.

The reason that I disagree with Mr. MacDonald is because I believe he's perhaps confusing the collection of that data with the disclosure of that data. I believe that the collection of that data is all very relevant and needs to be obtained by the Department of Energy to properly calculate the royalty. What I don't agree with necessarily is that the public has a right to find out what, for example, the dividends on preferred bonds of the shareholders of Syncrude corporation are earning on those bonds. I'm not sure that Joe Public has a right to know that.

MR. MASON: All you have to do is buy one and you can find out; right? I'm sure Venezuela could do that.

***11:45***

MR. LUKASZUK: First of all, I'm not sure if the purpose of this meeting is to discuss how we collect royalties from Syncrude or Suncor. We're here dealing with FOIP and FOIP exclusively. So to predict what the requests under this legislation may be I don't think is terribly relevant.

However, if I heard correctly the presentation yesterday from this industry, they were quite adamant in advising us that they don't object to releasing any information that they would have to release under the Income Tax Act. As a matter of fact, they indicated that they were quite forthcoming with that information. However, they found that they should not be required to release any additional information to that which is required of them under the income tax law. I'm not an income tax expert, but I believe that any or all information that's released under the income tax law would be sufficient for the departments to calculate royalties as royalties are calculated from profits.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes, Mr. Chairman. It's very important that we know how the capital investment, the cost of that investment, is paid off because until that is paid off, no investor is going to increase the royalty from 1 percent to 25 percent. The citizens have every right to know that.

However, I have a question in regards to page 1, the last bullet,

just above the Mountain View Regional Water Services Commission footnote: "3 oil sands organizations said that the section should be amended to provide absolute protection of confidential business information." If we're going to have this paramountcy as a result of Bill 11 this spring, why are they concerned about that in section 16? Could you explain that to me, please?

MS LYNAS: Well, as far as I understand, what they were saying yesterday was that they would like something added to section 16(2) of the FOIP Act, and currently it is an exclusion where

> a public body must refuse to disclose to an . . . information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

What they were saying was add to that: information for the purpose of calculating royalties and all that. The effect would be – section 16 is mandatory, so if the definition applied to information in a record, then the public body must withhold it. So that would mean that they wouldn't be going under section 16(1) and have to meet the three-part test that it is confidential or financial or scientific or technical information; it was supplied in confidence and there would be a harm from the disclosure. Instead the test would be: is it the kind of information described in section 16(2), and if it is that information, then it would be withheld. That's the way I understand it.

MS DAFOE: If I could add to that, I think that they don't believe that the five-year limit provided in the Mines and Minerals Act is sufficient to protect them, because they were talking about their long-term planning strategies. So the Mines and Minerals Act right now has protection of that information for a period of five years. After that, it would become subject to the provisions of FOIP, and then they would have to satisfy the tests, and they would rather have it under section 16(2) to protect it, period.

MR. MASON: I think you just answered the question. I mean, basically it's got an absolute protection for five years, after which information would be subject to release if it could be shown that it did not meet any of these three tests. So in order to get the information, you would have to prove or reasonably demonstrate that it would not be revealing any trade secrets, commercial, financial, labour relations, scientific, or technical information of a third party and the other tests. They would still have all of those protections built in. So what's the reason for giving them a permanent and absolute protection?

MS RICHARDSON: If I may, I think what they were saying is that they want certainty. They don't want a public body to be looking at section 16(1), and they don't want to have to prove to the public body that they fit within 16(1). They want an absolute certainty, similar to what they have now, the five years.

THE CHAIR: I've perused most of the written submissions but not all. Is it fair to say that this question is almost exclusively the concern of the petroleum and the petrochemical industries? That's not fair? Okay. What other industries have made submissions concerned about mandatory exemptions?

MR. THACKERAY: Consulting Engineers, the Alberta Construction Association, Canadian Natural Resources: those types of organizations also expressed concern about section 16.

MR. ENNIS: If I can add to that, Mr. Chairman. The observation you make would be correct in terms of paramountcy. We've only heard, really, from the petroleum producers on that issue. This is part of a rather prolonged discussion that started with the last review committee, and as one of the members said yesterday, the review committee recommended extension of the paramountcies. To add a little background to that comment, when the review committee looked at this in 1998-99, they decided not to grapple with it substantively but simply to extend the paramountcies that were currently in regulation until the Department of Energy could resolve the matter through some kind of a statutes amendment act on its own and domesticate this problem to its own legislation, the Mines and Minerals Act particularly. That event came to pass during the last year, and there was the passage of I believe it was Bill 11, the Energy Information Statutes Amendment Act.

During the work-up to that bill the commissioner's office was consulted, and the commissioner's office maintained the position that royalty information represents rents paid to the people and should be accessible. The Department of Energy, of course, was seized with the problem of providing as much confidence as it could to producers and came up with a position that would have a five-year lockout, if you will, from access to this information and after that have the tests in section 16 apply, which may actually continue the ability to shield that information if indeed there is a harm there. Then the onus would flip to the producers to show that there is a harm from the disclosure of information that's more than five years old.

The commissioner's position has been that section 16 handles this from the beginning anyway, that there is provision in section 16 to keep enterprises from being harmed from the get-go, so the five years isn't necessary. For its reasons the Department of Energy opted for a five-year initial lockdown on the information, I guess, and then to have the information be regularly handled under FOIP after that. The submission yesterday indicated that the industry saw the Department of Energy's actions as some kind of an interim solution, at least from the industry's point of view. I'm not sure if the Department of Energy would share that view of it. I think that they think this is the law.

THE CHAIR: I think I'm going to call this to a vote unless anybody has anything else.

MS DeLONG: A vote on what?

THE CHAIR: Well, we're going to have go with this question by question. I guess the first question that we're going to vote on is whether or not we think that excepting the confidential third-party business information from disclosure is appropriate. Now, if we believe that it is, then the rest of this discussion I think is moot. I happen to believe that it's not, but I think I've made that position clear. If we believe that changes need to be made, then we'll discuss those changes, but if we believe that the business protection currently afforded to the petroleum industry and others is appropriate, then there's no point discussing this any further.

***11:55***

MR. MASON: What's the motion?

THE CHAIR: I haven't made it yet. It's going to be question 7(a):

> Should the provision to except confidential third party business information from disclosure in section 16(1) be amended to afford more protection of business information from disclosure?

Now, if that question gets answered in the negative, there's no need to go on to talk about the specific recommendations. Before I call that vote, does anybody have anything that they want to say in terms of summation?

