Title: Tuesday, June 25, 2002 FOIP Act Review Committee

Date: 02/06/25

[Mr. Rathgeber in the chair]

THE CHAIR: I'd like to call this meeting to order. Good morning, everyone. There's no new agenda today. It's a continuation of yesterday's agenda, so we can get right to work. I understand that we will be dealing firstly with question 5 with respect to access issues general. A paper was distributed on June 4, and I'm assuming that somebody from your team will be doing a brief presentation.

Ms Carlson, do you want to address the panel before Tom's team does their thing?

MS CARLSON: Yes, I do. Thank you, Mr. Chairman. I just had a point of clarification that I would like to put on the record and get addressed at some time before we're finished all the proceedings. When I was reviewing the information we were presented with at the beginning of the committee, in the notes it talked about the Alberta act being modeled in part on Saskatchewan. It was my understanding that our act was modeled on Ontario and B.C., so if I could just get that clarified at some point.

MR. THACKERAY: The latter is correct. It was modeled on British Columbia and Ontario, not Saskatchewan. [interjection] There were some from Saskatchewan. I have been corrected.

MS CARLSON: So what parts were those? In general, if I remember what I was reading there, the differences that were significant, I thought, were that in Ontario and B.C. the commissioners had the power to make decisions and in Saskatchewan I thought that they could only make recommendations.

MR. THACKERAY: That's correct. In Saskatchewan the commissioner is part-time, and I believe he has an ombuds-role rather than an order-making role like they have in Ontario, British Columbia, and Alberta.

MS CARLSON: Thank you.

THE CHAIR: Okay. With that out of the way, if we can proceed with the presentation on access issues.

MS RICHARDSON: Thank you, Mr. Chair. I'll be presenting that. The question in the discussion paper on access was: "Is the process for obtaining access to records appropriate?" A minority of respondents, 10 percent, remarked that they thought the process for obtaining access to records was not appropriate in some way, so the paper addresses some of the themes of the comments: time lines, making a request, processing a request, and then just some other comments.

In terms of time lines under section 11 of the act the time limit for responding to an access request is normally 30 calendar days. It can take longer if the request is transferred under section 15 or if the time limits have been extended under section 14. Under section 14, which deals with time limits, "the head of a public body may extend the time for responding . . . for up to 30 days" or longer with the commissioner's permission, and the reasons for extending the time would be: the applicant hasn't provided enough detail to enable the public body to identify the requested records; secondly, a large number of records must be located and to do so within the time limit would "unreasonably interfere with the operations of the public body"; thirdly, more time may be needed "to consult with a third party or another public body before deciding whether to grant access to a record"; or a third party asks for a review of a head's decision.

Hilary talked yesterday about third-party notice time lines. That's under section 30 of the act, and as she indicated, the third party has 20 days in which to respond to a third-party notice, and then the public body has 10 days in which to make a decision about granting access to the records.

Just some statistics, and they were attached to the paper. Government ministries complete more than 80 percent of requests within 30 days, and local public bodies complete more than 70 percent within 30 days. There are some other statistics from the FOIP Act 2000-2001 annual report.

So I don't know, Mr. Chair, before we move on to Making a Request, if there are any questions that members have.

THE CHAIR: Any questions from the membership? Apparently none.

MS RICHARDSON: Okay. There were some comments from respondents about making a request, and the commentary basically is trying to respond to those sorts of issues that were raised. There were some comments where there was a feeling that applicants should have to justify the reason for making a request and that this should be considered in deciding whether to release the records. Also, one respondent, the Alberta Association of Chiefs of Police, thought the act should be amended to allow a public body to refuse to process a request if there was an outstanding warrant for the applicant or if processing the request would pose a danger to the health, physical or mental safety of another person or the applicant.

So in terms of commentary the reason for making a request may be a relevant factor if you're considering responding to a request for a third-party's personal information, because section 17(5) of the act says that "the head of a public body must consider all relevant circumstances," so that might be a relevant circumstance. However, it isn't really a relevant factor in responding to requests for other types of records. The act doesn't discriminate among applicants, and as a matter of policy public bodies try to respect the anonymity of applicants. Under the act a public body cannot refuse to process a request provided any initial fee, if that's required, has been paid unless the commissioner has said that it may disregard the request under section 55, but as we talked about yesterday, in the discretionary exceptions part of the act and certainly mandatory exceptions there are exceptions under the act that would allow the public body, such as a police service, to withhold records if disclosure could harm a law enforcement matter or threaten an individual's health or safety or interfere with public safety.

9:10

Section 55, which Frank Work spoke of yesterday, says that "the Commissioner may authorize the public body to disregard one or more requests" for access or for correction if the request would "unreasonably interfere with the operations of the public body or amount to an abuse" of the right of access or "one or more of the requests are frivolous or vexatious." When we get into the question about the commissioner's powers and process, we'll be speaking a little more about that.