MR. MASYK: I just wanted to comment, Brent. Even concerning the petroleum producers yesterday, on withholding information on their technical abilities to develop oil sands, the less they can reveal,

the more you're going to attract the shareholders to invest in that company. That's one perspective that they brought forward. Number two, the province collecting royalties, to substantiate this government, is another perspective. Now, to blend those two – I don't know if we can define that in a motion.

THE CHAIR: Well, I think we can.

MR. MASYK: Well, that's fine if you can. Let's vote on it.

THE CHAIR: Well, no, but I'm happy to hear argument on that point of order. First of all, we have to start moving forward, because we have a lot of work today. Second of all, I think that if we believe that the current balance and the current protection based in section 16 are appropriate, then there's no need to go any further with this.

MR. MASON: I guess, Mr. Chairman, I just want to draw to members' attention that even if the complete and absolute exemption is not extended past five years, there are still all of the protections that are set out in section 16, which do protect them from anything that might undermine their business interests, in my view.

THE CHAIR: I understand your view, and I hope you understand that I have a contrary view.

MR. MASON: I certainly do.

THE CHAIR: Any other comments?

MS DeLONG: So right now the question is: are we going to open up section 16 and have a look at it?

THE CHAIR: Basically.

MS DeLONG: Right. Okay. Good.

THE CHAIR: I need somebody to make a motion or if they could just read it verbatim. Section 7(a), as prepared by Hilary, is the motion that the chair is asking for.

MS DeLONG: I assume that I'm making a motion that covers section 7(a).

THE CHAIR: Ending at the question mark and not going on to the recommendations.

MS DeLONG: Right.

THE CHAIR: The motion is on the floor. Well, I guess it's a yes or no. It can't be so much as a motion, so we're going to do a yes or no vote.

> Should the provision to except confidential third party business information from disclosure in section 16(1) be amended to afford more protection of business information from disclosure?

Who votes yes? Two. Who votes no? It's defeated.

MS DeLONG: I'd like to make another motion.

THE CHAIR: Please.

MS DeLONG: I'd like to make a motion that section 16(1) be made more specific by adding some detail essentially saying: including but not limiting.

MS CARLSON: You need to be more specific than that.

MS DeLONG: I do?

MS CARLSON: I don't understand what you're saying.

MS DeLONG: Sorry. For example, instead of just saying "significantly" harmful, I would like to be able to say "significantly harmful including providing an advantage in trading stocks and securities, providing a competitive advantage in the conducting of business with the government" and essentially put that list in so that it makes clear in the act what "significantly" harmful means.

THE CHAIR: Well, Ms DeLong, the membership has just voted that they believe that the protection afforded to business is adequate. So I think that your motion may be res judicata, already decided.

MS DeLONG: This doesn't necessarily give more protection to business. What this does is make it clear exactly what the guidelines are.

THE CHAIR: Well, section 16 is Disclosure Harmful to Business Interests of a Third Party. That's what the heading under section 16 is. We'll come back to that.

MR. MASON: Is the motion not accepted?

THE CHAIR: It's not accepted yet. We're debating whether we're going to accept her motion.

MR. MASON: That's not a question of debate; that's a question of the chair's ruling. If the motion was accepted, I was going to move a motion to refer it to the administration for a report on the feasibility of doing that.

THE CHAIR: Mr. Thackeray, do you have any preliminary thoughts?

MR. THACKERAY: Going back to the discussion at the very beginning of question 7, I guess the issue was raised as to: how specific do you want to be in a statute? What we tried to do as the organization responsible for the administration of the act is provide as much information both to the public and to public bodies that are subject to the act on suggested ways of interpretation. That's why the Guidelines and Practices document, which everybody got a copy of and is about two inches thick, is updated at least every two years to ensure that any new rulings coming from the commissioner are incorporated, and that advice is available to the public, business interests, and public bodies that have to deal with the legislation.

In addition, a private-sector company does do an annotation of the act, which is available through Queen's Printer, which goes through the commissioner's orders as they're released and references the appropriate section within the statute to provide advice to all people that are interested in access and privacy issues.

THE CHAIR: Okay. Ms DeLong, do you have some specific inclusions that you want to include in your motion? I agree with Ms Carlson that it's difficult to understand what you're motioning.

MS DeLONG: The list is here towards the bottom of page 2, the last sort of round bullet:

> Section 16(1) should be expanded to prevent the disclosure of information that would: (1) provide an advantage in trading stocks or securities; (2) provide a competitive advantage in the conducting of business with government; (3) place the government at a competitive disadvantage in procuring goods or services; (4) facilitate access to otherwise secure computer or data systems; (5) place the government or any person at risk; (6) provide a means to gain access to information that it would not otherwise be entitled to under FOIP.

Essentially what I'm looking for here is more specifics. It's very difficult for business to deal with government when government is vague. The more specific we can be, the more certainty there is in how government deals with us. When a business provides information to government, the more specific the guidelines are in terms of what is going to eventually be put out to the public, be put out to their competition, the more comfortable they are in providing that information and in going into any sort of a business venture that involves government.

THE CHAIR: That is your motion?

MS DeLONG: That's my motion.

THE CHAIR: Okay. The chair accepts that motion.

MR. MASON: Mr. Chairman, I would, then, move that

> we refer this to the administration for a report at a subsequent meeting on the desirability and the feasibility of providing greater certainty in the definition of "significant harm."

THE CHAIR: Well, we'll vote on that motion before we vote on Ms DeLong's motion. I want to caution the members that we have a timetable and that today we are scheduled to deal with question 7. I would caution against referring things back for further deliberation and discussion.

MR. LUKASZUK: Before we do defer things for further deliberations, can we just vote on Ms DeLong's motion in principle? If there isn't overwhelming support around this table, why defer this in the first place?

THE CHAIR: I agree with you, but I think that procedurally we have to deal with Mr. Mason's motion first. We've had considerable discussion. Quite frankly, I'm surprised at the motion given that there seemed to be almost unanimous rejection of specifying and tying the commissioner's hands, but the motion is on the floor, and I think we have to deal with it. I think that procedurally we have to deal with, essentially, Mr. Mason's adjournment or hoist amendment.

***12:05***

MR. MASON: It's a referral motion, Mr. Chairman.

THE CHAIR: Thank you. Sure. I think we have to deal with it first.