THE CHAIR: Any questions with respect to making a request? This whole access issue is fairly long. It's going to take us some time to get through it with only one general question at the end, so if anybody has any specific questions as we work through this, I'd encourage you to ask them as we deal with them.

Processing a request.

MS RICHARDSON: There were some comments from respondents

about the way that requests were processed and generally handled, so in terms of the commentary it's just basically responding to some of those issues. There's certainly nothing in the act that prevents a response to a request being sent to an applicant's mailbox, which was one of the issues raised, as long as any outstanding fees are paid first.

There was an issue that was raised. An organization was concerned about occupational health nurses disclosing employee health records to a FOIP co-ordinator in response to an access request, feeling that the FOIP co-ordinator was not bound by the same professional health ethics, and they were concerned that this could lead to a disciplinary action by the Alberta Association of Registered Nurses. Section 40(1)(h) of the act permits the disclosure of personal information "to an officer or employee of the public body . . . if the information is necessary for the performance of the duties of the officer [or] employee." So that would permit an occupational health nurse in a public body to disclose employee health records to the FOIP co-ordinator on a need-to-know basis for the purpose of responding to an access request.

Section 90 of the act protects the public body, the head, or "any person acting for or under the direction of the head" from a lawsuit resulting from the disclosure of records or the failure to disclose records in good faith or "any consequences of that disclosure or failure to disclose."

There was an issue raised about making allowances for applicants with special needs, such as literacy issues and being able to make an oral request, and section 4 of the FOIP regulation does allow for that. Also, an individual can authorize somebody else to act on the individual's behalf in making a request.

There were some comments on the duty to assist under section 10 of the act. Section 10 sets out the duty to assist and to respond to a request "openly, accurately and completely." There was a question raised by the University of Calgary probably in response to an order of an inquiry officer for the commissioner's office indicating that in that particular situation the University of Calgary didn't fulfill its duty to assist because it didn't properly clarify the request and therefore couldn't conduct a proper search for records. Now, the comment from the university was – it was actually two organizations. The Universities Co-ordinating Council and the Alberta Society of Archivists felt that the duty to assist shouldn't be expanded to include a requirement to clarify the request. Respondents felt that public bodies can't control an applicant's willingness to co-operate. However, in that case, the inquiry officer for the commissioner did find against the University of Calgary.

MS DeLONG: I just have a quick question. In terms of the records being sent to the mailbox, can it be COD? In the commentary you said that the fees have to be paid first.

MS RICHARDSON: Yes. That is a requirement under the act.

MS DeLONG: So it can't be sent COD, then?

MS RICHARDSON: No. I didn't know if they just simply objected to the fees or if they were trying to protect their anonymity in some way. Certainly they could make their request through somebody else. The response could be sent to their mailbox, but the fees would have to be paid, if there were any fees. If it was personal information and it was less than 40 pages, then there wouldn't be any fees.

MRS. JABLONSKI: Will they accept Visa?

MS RICHARDSON: Yes. Some public bodies do.

THE CHAIR: Any other questions regarding processing requests? General and other comments.

MS RICHARDSON: In Other Comments there was an issue raised by the Alberta School Boards Association, and they raised it in their presentation. They felt that it would be useful to have a consistent interpretation of the term "guardian" in section 84(1)(e). The term isn't defined in the FOIP Act, but it is defined in the School Act, so I thought I would just make a few comments on that.

Under section 84(1)(e) if the individual is a minor, any right or power may be exercised "by a guardian of the minor in circumstances where, in the opinion of the head of the public body . . . the exercise of the right or power by the guardian would not constitute an unreasonable invasion" of the minor's privacy. So that's sort of one of those situations where a guardian would be representing the minor either in a situation where the minor needed to consent or there was an issue over whether or not someone could have access to the minor's information or there was an issue over whether the minor should be making the request for their own personal information.

The term "guardian" isn't defined in the FOIP Act; however, in the School Act it's included in the definition of parent for the purposes of the School Act. However, it's very narrowly construed in that act. A parent would include for example an individual who has been granted "a temporary or permanent guardianship order" under the Child Welfare Act or the Domestic Relations Act.

In the Guidelines and Practices manual for FOIP the definition of guardian recognizes that governing legislation of public bodies may contain different definitions of requirements concerning who is the guardian for the purposes of that statute. So as I said, for the purposes of the School Act guardian is defined in a particular way.

If a definition of guardian was added to the FOIP Act only for the purposes of school authorities, it would likely have to refer back to the definition of parent in the School Act. So there would still be some, you know, sort of referring back and forth. Schools would still have to make their own determination as to whether an individual was or was not able to exercise the rights of a minor under section 84(1)(e).

Then there were some comments about public interest disclosure under section 32 raised by one business and one public body. There appeared to be a need for further clarification as to whether section 32, disclosure in the public interest, applied in certain instances. Section 32 specifies when information must be disclosed in the public interest. The section talks about "a risk of significant harm to the environment or to the health or safety of the public," an affected group or an individual, or the disclosure must clearly be in the public interest. The provision overrides the rights of third parties under sections 16 and 17.

There were questions about whether or not the disclosure of personal information contained in development or building permits was permitted. Under section 17(2)(g) of the FOIP Act it's not considered an unreasonable invasion to disclose the name of the holder of a building permit and the nature of the permit or licence, but not anything else about the individual. The issue of disclosing building permits was raised during the last review of the FOIP Act, and the committee decided that no legislative change was required. But since then the Safety Codes Act has been amended, so it now permits the disclosure of building permit information under that act, and there are a number of good FAQs that are available for municipalities about the release of building permit and development permit information.

9:20

THE CHAIR: Is all building permit information discloseable or only those that encroach upon other people's property or rights?

MS RICHARDSON: If you look at section 17(2)(g), it says that the "disclosure of personal information," which would be perhaps the name of the permit holder, "is not an unreasonable invasion" if the disclosure is about "a licence, permit or other similar discretionary benefit relating to" in this case it would be real property, "including a development permit or building permit, that has been granted to the third party," but the disclosure has to be limited to the name of the individual that holds the permit and the nature of the permit.

THE CHAIR: Thank you.
Mrs. Jablonski.

MRS. JABLONSKI: Thank you. I would like to suggest that we add a definition for the term "guardian" in section 84(1)(e) and that definition be the same definition as that used in the School Act. So instead of having to find the School Act and find out what that definition is, include that definition right in our FOIP Act. I just throw that out for comments.

THE CHAIR: Okay. We'll hear from Ms DeLong, and then we'll come back to you.

MS DeLONG: Oh, I just wanted to clarify that an actual building permit that shows the actual plans of someone's house is not FOIPable.

MS RICHARDSON: It could be considered property information, but they may decide to accept it for other reasons. There may be security reasons or that sort of thing, but section 17 and 17(2)(j), where it's not considered an unreasonable invasion of personal privacy, have to do more with personal information, so I'm not sure that a building plan would be considered the personal information of the individual.

MS DeLONG: You know, I'd rather that burglars can't get a plan of my house, and I would prefer that somebody just can't just say, "Oh, well, I wonder what windows those are" and go and get a plan of someone's house.

MS RICHARDSON: I'm not sure exactly what records a municipality would have. I don't know that they would have all the building plans of individual residential properties, so I'm not sure where they could get that.

MS DeLONG: When you get your building permit, you have to submit a plan.

MS RICHARDSON: I suspect that they would use other exceptions in the act to – I'm just trying to think what might be applicable. Maybe you could just give us a moment and we could confer.

MS CARLSON: I just wanted to support Mary Anne's request for a definition. I think that streamlines some of the outstanding issues we've heard.

THE CHAIR: I assume we'll come back to that after we deal with this survey issue.

MS RICHARDSON: I think one of the exceptions that they would probably use – I don't think building plans are routinely available – is section 18, where it could harm an individual or public safety, so I suspect that's what municipalities would apply if they were asked for that information.

THE CHAIR: Mr. Ennis, do you have any insight on this building permit issue.

MR. ENNIS: I do recall, before the FOIP Act came into play, that for one of the large municipalities in Alberta we had a right-to-information bylaw in that municipality, and the first request they received was for the building plans of a house that an elected official was building. They refused to disclose at that point, but that was under their right-to-information bylaw. We haven't seen a case since in our office on this issue. There would be always the security issue, and the act has exceptions built in to protect people from harm, but the test for harm would be a pretty difficult one if someone was simply asking for a building plan and didn't have a long criminal record for break and enter or whatever. I think this is something we should look into in detail with the level of government that has building plans. That would be municipal government. Perhaps we could undertake to do that within the day here and have this resolved this morning.

THE CHAIR: That would be very wise, and I thank you very much for that suggestion.

So we'll defer that topic, and we'll go back to the definition of guardian. Did you have anything to add, Mrs. Jablonski? You seem to have the support of Ms Carlson.

MRS. JABLONSKI: No. Just what I said. Thank you, Brent.

MS RICHARDSON: I guess I see a bit of a problem with defining the term "guardian" just for the purposes of the School Act, because as I indicated, guardian is used in a number of other statutes, and it has different meanings under the Child Welfare Act, the Domestic Relations Act, the guardianship act, the Dependent Adults Act, for example. That may have been why it was not defined under the FOIP Act. There are some pretty good guidelines in the Guidelines and Practices manual for public bodies in terms of how you work through it, and I believe that the school jurisdictions have looked at this issue and have worked out their own guidelines. The definition of guardian in the School Act is really just for the purposes of the School Act. So to refer back to that, you'd probably have to define it in the same way as the School Act, which would create problems for other public bodies that deal with other minors in other situations.

MR. MacDONALD: Mr. Chairman, Ms Richardson explained that very well for this member. I had concerns about the definition of guardian in the School Act and how it affects other acts, particularly the Child Welfare Act. At this time I would certainly prefer that we not have a definition of guardian specific to the FOIP Act.