MR. MASON: I'll withdraw the motion given the comments. I was trying to assist the mover of the motion, but if it's seen as tying us up, that's not what I meant to do.

THE CHAIR: Okay. The motion has been accepted, so apparently I need unanimous consent of the committee for him to withdraw his motion. Is unanimous consent granted?

HON. MEMBERS: Agreed.

THE CHAIR: Anybody opposed? Mr. Mason's motion is withdrawn.

Now Ms DeLong's motion is on the floor. We have had significant discussion on that when we had our general discussion on section 16. Does anybody have any final, brief comments with respect to adding specific definitions to what is "significant harm"? Okay. All those in favour? Opposed? It's defeated.

Before we break for lunch, I'm hoping that we can quickly deal with questions 7(b) and (c). I actually believe that this should be moved given the previous vote and given what seems to be the majority viewpoint that the current business protection afforded by section 16 is appropriate. I may disagree with that and Mr. Lukaszuk and Ms DeLong may disagree with that, but I'm guessing that the majority are going to vote that there should be no blanket protection given to the oil and gas industry. Is that correct?

Mr. Jacobs, I see you shaking your head.

MR. JACOBS: Well, that would be consistent with my first vote.

THE CHAIR: It would have to be consistent with your first vote.

Mr. Mason, you haven't changed your view in the last 30 minutes?

MR. MASON: No. I haven't changed it in the last 30 years.

THE CHAIR: Mr. Masyk, you're still opposed to giving further protection to the oil and gas industry?

MR. MASYK: I am.

THE CHAIR: Ms Carlson, you're still opposed to giving further protection to the oil and gas industry?

MS CARLSON: I am. I think it's already provided.

THE CHAIR: I understand that. So could I have a motion that

> question 7(b) be answered in the negative.

Mr. Mason.

MS CARLSON: You have to actually, I think, poll everyone if you're going to poll some.

THE CHAIR: What?

MS CARLSON: You didn't ask Hugh.

THE CHAIR: Mr. MacDonald, have you changed your view with respect to giving further protection to the oil and gas industry? For the record he's shaking his head no. So the motion as proposed by Mr. Mason is question 7(b), which reads:

> Should the provision to except confidential third party business information from disclosure in section 16 be amended to provide absolute protection of confidential business information supplied by oil and gas companies to Alberta Energy under the oils sands royalty regulations?

All those that answered the question in the negative, please raise your hands. That is a majority, so that question will be answered in the negative.

MR. MASON: Do you want one on 7(c) as well?

THE CHAIR: Well, question 7(c) might be a slightly different question. I'm not sure that question 7(c) has been answered. Has it?

MS CARLSON: No.

THE CHAIR: It hasn't. So can we deal with that in a timely manner, or should we break for lunch now?

MS CARLSON: Let's find out.

THE CHAIR: Well, I think we may have a different quorum this afternoon, so if we're going to deal with it, I want to deal with it.

Okay. Question 7(c) is:

> Should the provision to except confidential third party business information from disclosure in section 16(1) be amended to allow

more disclosure of information about government contracts awarded to business, and the basis for awarding such contracts?

Can we put that to a motion? I'm opening the floor to discussion. Nobody has anything they want to say?

MS CARLSON: I would not support this motion. I haven't heard anything to date that would convince me that more disclosure of information is required.

THE CHAIR: I agree with your position.

Do we need to debate this further? Does anybody take a counterposition to the position of Ms Carlson, supported by the chair?

MRS. JABLONSKI: Brent, just to give me some clarification, because I've just come in – I apologize for being late; I'm overlapping my meetings today – give me an example of where this would be used, please.

THE CHAIR: Mr. Thackeray, may I think that it's fairly self-evident? The question posed is: if someone is awarded a contract, should more information regarding that process, their bid, their tender – does the public have a greater right to scrutinize that? Am I reading that correctly, Mr. Thackeray?

MR. THACKERAY: That's right, Mr. Chairman.

THE CHAIR: To give you an example, somebody gets a contract to build a highway.

MR. MASYK: On governments in Alberta, municipal and also provincial, versus "government" – is that all levels of government?

THE CHAIR: I don't know. I didn't write the question.

MS LYNAS: Yes.

THE CHAIR: Yes, it is.

MR. MASYK: Okay. Thanks.

THE CHAIR: Mr. MacDonald, I've been waiting for your comments.

MR. MacDONALD: Mr. Chairman, I'm flattered that you're waiting for my comments. In regard to the first Bill 11 and the increased provision for the contracting out of private health care facilities, it's evident to this member the confidence that the government has in the private health care delivery systems. I think we should have a good look at this. I think that in light of government contracts, if one could be specific just to private health care providers, this is worth noting, and it would be my view that perhaps there should be a guideline or a policy where one is dealing with the public through the government and there are tax dollars involved. Then perhaps we should look at increasing disclosure. I see on the front here – and I haven't had the time to review it – that the Jubilee Lodge Nursing Home has expressed an opinion on this. Now, this may go back to one of the previous documents that I have read, but in light of the philosophical shift towards private health care in this province, perhaps this is the time to have a look at that.

THE CHAIR: Okay. Does anybody else have a comment?

Ms Carlson.

MS CARLSON: I'd like to table a vote on this, then, until after lunch. Let us talk about it over lunch.

THE CHAIR: Who is not going to be here after lunch? Mr. Jacobs. Well, then, you should speak to Ms Carlson's suggestion.

MR. JACOBS: That's fine.

MS CARLSON: Could you tell us your opinion now?

MR. JACOBS: I don't think we need any more disclosure.

THE CHAIR: You're going to be absent for that vote. You understand that. I don't think we allow proxies.

MR. JACOBS: That's right. I understand that.

MS CARLSON: And you're okay with that?

MR. JACOBS: Sure.

THE CHAIR: I guess I concur with Ms Carlson that we can break for about 45 minutes and chat about this informally and then go back on the record at 1 o'clock. Is that agreeable? We're adjourned.

[The committee adjourned from 12:14 p.m to 1 p.m.]

THE CHAIR: Okay. We're all present. We'll go back on the record. It was brought by Ms Carlson that we informally discuss question 7(c) and the discussion paper over lunch and then we vote on it after we have had a chance to nourish ourselves. Does anybody have any final comments or suggestions regarding Ms Carlson's motion that 7(c) be answered in the negative?