Thank you.

MS DeLONG: If we did put a definition of guardian in the act, would it have precedence over the School Act in terms of FOIP?

MS RICHARDSON: The only time it would have precedence would be if there appeared to be a conflict with what was in the FOIP Act, and then you might be in a situation where there would have to be something specific said in the School Act to say that the definition of guardian was still going to have precedence over the FOIP Act. You're getting into a bit of a paramountcy situation, so I don't know that you want to set that up without thinking it through.

The other act where there are already some interpretation problems between the FOIP Act and another act is the Health Information Act, which approaches guardianship in a different way. It's similar to how they approach it in a medical setting. They look at whether individuals, if they're under 18 years of age, understand the nature and consequences of the act. Again, there is a different approach there.

So to put a definition of guardian in the FOIP Act without really

looking at all the different places where guardian is used and attempting to avoid a conflict with those statutes might be a challenge.

THE CHAIR: Ms Lynn-George.

MS LYNN-GEORGE: My point has been made.

MRS. JABLONSKI: My concern is that if we don't have a definition of guardian, it becomes a choice of whoever is making a ruling as to what definition they use, and I don't think that that's very acceptable. I think that we should have some definition of guardian. Is it possible to research the different acts? I find it hard to believe that we don't have a consistent definition of guardian in government, that each act has its own little thing. So I would suggest that perhaps we look that one up, find out what it is, and maybe include a broad definition of guardian in the FOIP Act so that it's not left to someone's ruling but is clarified and consistent.

9:30

THE CHAIR: Let me address that from a legal perspective. The reason that there's no consistent definition of guardian from statute to statute and from situation to situation is because guardian means different things in different contexts. There are custodial guardians and there are legal guardians and there are parental guardians and there are biological parents. They all have slightly different meanings, and I think there's a reason for that. I suppose I'm not opposed to attempting to undertake a definition of guardian for the purposes of this legislation, but I think that that would be a very difficult exercise to complete.
Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. A point very well made, and Ms Richardson has initially much more eloquently probably done the same. Defining the term "guardian" would be like trying to define what an animal is. You know, there are different types of animals. It's a good thing that we don't have a definition of guardian because guardian is very situational for the purposes of each act. A guardian under the Child Welfare Act would not resemble a guardian under the School Act because the term "guardian" plays a very different role. So for us to undertake an exercise now with research and trying to define what the word "guardian" means, it would probably mean this committee sitting for the next year and a half and still not coming to a consensus. I guess when a FOIP request is being made in relation to a body or an act, then that particular definition of the term "guardian" would be used. That only seems logical.

THE CHAIR: I agree that for applications under the Child Welfare Act, which is perhaps a bad example because they have paramountcy legislation, certainly their definition of guardian would have to apply in that situation as opposed to if the application was made under the Domestic Relations Act or under the School Act. The appropriate definition of guardian would apply as it relates to that statute or that situation.

MS RICHARDSON: I guess the only other comment I would have is that when the FOIP Act describes the exercise of a right or power by somebody else and is talking about an individual who is a minor, the test that the public body uses is whether or not it would be an unreasonable invasion of privacy by the guardian. So there certainly is a test. If they're talking about unreasonable invasion, then they go back to looking at section 17, which has that whole analysis of what is and what isn't an unreasonable invasion. So they're not left without any criterion. As you say, there's more discretion involved in applying that test.

THE CHAIR: All that being said, unless there's further discussion, you're certainly able to make a motion if you'd like.

MS DeLONG: As I'm sure everybody at the table knows, I'm a proponent of parental rights, concerned that parents be responsible for their children rather than the government being responsible for their children, and to be responsible they do need the information. I'm concerned about the narrow definition of guardian, that we really need to expand it. Supposedly, it takes a village to raise a child. We tend to cut back on the number of parents that are involved in their children's lives rather than trying to increase the number of parents involved in their children's lives. So I am, as you know, looking for an opportunity to somehow expand the definition of guardian to include all the parents of a child. I just wondered: where are we right now in terms of guardian? For instance, is it only the custodial parent at this point that is allowed to have information on their children? Where are we with the definition of guardian then?

MS RICHARDSON: Well, it's not defined in the act. That is really where we are. It just says: "if the individual is a minor, by a guardian of the minor." The head of the public body has to decide if that would not be an unreasonable invasion of the minor's privacy. As Mr. Work pointed out yesterday, you know, in some cases even with young children they have their own informational rights.

MS DeLONG: But those are two different issues. One is the issue between the parent and the child, but the other issue is: what parent?

MS LYNAS: If I could speak on that, my understanding is that it's normally both parents. Now, in the event of a divorce or a separation I believe that if there's a court order, it's only if the court order says that one parent cannot have access to the information. That's what would make the determination that one parent would not get the information: when it's in the court order.