MS CARLSON: In discussion it seems to me that I really don't have enough information to make a good choice here, and this is one that I would like to see referred back to staff to give us examples of what it would look like if amendments were made to allow for more disclosure. Who would be impacted by that, and do we have any existing kinds of problems now? For interest's sake, I thought a very interesting example was brought up during lunch about situations such as doctors asking for nurses to be attending people and personal care attendants being put in place, some kinds of examples like that, where if we had more disclosure, it would be easier to find that out and to correct it. So I would like actually a referral motion on this.

THE CHAIR: I'm not sure that I understand what that has to do with the awarding of government contracts.

MS CARLSON: Well, the nursing home could be a nursing home kind of example. We were trying to think of examples of cases where more information would be necessary, and that was one that came up. It's enough to flag a concern for me. I feel that we're getting a bit of a push to get some of this stuff agreed to on this committee before we've heard all the presentations. So if I have any lingering doubts, then without being obstructive, I would like to be able to refer some of these matters back for just a little more information before I actually vote.

THE CHAIR: Okay. Well, with respect to your one comment, the presentations that we have not yet heard will not or at the very least should not impact on any of our deliberations here this afternoon with respect to the issues of those stakeholders as we understand them.

Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. I'm quite surprised with Ms Carlson's response, because I was under the impression that she supported voting against this particular motion. I partook of the same informal discussion during lunchtime, and nothing was said in the least that would have me even consider changing my mind, as most of the examples that were brought up were stemming from hypothetical situations south of this border, which are not terribly relevant to what is happening in Alberta. However, one could definitely come up with a million instances where more information could possibly be required, but that is not a relevant question. It's hypothetical. The question is: up to now have there been requests where more information was required and was not released? I'm not aware of such situations.

THE CHAIR: Mr. Thackeray, maybe you can help me out here, but I'm not aware of any of the submissions either oral or written where this seemed to be a concern.

MR. THACKERAY: It was mentioned twice. One was by the Mountain View Regional Water Services Commission, and the second was an individual by the name of Mr. Richard Covlin. Currently what the recommended practice is when the government goes to bid on a contract is that the total sum is available for release, but how the individual company derived that sum is held back under section 16(1). So the public is aware of what the total value of the contract is but not how the individual company came up with that number because that is seen as business-sensitive information.

THE CHAIR: Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I just want to make a comment. The paragraph is 30, 35 words, but what isn't said here is that issues such as security of different types of contracts – and maybe something shouldn't be said for that reason. Also, for the competitiveness of awarding a contract, there are a lot of things that shouldn't be said to give advantage to one contractor over the next, depending on the different contracts. So in that, I think that maybe it should be left alone and just supported: that, no, it shouldn't be.

THE CHAIR: Thank you.

MR. MacDONALD: Well, there are any number of issues that could be brought forward, contracts with regional health authorities, whether it be a nursing home or whether it be a home care facility. Regardless, when you are contracting with the government, part of doing business with the government is full disclosure and openness and transparency. These are tax dollars that are going to be spent whenever these contracts are awarded.

I myself think there should be provisions to increase disclosure. I'll sum up very quickly, Mr. Chairman, the remarks that the Member for Edmonton-Highlands made in the Assembly regarding the contract that was under the river. It turned out that the citizens were sold down the river. The engineer had at one time raised flags, concerns about how this money was being spent. It was ignored. I believe this fellow lost his job. It's not this level of government or anything. It was certainly a municipal level at the time, but it's a lesson that we can all learn from, I believe.

I would like to support Ms Carlson in her motion that this be tabled.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. I guess my concern is that the question is so general in nature that I can only give a general, instinctive response. I mean, my instinct would be: yes, we should. But I'm afraid that I don't know how that would be defined and in which cases more information would be appropriate and in which cases it wouldn't. I guess what I'm saying is that if the motion – and I just came in after it was made – was that it would go back and come back with something more specific that we could look at then, I could support it. I think, however, that the question as it stands is a bit of a problem because there's not enough definition provided.

THE CHAIR: I think the question is general, and I think it's general for a specific reason: is the committee concerned that there's not enough information available to the public regarding the awarding of government contracts? If the committee answers that question in the negative, there's no need to deliberate on that matter further. I think that's why the question is written the way it is.

Now, Ms Carlson, you have two motions before us. If you are standing by both motions, we will deal with the second one first and then the first one second. If you are withdrawing your first motion and dealing only with the second, you will require unanimous consent to do so. So I put it to you how you wish to proceed.

MS CARLSON: I'll withdraw the first motion.

THE CHAIR: Ms Carlson has asked for unanimous consent to withdraw her first motion, that

> question 7(c), "should the provision to except confidential third party . . . information from disclosure in section 16(1) be amended to allow more disclosure of information about government contracts awarded to business, and the basis for . . . such contracts?" be answered in the negative.

That is motion 1. She requires unanimous consent to withdraw that motion. Is unanimous consent granted? No.

You didn't vote in favour of your own motion?

MS CARLSON: I assume that that would be the case. Certainly I vote in favour of that.

THE CHAIR: Okay. It's still defeated.

So we'll deal with question 2 firstly.

MR. MASON: I'm sorry; I'm lost, Mr. Chairman. What just happened?

MS DeLONG: We're still on the first motion.

THE CHAIR: Ms Carlson asked for unanimous consent to withdraw motion 1.

MS DeLONG: So we're on motion 1.

THE CHAIR: No. We're on whether or not she can withdraw the motion.

MS DeLONG: Yeah. So it still sits.

THE CHAIR: Yes.

MS DeLONG: Yeah. Thank you.

THE CHAIR: She can't withdraw. She didn't get unanimous consent.

MR. MASON: Who withheld unanimous consent?

THE CHAIR: Everybody except her.

MR. MASON: Oh, I misunderstood.

*1:10*

THE CHAIR: Okay. We'll do it again.

The members asked me to reread the question, and I read it. Now, she's asked for unanimous consent to withdraw that motion.

MR. MASON: Then you would say: does anyone object?

THE CHAIR: No. I ask: who is in favour of giving unanimous consent? Say aye. Unanimous consent has not been given, so question number 1 stays. Are we clear now?

Now we vote on question 2.

MS DeLONG: Number 1.

THE CHAIR: Number 2.

MS DeLONG: It's not an amendment to a motion.

THE CHAIR: Just listen. We're dealing with question 2. Ought the question which has been posed be deferred and referred for further study and deliberation at a future point in time? Is that essentially it?

MS CARLSON: Yes.