MS DeLONG: I see no problem with that. What I'm concerned about are situations where one parent does not get access to the information even though there is no court order in place. Is there some way that we can define guardian so that it includes all parents who are not by court order allowed access?

THE CHAIR: I think the remedy for that problem is for that parent to get status via court order. If the court decides that they are a guardian of this child, therefore they will be in the same legal position as the first parent that you referred to. If there's some reason for excluding that parent from guardian status, if there's a good reason for doing so, then that person will be excluded.

MS DeLONG: So they're assumed not to be a parent until they get a court order saying that they are then? Guilty until proven . . .

THE CHAIR: Well, again, the definition of parent and the definition of guardian ought not be confused, which is part of the problem with this discussion. As a matter of family law one's rights are defined by court order, interim or otherwise.

MS DeLONG: They have the right until it's taken away, or they have to get the right?

THE CHAIR: I think we're splitting hairs. I'm assuming you're talking about a normal family that splits up.

MS DeLONG: Yes.

THE CHAIR: Well, typically in that situation either one parent leaves the home and leaves the children with the other parent or one parent takes the children and leaves the home.

MR. LUKASZUK: Or they both leave and leave the children alone.

THE CHAIR: In Mr. Lukaszuk's example, then in that case the Minister of Children's Services becomes the guardian, which raises a whole other definition of guardian.

Under the normal matrimonial breakup everything is in limbo, and either party can apply to the court for status as either custodian and/or guardian. The whole adage that – and I hate to say this when it comes to children – possession is nine-tenths is readily applicable in the interim period, but until one party gets itself in front of a judge and gets a court order, nobody's rights are defined.

It's difficult. I don't think it's a meaningful debate to determine whether or not you go to court to get rights or you have rights until the court takes them away. Nothing is determined until one party can get in front of a judge. Everything is in limbo.

Am I correct, Ms Dafoe?

MS DAFOE: Well, yeah, I guess you could say that. I think what we have to get back to is that the definition isn't here because the definition exists in all sorts of different statutes. So if you're dealing with a FOIP application to a school board, for example, the School Act definition of guardian is the one that the head of the public body is going to look at, and that's probably appropriate for School Act records. If a child welfare agency is the public body, then they're going to look at the Child Welfare Act definition of guardian, and that's probably appropriate for their records.

So if you put a definition of guardian in the FOIP Act itself, I'm not entirely sure how you would do it, because you have so many other different definitions out there in other legislation that either the FOIP Act is going to have to be read together with or one of them is going to have to be paramount. Then you go through the whole process of determining which is paramount, and that should be probably addressed in the FOIP Act, as Ms Richardson has said earlier. I'm not sure that it would be helpful instead of being harmful.

9:40

THE CHAIR: I agree with that. I find myself in the unusual circumstance of agreeing with Mr. MacDonald.

MRS. JABLONSKI: Who makes the decision about which definition is used for which case?

THE CHAIR: Well, I think that it would have to be the public body, and I think that's appropriate, because under different circumstances a different definition of guardian is going to have to apply.

Now, all of that being said, do you still wish to make a motion?

MRS. JABLONSKI: No. I'll defer at this time. Thank you.

THE CHAIR: Ms Carlson.

MS CARLSON: That's fine.

THE CHAIR: Okay.

Now, I think we've gone through the paper. I had another question on building permits. You've attached some photocopies from the 1999 – I believe it was the Gary Friedel report. Now, is this building permit thing a burning issue? Is there a reason why we're looking at what they did three years ago?

MS LYNAS: I could speak to that. I believe it's an issue for one company that collects this information and republishes it, and in dealing with, you know, the 350-plus municipalities in the province, he doesn't always get a consistent answer. He has phoned me at various times, and municipalities have phoned me. We've directed them to the correct information, and the problem seems to be resolved. So I don't think there's a problem with the act. It's more just everyone getting on the same page and understanding how it works, that the information is available.

THE CHAIR: John, have you started the wheels in motion to answer that other question?

MR. ENNIS: Just five minutes.

THE CHAIR: Okay. Thank you.

All right. Do we have any other discussion with respect to any part of the presentation or paper on question 5 with respect to access? Okay. We have only one generic question: "Is the process for obtaining access to records appropriate?" I'm anticipating a positive response, but I don't want to prejudge anything. Is there any discussion on that generally before I ask for a motion? If we could have a motion then. Is anybody awake? Ms Carlson.

MS CARLSON: I would like to make the motion that

> the process for obtaining access to records is appropriate at this time.

THE CHAIR: Thank you. Any discussion or questions for Ms Carlson on her motion? Ms DeLong.

MS DeLONG: I just have one concern in this area. I'm concerned about the ruling that was made regarding clarifying the process for determining whether a record exists; in other words, putting the onus on the department head to be able to make sense out of a request rather than just responding to the request.

THE CHAIR: What decision is that?

MS DeLONG: Linda, you mentioned a case where you overruled the University of Calgary because the thought was that they should have clarified the request first and then responded to it or something to that effect.