THE CHAIR: All those in favour, raise your hands. It's defeated.

MR. MASON: You need to call both votes, Mr. Chairman.

THE CHAIR: Sorry?

MR. MASON: You need to call both those in favour and those opposed.

THE CHAIR: Those in favour of deferring Ms Carlson's motion, please raise your hands. I count three. Those opposed? I count four. It's defeated.

Now we will deal with the question. Does it need to be reread?

MS CARLSON: Yes.

THE CHAIR: The motion before this committee is that

> "should the provision to except confidential third party business information from disclosure in section 16(1) be amended to allow . . . disclosure of information about government contracts awarded to business, and the basis for awarding such contracts?" be answered in the negative.

That was the original motion; correct?

MS CARLSON: Yes.

THE CHAIR: Okay. So let's not get caught up on the negative, committee members. If you're in favour of giving more information about contracts, then you will vote no. If you like it the way it is, you will vote yes. So who is in favour of the motion?

MR. MacDONALD: It's the other way around; isn't it?

THE CHAIR: No.

MRS. JABLONSKI: If you are in favour of Debby's motion.

THE CHAIR: If you're in favour of Debby's motion and you're in favour of the status quo, vote yes. Okay. Against Debby's motion?

Mr. MacDonald, did you abstain from voting?

MR. MacDONALD: No, I didn't.

THE CHAIR: I didn't see your hand.

MR. MacDONALD: For the record I am voting that there be an amendment to section 16(1) to allow more disclosure of information about government contracts.

THE CHAIR: So you're voting against Debby's motion, and you're voting with Debby, because she's voting against her own motion. Correct?

MR. MacDONALD: What I said on the record is on the record.

THE CHAIR: The motion is defeated by a count of four to three.

MS CARLSON: I don't think so.

MRS. JABLONSKI: No, it wasn't defeated.

MS CARLSON: It wasn't defeated. I think it's a tie.

MRS. SAWCHUK: It's a tie, Mr. Chairman.

THE CHAIR: Well, okay.

MS CARLSON: Ask it more clearly: who wants more disclosure?

THE CHAIR: Well, there are one, two, three, four, five, six, seven, eight members.

MS CARLSON: And I think it was four to four, the vote.

THE CHAIR: Well, why don't we have a division or something? Who's in favour of more disclosure regarding government contracts?

MS CARLSON: Me.

THE CHAIR: That's three.

Who's opposed? Now Mrs. Jablonski didn't vote. You can't abstain.

MRS. JABLONSKI: Why not?

THE CHAIR: It's in the committee.

MS CARLSON: Well, vote with me, and your chair will vote against it anyway.

MRS. JABLONSKI: Okay. I just didn't feel that I had enough information about it. But I'm not in favour of more disclosure.

THE CHAIR: So you're voting . . .

MR. MASON: Against the motion.

THE CHAIR: No. She's voting for the motion.

Okay. The motion is defeated by a vote of five to three.

MR. LUKASZUK: Can we have a break, please?

THE CHAIR: We're going to take five minutes, please.

[The committee adjourned from 1:16 p.m. to 1:20 p.m.]

THE CHAIR: We need a point of clarification about just before we went off the record, and the chair apologizes for the confusion. The actual vote regarding the motion was carried. The chair had said that it had been defeated. There was considerable confusion regarding a motion that posed a question answered in the negative. So is the chair correct in his understanding that the motion was actually carried and that the question be answered in the negative?

MRS. JABLONSKI: That's correct.

THE CHAIR: Does anybody take issue with that ruling?

The chair will make the suggestion that during all future deliberations when a question is before the committee, the motion be worded such that the question is answered in the positive so that anybody who is opposed to that suggestion can vote negative to that motion. Does that seem reasonable?

MR. MASON: It did. It could make a difference though, Mr. Chairman, to be honest. Tie votes are lost. Or in these rules do you only vote to break ties?

THE CHAIR: I only vote to break ties.

Okay. Now we can go on to question 8.

MR. THACKERAY: If you look at page 4, there were some comments made by the public on sections 17, 22, and 27.

THE CHAIR: Do you wish to discuss those?

MR. THACKERAY: We just wanted to bring them forward to see if after we make our brief presentation, it raised any questions with the committee that they wanted to have discussed here.

THE CHAIR: Sure. Go ahead.

MS LYNAS: Section 17 protects the privacy of individuals whose personal information may be contained in records responsive to a FOIP request that's made by someone else. Third party information must not be disclosed if this would constitute an unreasonable invasion of privacy. The exceptions only apply to identifiable individuals, not to groups, organizations, or corporations, so only people can have privacy rights. Anytime someone requests personal information as it is defined in the act, the public body must consider whether disclosure would be an unreasonable invasion of privacy.

One respondent indicated that the FOIP Act should not allow the disclosure of personal information where without FOIP the personal information would not be disclosed without consent. Now, the FOIP Act provides a right of access subject to limited and specific exceptions to disclosure. In terms of personal information the act sets out circumstances when disclosing personal information would not be an unreasonable invasion of privacy, and these circumstances are not limited to when a third party consents to the disclosure.

Another respondent said that section 17(4)(d) should be amended to allow witness data on motor vehicle accident report forms to be released with the consent of the witness. As I mentioned, you know, information can be disclosed with consent.

Another respondent noted that a review of the factors to determine whether disclosure of personal information is presumed to be or presumed not to be an unreasonable invasion of privacy is subjective. Sections 17(2) and 17(4) list a number of scenarios. Some absolutes would alleviate uncertainty as a public body would just be required to apply an objective standard. This particular respondent felt that in circumstances where the individual has provided consent or an individual originally provided the personal information or an enactment requires disclosure, the personal information should automatically be disclosed. When a FOIP request is made, a public body may always disclose information with consent or if an enactment requires disclosure, but at the moment they aren't required to, so they can take other areas into consideration.

Another respondent said that in a specific order involving the city of Calgary, the Information and Privacy Commissioner had ordered the disclosure of the amount of severance paid to a number of city of Calgary senior staff, and this was based on an interpretation of section 17(2)(e), which allows the disclosure of "discretionary benefits" of employees of public bodies. The respondent indicated that severance payments must be paid so, as such, they are not discretionary and felt that releasing such information is an invasion of privacy. But in that section of the act the word "discretionary" refers to whether the amount of the payment is discretionary. If severance payments are paid out according to a strict formula such as one week's pay for every year of employment, then the payments are not discretionary. When the amounts paid out are based on negotiations between the parties, the payment fits within this section, and the commissioner indicated in his order that it's important that public bodies be accountable even, in this case, at the expense of an individual's privacy.

Three respondents said that section 17 allows public bodies to exercise a significant amount of discretion in balancing access and privacy. They indicated that in recent commissioner's orders involving the University of Alberta, access rights of individuals to their own personal information seemed to outweigh the privacy rights of others. In the cases involving the University of Alberta where the commissioner ordered that additional records be disclosed, the applicants were requesting personal information about themselves. Individuals may have provided their opinions about other individuals expecting the information to be kept confidential, but person A's opinion about person B is the personal information of person B according to the definition of personal information in the FOIP Act.

One respondent said that requiring consent makes no sense in some circumstances and requiring written consent is even more unreasonable. These are the comments of the Insurance Bureau of Canada, that made a presentation yesterday. In this case, they were talking about obtaining consents for the disclosure of drivers' abstracts. Insurance companies obtain drivers' abstracts under the Motor Vehicle Administration Act, and that act requires written authorization for each abstract released. The requirements in the Traffic Safety Act when it's proclaimed will be the same, so this legislation is a responsibility of Alberta Transportation. It isn't the FOIP Act that is requiring them to get the consents in this case.

One respondent said that the term "unreasonable invasion of privacy" should be defined, and another indicated that in child welfare cases the entire file should be provided without severing to allow a proper investigation of how an investigation was carried out.

That summarizes the public submissions.

THE CHAIR: Questions or comments from the committee members?

MRS. JABLONSKI: Just one question. She said that these consent forms for the driver's abstract are going to be part of the Alberta Transportation requirements in the act. Does that mean that that act then will be paramount over FOIP?

MS LYNAS: It currently says that in the Motor Vehicle Administration Act, and it perhaps just isn't being followed.

MRS. JABLONSKI: But will it be paramount?

MS LYNAS: No, but when an another act, as I guess in this point, doesn't permit disclosure, the FOIP Act respects that.

Do you want to add anything?

MS LYNN-GEORGE: This is something that is not always clearly understood. If another act allows disclosure, then that will be not an unreasonable invasion of privacy under the FOIP Act. So the acts work together, and the FOIP Act doesn't repeat what's in other legislation. Now, if another act doesn't allow disclosure, then the FOIP Act is paramount, and you would go through and consider whether there were any provisions of the FOIP Act that were in conflict with the provision in that other act. Normally if another act didn't allow disclosure of personal information, the FOIP Act wouldn't either. There is generally not a conflict, because if there were a conflict, one of the acts would likely be changed, be amended to resolve that conflict.

MRS. JABLONSKI: So in other words the FOIP Act can't change the situation as it is right now, and that is that we need written permission to release an abstract.

MS LYNAS: Right.

MRS. JABLONSKI: So that exists right now in the transportation act. Thank you.

***1:30***

MS DeLONG: There's one comment here that sounds quite reasonable to me. Perhaps I don't see the whole picture, but it sounds a quite reasonable request. One respondent said that section 17(4)(d) should be amended to allow witness data on motor vehicle accident report forms to be released with the consent of the witness. Now, to me that's quite reasonable. Or is this already in place?

MS LYNAS: Currently if a witness provides consent, their information can be disclosed.

MS DeLONG: What do you mean by consent? Can it just be sort of on the police form, a little check saying that, yes, they did say that they would consent to it being released? Or does it have to be a whole complete form that gets processed?

MS LYNAS: Currently the collision accident report form doesn't have that tick box, so it would mean in practical terms that the police service looking at disclosing it would have to ask the witness for consent, and if the witness has provided consent, then it would be given out.

MS DeLONG: But we don't have to do anything to change FOIP for this to happen?

MS LYNAS: No.

MS DeLONG: Okay. Thank you.

MR. LUKASZUK: I have a little bit of a concern with the request in the submissions made by the Insurance Bureau of Canada, and maybe some of the comments that I made to them would be indicative of that. The Insurance Bureau of Canada has presented to this committee twice. Perhaps that may not be a popular opinion, but it is definitely mine. Also, the Alberta Association of Private Investigators has carried out quite an adamant argument about disclosure, which in essence represented the interests of the Insurance Bureau of Canada, as they indicated clearly that – I don't recall the number – something in excess of 75 percent of the work that they do is for members of the Insurance Bureau of Canada. Both parties, whether we consider them one or two, were asking for different parts of the same thing. In essence, the Insurance Bureau of Canada and the Alberta Association of Private Investigators are asking for much more liberal access to records held by the Government Services department, by Alberta registries.

Now, my concern is that since those two parties work in unison very often, especially following a motor collision, if you pool those two parties togther, they will be entitled to a great deal of personal information, as they do merge those two files ultimately for purposes of adjudicating a personal injury claim. I'm not sure if that's a desirable outcome. We're not dealing with two separate parties who don't share information with each other. They do share it with each other, so if one gets half and the other gets half, ultimately the amount of disclosure is quite significant. What that will mean to the Alberta public other than disclosure I'm not sure.

On the argument they presented to us that the witness forms are not accessible to insurance companies, I'm not sure. I imagine the chair with his professional background maybe would support me on that or maybe even Mr. Thackeray as well in that I find it next to impossible to believe that a counsel representing an injured party could not get a witness statement. That simply doesn't happen. There are processes such as examinations for discovery and others that take care of that and disclosure of information among parties in a dispute.

Those are the comments that I suggest we keep in mind, because we're dealing with two separate parties asking for the same thing under the umbrella of one.

THE CHAIR: Thank you.
Mr. MacDonald.

MR. MacDONALD: Yes. Thank you, Mr. Chair. In regards to 17(4)(a), do you think that currently provides protection to me from a said pharmacy selling my prescription record over, say, a period of 10 years to another party? For instance, if I'm a physician and I have concerns about information regarding my prescribing patterns falling into the hands of, let's say, a pharmaceutical salesperson, do you think that protects the physician's personal privacy and also mine, or do we need to strengthen that?

THE CHAIR: I think Mr. Ennis has volunteered to answer that question.

MR. ENNIS: Well, Mr. Chairman, before going too far into this discussion, I think it's important for the committee to know that this matter is currently in front of the health information commissioner. The health information commissioner is conducting an investigation and an inquiry into this particular issue, which has been explored in some other provinces as well. I don't think I can say more than that about the case, but it's just important to know that it's currently in the tribunal process.