MS RICHARDSON: This was an order of the Information and Privacy Commissioner, an inquiry officer in that office, and I think it was probably after a long sort of drawn-out request. I'm not familiar with all of the particulars of the order, but it appears that in that case when it finally got before the commissioner, even though the public body, the university, had worked with the applicant and I believe there had been a number of requests for similar information, there was one concern that the inquiry officer in that case had in the final sort of review of it, and that was whether or not the University of Calgary had sort of done all it could to clarify the request. The university's response in their comment to the discussion guide was: it's very difficult to clarify when the applicant won't respond; in other words, there's an unwillingness to co-operate. So ultimately the decision of the inquiry officer was that they should have clarified the request so that they could make sure that they did an adequate search for records, and I guess that's just the difficulty that the university found itself in. It had an unwilling applicant. So I think it's sort of: how far does the duty to assist go?

MS DeLONG: What's determining where that line is right now? Where in the act are we?

MS RICHARDSON: Section 10 says that the head of a public body must do all that it can to respond "openly, accurately and completely" to an applicant's request. Ultimately, if there's an issue concerning the duty to assist – in other words, an applicant says, "I don't think they tried hard enough to find the records" or "They didn't do an adequate search" or something of that nature – they can go to the commissioner and have that matter reviewed. There are a number of cases where the commissioner has dealt with the duty to assist.

So it is something that is a positive duty that the public body has. It does have a duty to assist. Ultimately, if there's a complaint about that, it would go before the commissioner.

THE CHAIR: Do you understand that?

MS DeLONG: I do, but I don't see under section 10 where it's the public body's duty to clarify a request.

MS RICHARDSON: That's a bit of an interpretation, I guess. As part of the duty to assist, you have to find out what records the applicant is seeking. Sometimes it's not clear when they send you their request what exactly it is that they're looking for. Sometimes they don't know. So what you do is you correspond or you speak to the applicant on the telephone, try to find out what it is exactly that they're looking for so that you can in some sense narrow the scope of request so the fees are less for the applicant, or it just makes it easier for you to find it. You only have 30 days, so you have to do whatever you can to figure out exactly what it is the applicant is asking for. That's the process of clarifying.

I don't know the facts of this particular case that the University of Calgary was involved in, but we could probably provide you with a copy of the order if that would be helpful.

MS DeLONG: It's just that I want to make sure that the responsibility stays with the applicant. In other words, you can't sort of generally just go on a fishing expedition. You need to specifically ask for whatever information you actually do need.

MS LYNN-GEORGE: Section 7 of the act says that the person making the request must put the request "in writing and . . . provide enough detail to enable the public body to identify the record." So that's the obligation of the applicant, and then the duty to assist provision goes to the obligations of the public body.

THE CHAIR: I'm assuming that this works reasonably well in the majority of cases. Certainly an applicant doesn't know exactly what the document looks like, so they're going to need some assistance, but I think section 7 covers it. They have to do some due diligence to make it an intelligible request; is that fair?

9:50

MS LYNN-GEORGE: Up to a point. The commissioner has given quite a lot of rulings on this, and the commissioner has also stated that it's very dependent on the facts situation, what the obligations of the parties are. In our Guidelines and Practices manual on page 42 we give a summary of some of the decisions that the commissioner has made. For example, the commissioner has said that a public body doesn't have to create a new record to assist an applicant unless it could do so with its normal computer hardware and software. He has said that the duty to assist is independent of whether the requested records are subject to the act. So if an applicant makes a request and the records are excluded, the public body can't simply ignore the request. The duty to assist does not require a public body to seek clarification of a request when the request is on its face very clear. There are quite a lot of decisions that have been made where the commissioner has provided guidance to public bodies on this, but as the commissioner has said, it's quite dependent on the circumstances of the request.

THE CHAIR: Are you satisfied with that, or do you wish to make a motion or amend Ms Carlson's motion?

MS DeLONG: No. I'll just go with Debby's motion.

MRS. JABLONSKI: I apologize that I was late this morning, but did we discuss the relevance of changing the FOIP Act for the time requests being 30 business days instead of 30 calendar days?

THE CHAIR: Well, we had a briefing on it, but we have not debated it.

MRS. JABLONSKI: Well, then I would like to move that the response time for a FOIP request be changed to 30 business days instead of 30 calendar days.

THE CHAIR: Okay. The chair accepts that motion. Do you want to back that up with any reason or argument?

MRS. JABLONSKI: No. It's just that from a business point of view I understand the difficulty of trying to fit into a time line when you have employees that are only working a five-day week or are taking stat holidays and how that 30 calendar days doesn't really allow 30 working days.

MS CARLSON: A question on that with regard to a school year. How does that work, then, for schools? What are 30 working days there?

MRS. JABLONSKI: Well, my comment to that would be that it would be difficult to have somebody search a record when there's nobody in the school over the summer, so I think this might work for that. But I realize the importance of getting the information as quickly as possible, so I'm not even sure how the schools work it now.

MR. THACKERAY: Just a quick comment about the 30 business versus calendar days. In Bill 7, 2002, in the province to the west of us, British Columbia, they amended their Freedom of Information and Protection of Privacy Act by redefining "day" so that "day" does not include a holiday or a Saturday, which basically means the 30 days is 30 working days rather than 30 calendar days. That was a recent amendment to the B.C. legislation.

MRS. JABLONSKI: I don't want to change the definition of "day".

MR. THACKERAY: But that's how they did it there.

MRS. JABLONSKI: Right.

THE CHAIR: Lawyers have their own definition of clear days. It doesn't count the first day or the last day or any holidays in between.

Any other comment?

MS CARLSON: Is there an answer to my question?

MRS. JABLONSKI: About schools?

THE CHAIR: I don't know. Does anybody have any advice for Ms Carlson with respect to school years?

MS RICHARDSON: If I may, Mr. Chairman. It was something that

was raised in the Alberta School Boards Association presentation, I believe. It's an issue for them, and they're managing. What they do is they have to sort of make sure that there's somebody going and checking the mail periodically, but receiving the request is not so much the issue; it's trying to find people who can give them access to the records that's more of the problem. So it certainly is an issue for them. They're managing, but they raised it as an issue.

MR. LUKASZUK: Mr. Chairman, perhaps we should follow on Mr. Thackeray's lead and not the legal definition of a day. There are, I'm sure, about 30 billable hours in a lawyer's day. But if we were to use the British Columbia definition of a day, that would accommodate all circumstances. If the definition of a day would exempt holidays and weekends, then it would accommodate the school boards, because the two months of vacation time are holidays, and those would not be counted as days. Also, then, it would accommodate Mrs. Jablonski's proposal, because it would extend it to 30 working days. So if we were to define a day as a quantum of time that does not include holidays or weekends, then perhaps all situations would be accommodated by it.

THE CHAIR: Mr. Mason, then Mr. Thackeray, and then Ms DeLong.

MR. MacDONALD: Can I get on the list there?

THE CHAIR: Yes, you may.
Mr. Mason.

MR. MASON: Okay. My understanding of 30 days is that it essentially means four weeks, which is 20 business days. So if we change it to 30 business days, then we're effectively changing the time to six weeks from four weeks. Is that correct? You know, we could mess around with days and definitions of days and stuff, but really we're increasing the amount of time that somebody has to respond by 50 percent. Right?

MRS. JABLONSKI: Right.

MR. MASON: And that's your intention? Are there any policy issues related to that? Are there administration issues related to that?

THE CHAIR: You seem to have stumped the team. This may be the first time.

MRS. JABLONSKI: There are six public bodies that all say the same thing: the time line isn't enough.

MR. MASON: Yeah, I know, but my question is: are there administrative issues? Are there problems that would be created by adding this extra time into the process?

THE CHAIR: Tom, you're next on my list anyways. Do you want to take a shot at this and whatever else you had to add?

MR. THACKERAY: The only administrative thing that comes to mind – I guess a couple of things. The majority of our publications deal with 30 calendar days, so they would all have to be changed. The tracking system that's used to compile statistics and to follow the flow of request/response is all based on 30 calendar days. If the time were extended to 30 business or working days, we may see a reduction in public bodies giving themselves an additional 30 days, which is allowed under the act anyway. Basically, a public body can take 60 calendar days before having to go to the commissioner to get an extension for a longer period of time.

In response to Mr. Lukaszuk's comment about schools and being on holidays for the summer, the public body is the school board, and they are open over the summer, so that would be an issue there.

MR. MASON: Can I ask the same question to the commissioner's office?

MR. ENNIS: It's my pleasure to respond to this. I missed the opening part of this discussion. I was out of the room for that moment. In terms of operational issues I think it's important to keep in mind that 30 calendar days doesn't actually run as 30 linear calendar days in many instances. FOIP access activity is very much like time clock chess. At certain times FOIP co-ordinators stop the clock by returning some information or some question back to the applicant, especially where fees are involved. So the 30 calendar days often runs over a period of something like 40 days when there's that deliberation about whether or not the applicant will pay the fee, whether or not the applicant is clear on what they're looking for, and so on.

Another set of issues would come of course around the Christmas season, when working days are very different for different public bodies. There always is a bit of a jam up in the late December period because people are away, yet the clock is ticking on their 30 calendar days during that period.

Apart from the Christmas season and the difficulties for a few school boards whose staff are mostly away in the summertime, those would be the operational issues that we can anticipate overcoming by having a longer period, but those issues haven't been mainstream for us.

10:00

THE CHAIR: Ms Lynn-George. No? I finally get your name right, and then you don't speak.

MR. MacDONALD: Well, in regards to the 30 days I cannot understand why we would have any need to change it in this province. The rest of the workforce is working probably seven days a week. The 30-day time frame in my view has worked in the past, and I can't see any need to change it. If we're going to have freedom of information – Mr. Mason is absolutely right. We're contemplating changing it from four to six weeks. If that information is readily available, it can be available in 30 days in my view. There's no need to change this.