THE CHAIR: Thank you.
Ms Lynas, did you have something to add?

MS LYNAS: Yes, just to say that pharmacies aren't public bodies under the FOIP Act, so 17(4)(a) would not apply to the information.

MRS. JABLONSKI: Going back to 17(4)(d), I have one question, and then I have a comment. Are witness data on motor vehicle accident report forms now released without consent? The respondent was asking that we amend 17(4)(d) so that these forms can be released with the consent of the witness. Are they now released without consent?

MS LYNAS: Well, for the witness contact information that's on the collision report form, my understanding is that some of the police services in the province aren't completing that part of the form. Part of the reason for not doing it is because they're concerned about witnesses being threatened or intimidated. It's not an issue within

the FOIP Act and concern about protecting privacy per se; it's more that they are concerned about the safety of the witnesses if they routinely disclose that information. So when they complete one of these collision report forms and it goes to the parties in an accident, some services will not have completed that part of the form for that reason. This is something that our Solicitor General, I guess, is looking at at the moment, working with police services and Alberta Transportation in looking at the form and whether all that information should be there or there should be consents built in: that type of thing.

MRS. JABLONSKI: So currently, then, because of that concern for the safety of the witnesses, are they taking witness statements on other forms and not on the collision report?

MS LYNAS: Yes.

MRS. JABLONSKI: Okay. Those other forms are used in the courts and they're used by the lawyers, so are they public information anyway at this time?

MS RICHARDSON: Mr. Chair, maybe I could answer that. As I understand it, they're not public information. They're under the Motor Vehicle Administration Act, and there's the same provision basically under the Traffic Safety Act, which is not proclaimed in force yet. Those witness statements are available to parties that basically have a financial interest in it, which would be, you know, the insurance company, the lawyer representing a party who's been injured, and so on. That's currently the practice. They would be available to other people with the consent of the witnesses.

MRS. JABLONSKI: Okay. So as it stands now, those forms are available to insurance companies and lawyers who are involved in the case.

MS RICHARDSON: That's my understanding, yes.

MRS. JABLONSKI: But not to other members of the public?

MS RICHARDSON: Not without the witness's consent.

MRS. JABLONSKI: Okay. So is that what we're trying to get here, then, that we can release to the public if we have the consent of the witness? Is that what we're getting at?

MS LYNAS: I think that in reading the entire submission, there's a concern about making the police complete all the sections on the form as well, which is what the Solicitor General is working on, as to whether that form is appropriate in the first place.

MRS. JABLONSKI: Thank you.

THE CHAIR: Any other questions or comments?

Now, with respect to this portion of the paper there are no specific questions being asked with respect to section 17, so does any committee member have any motions that they wish to make with respect to section 17?

MS DeLONG: Just that from my experience I strongly support the last item on page 4. I don't know if there's a general acceptance of that, but certainly from my experience that's something that should be allowed.

THE CHAIR: Are you making a motion?

MS DeLONG: Yeah, I'll make that motion.

MR. ENNIS: Just as a point of information, Mr. Chairman, child welfare cases are of course a big part of FOIP. The Child Welfare Act contains some paramountcy provisions regarding reports of child abuse, and the minister responsible for child welfare legislation is obligated not to disclose under any circumstance the identity of the individual reporting abuse to a child. I think that it's important to know that that section of the Child Welfare Act is paramount to the FOIP Act.

THE CHAIR: Ms DeLong, were you listening to that?

MS DeLONG: Yeah, I was. I don't expect that this is something that would go through. It's just that from my experience in terms of justice being served, this is something we need to do in the long term.

THE CHAIR: Well, are you making a motion? In light of the fact that the provisions of the Child Welfare Act which preclude any information regarding a complainant are paramount, what would your motion be?

***1:40***

MS DeLONG: Okay. So in other words even if we do change FOIP, then it doesn't matter?

THE CHAIR: Well, you're not going to get any information concerning the complainant if that's what you're looking for.

MS DeLONG: Well, it isn't just information regarding the complainant. What happens in these cases is that one of the people asks for their information, and because wherever anybody else has made any comments or anyone else's name is on there, whether they are a complainant or not, they just don't get all of their information.

THE CHAIR: Well, again I'm asking if you wish to make a motion.

MS DeLONG: Sure, I'll make a motion that in child welfare cases the entire file should be provided without severing to allow a proper review of what was done in the investigation of a complaint, excluding the name of the complainant. Is that right? You're better at these things than me, Debby.

THE CHAIR: The chair will accept that motion. Does anybody want to speak for or against that? Go ahead.

MS RICHARDSON: Just to add a bit of clarity, some of the severing that's done in child welfare files, I would imagine, would be severing out other people's personal information, because often those files contain, you know, he said/she said information from a child about a parent, information about a spouse, and various other people's personal information. So would your motion include not even severing that kind of information, that is really the personal information of other individuals?

MS DeLONG: I believe that parents should be responsible for their children, and when as a government we say that we will give you some information about your children, we will give you some information about parenting, but not all the information about your children, we are taking away the responsibility from parents and we're taking it on as a government. I don't believe that we should be doing that. I believe that we need to give it back to the parents.

We need to also give the strength back to the parents. One of the things we haven't talked about in this very much is that information is power – information is power – and whenever we're refusing to give parents information about their own child, we're taking the

power away from those parents.

MS CARLSON: I'm not sure that answers the question asked though. What I'm hearing you say is that in the information released, there would be identifiers within the information of who said what. Is that accurate?

MS DeLONG: Yes.

MS CARLSON: Then I can't support that motion.

MR. LUKASZUK: I must disagree with Ms DeLong. I think Ms DeLeeuw yesterday told us that information is power.

Can we bring this matter to a vote?

THE CHAIR: If there's no further discussion or debate, we certainly can. The motion as proposed by Member DeLong is that

> in child welfare cases the entire file should be provided without severing to allow a proper review of what has been done in the investigation, minus the name and any information identifying the complainant.

All those in favour of that motion, please raise their hands. All those against? It's defeated.

Section 22.

MS LYNAS: Section 22 is another mandatory exception for disclosure of information that would reveal the substance of deliberations of Executive Council or any of its committees. It also applies to Treasury Board and its committees, and it covers any advice, recommendations, policy considerations, or draft legislation or regulations submitted to or prepared for submission to Executive Council or Treasury Board. There were two respondents who kind of implied in their answers that cabinet and Treasury Board confidences should not be an exception or that it should be discretionary rather than mandatory to make for a more accountable and transparent government.

The exception is a standard one in provincial/Canadian FOIP legislation, and I provided some statistics on how often it has been used over the last few years.

THE CHAIR: Any questions regarding the brief presentation on section 22?

MR. MASON: Mr. Chairman, I'm sorely tempted to do some mischief on this one. I just wonder if it is standard practice across the British parliamentary system for cabinet deliberations and decisions and so on to be secret. Is that almost universal?

MS LYNAS: Yes.

MR. MASON: And our whole way of life would come to an end if we didn't do it that way.

MS CARLSON: Their way of life, Brian, not yours and mine.

MR. MASON: My life would just be beginning.

It has always struck me how city council can make decisions and is required by provincial legislation to make all its decisions in public unless there are very specific reasons why not, and as soon as you get to the other orders of government, the rules are completely different. So that's the extent of my mischief making for today, Mr. Chairman, but I do want to put that out there.

THE CHAIR: I'd like to point out to Mr. Mason that the Legislative Assembly of Alberta, which is the legislative arm of the provincial government, is open and that there are transcripts made of all the proceedings there. Similarly, what goes on in the mayor's office when the mayor has his deliberations with the city manager – a lot of those meetings are held in confidence. So there is a difference between the executive and the legislative arms of government.

Mr. MacDonald.

MR. MacDONALD: Section 22(2)(a). There's a 15-year limit on this; correct?

MS LYNAS: Yes.

MR. MacDONALD: Mr. Chairman, I would at this time like to propose a motion that we change section 22(2)(a) to

> information in a record that has been in existence for five years or more.

Change the 15 to five. I think it would be much more suitable if we did it every time there was an election. Then cabinet or Treasury Board documents from the previous session could be made available through FOIP. But five years is the longest term a Legislative Assembly can last, so I would like to see that at five years, not 15.

THE CHAIR: Okay. There's a motion on the table. Does anybody wish to speak to that motion?

MR. MASON: Just a question. Are there actually some reasons why 15 years is in this act?

MS LYNAS: Well, I think it's more in relation to other acts. B.C. is 15, Manitoba is 30, Nova Scotia is 10, Ontario is 20 years, Quebec is 10, and Saskatchewan is 25. I couldn't tell you exactly how ours was come up with, but I imagine that the other legislation was looked at.

MR. MASON: Fifteen looks pretty good.

THE CHAIR: In fairness, I think some cabinet and Treasury Board confidences are releasable after five years, as I read 2(c)(iii), or am I reading that incorrectly?

MS LYNN-GEORGE: That's correct. Well, that's limited because it only applies to background facts, so it doesn't give you the rationale in, you know, any sort of policy consideration.

***1:50***

THE CHAIR: The briefing papers are available after five years if the decision has been made and implemented. That's always been my understanding.

MS LYNN-GEORGE: I think that actually the commissioner has dealt with this in some detail and said that it's not quite as simple as that.

THE CHAIR: John, can you elucidate for us?

MR. ENNIS: Not beyond that. This is an area of the act where the commissioner plays a special role in that it's the commissioner who can see cabinet confidences. One of the factors to consider, though, is that the cabinet is often deliberating – not often, but I'm not there, so I can't say for sure. The cabinet is supposed to be deliberating on matters that involve third parties without those third parties necessarily having come forward to be deliberated about. So there may be discussions in cabinet that affect other parties, outside parties, outside governments, where those individuals would continue to have an interest or a stake beyond just a few years. I think the notion here is that 15 years was seen as a period when enough time had passed that the chances for upsetting the affairs of those parties who were towed into those deliberations unknowingly would be lessened.

THE CHAIR: Okay. Any other comments for or against Mr. MacDonald's motion? Mr. MacDonald to close.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. Just in light of what has occurred and what is occurring with that extensive West Edmonton Mall file, perhaps all this would not be necessary if we had a five-year time frame. Certainly I think this is a motion that would be supported by taxpayers in light of encouraging the government to be open and accountable, and I would urge members to support my motion.

Thank you.

THE CHAIR: Thank you, Mr. MacDonald.

All the members in favour of Mr. MacDonald's motion to amend "15 years" in section 22(2)(b), please raise your hands.

MR. MacDONALD: Sub (a), I believe, Mr. Chairman. Did I hear you say (b)?

THE CHAIR: You did; 22(2)(a). All those in favour? Opposed? It's defeated.

Any other comments, motions with respect to 22? And don't raise a motion, Mr. MacDonald, raising it to six years.

Section 27.

MS LYNAS: Section 27 allows a public body to withhold information that is subject to legal privilege or relates to the provision of legal services or the provision of advice or other services by the Minister of Justice and Attorney General or by a lawyer. One respondent seemed to indicate that this was an important exception. The section does protect the legal privilege of third parties, and it appears to be working as intended.

THE CHAIR: Any questions or comments with respect to 27? I take it, then, there are no motions or other business regarding section 27?

Thank you.

Can we go off for a couple of minutes?

[The committee adjourned from 1:54 p.m. to 1:58 p.m.]

THE CHAIR: Mr. MacDonald, did you want to speak on or off the record?

MR. MacDONALD: It makes no difference, but for the record, Mr. Chairman, could you please repeat the dates and times of our next meetings?

THE CHAIR: I shall. I would call for a motion that we adjourn for the day and that we reconvene June 24 at 10 a.m. Thereafter, we will meet on June 25 and June 26, both at 9 a.m., July 22 at a time to be determined, and, if necessary, July 25. May I have a motion in that regard?

MS CARLSON: And the 22nd and 25th are both at 9 a.m. as well.

THE CHAIR: At a time to be determined, but it'll definitely be in the morning.

MS CARLSON: Okay. Until 3?

THE CHAIR: Until a time to be determined. Full days.

MS CARLSON: Sorry. The 25th and 26th are till 3?

THE CHAIR: Yes.

MR. MacDONALD: Until 3?

MS CARLSON: On the 25th and 26th.

THE CHAIR: Monday, June 24, is 10 till 4. Tuesday, the 25th, and Wednesday, the 26th, are 9 till 3. May I have a motion to that effect?

MRS. JABLONSKI: So moved.

THE CHAIR: Anybody opposed? We're adjourned until Monday, June 24, at 10 a.m. Thank you very much.

[The committee adjourned at 2:01 p.m.]