Thank you.

THE CHAIR: Ms Carlson.

MS CARLSON: My question was answered. Thank you.

THE CHAIR: That's the end of my list, but I'm contemplating that it may have spurred more interest.

MS DeLONG: I just wanted to throw in a little comment. Work usually expands to meet the time, so I'd be very much in favour of keeping it where it is right now.

THE CHAIR: Okay. Any other discussion or debate? We have a motion forwarded by Mrs. Jablonski, and I don't remember exactly what the wording of it is.

MRS. JABLONSKI: The wording was that

> the response time response for a FOIP request be changed to 30 business days instead of 30 calendar days.

THE CHAIR: All those in favour of Mrs. Jablonski's motion, raise

your hands. Opposed? It's defeated.

Next we'll deal with Ms Carlson's motion, unless there are any other amendments or motions regarding question 5, access. Ms Carlson's motion was that the committee recommend that the process for obtaining access to records is appropriate. That's paraphrased slightly, but I think I captured the essence. Did you wish to get in on this debate, Mr. Mason?

So the motion is that the committee believes that the current process for obtaining records is appropriate. Any further discussion before we vote? Yes, Mr. Ennis.

MR. ENNIS: Mr. Chairman, just on the one point of information that you asked me to look into, the question of access to building permits, is now a good time to raise information about that?

THE CHAIR: If you have it, now would be the perfect time.

MR. ENNIS: Yes. I was able to get through to Mr. Steve Thompson at the city of Edmonton, and those of you who know Mr. Thompson know that he's well versed in municipal operations as well as in FOIP matters. He informed me that this is a common concern among FOIP co-ordinators at the municipal level, that it's generally a matter handled in policy as opposed to FOIP requests. In fact, they don't have FOIP requests in this area.

The planning division of the city of Edmonton – and Mr. Thompson believes this might be a common approach across the province – will give out plans specifically to public spaces in areas, for example, like shopping malls and public buildings. They will give out the detail of those parts of those spaces that the public would have ready access to. So there's a security concern for other parts of those buildings that is shielded by the planning department.

In terms of private residences, if a request is made for information about the outline plan of a private residence, the footprint of the building would be accessible. The contents of the footprint would not. That is the sort of operative rule that governs access on a routine basis to that information. So a third party could get access to a residential footprint; that is, how the building fits within the lot.

THE CHAIR: A survey certificate essentially.

MR. ENNIS: Essentially a survey certificate, yes. But the interior would not be made accessible.

A number of these policies have been reviewed and perhaps constricted over the past few months as a result of security events that happened last September, especially when it comes to public buildings in downtown cores.

THE CHAIR: Thank you for that and for the expedient nature of how you were able to get that information.

Ms DeLong, do you have any comment or question?

MS DeLONG: No. No. Thank you very much, though.

THE CHAIR: Are you satisfied with that response?

MS DeLONG: Certainly.

THE CHAIR: Okay. Then we can return to Ms Carlson's motion that

> the committee recommend that the current process for obtaining access to records is appropriate.

All those in favour, please raise your hands. It's carried unanimously, let the record show.

MR. MacDONALD: No.

THE CHAIR: I'm sorry. Let the record show that it was not carried unanimously, but it was carried.

We'll carry on now with question 9, fees, but before we do so, because we had somewhat sparse attendance at 9 o'clock, I didn't do introductions, so I'm going to do that now. My name is Brent Rathgeber, and I am the MLA for Edmonton-Calder, and I'm the chair of this committee. If the members could all introduce themselves for the record.

[Ms Carlson, Ms DeLong, Mrs. Jablonski, Mr. Lukaszuk, Mr. MacDonald, and Mr. Mason introduced themselves]

THE CHAIR: If the members of the technical team could introduce themselves for the record.

[Ms Dafoe, Mr. Ennis, Ms Lynas, Ms Lynn-George, Ms Richardson, and Mr. Thackeray introduced themselves.]

THE CHAIR: And the record should also reflect the attendance of Mr. Gary Masyk, from Edmonton-Norwood, and committee clerk Karen Sawchuk.

I've also been asked to remind the members that these cards that are in our mike/speaker assemblies are not to be removed. I'm not sure exactly what they do, but they have some sort of identification process. If they're touched, apparently they lose their functionality. They're not credit cards, so just leave them where they are.

If we could go on and begin the discussion on question 9 with respect to fees. Mr. Thackeray, who has the lead on this?

MR. THACKERAY: For the fees discussion, the information that was provided with the heading Question 9: Fees will be led by Linda. Then we have circulated a policy option paper which is fairly lengthy and fairly detailed, and Jann Lynn-George will be going through that in some detail if that is agreeable to the committee.

THE CHAIR: That's quite agreeable. Go ahead.

MS RICHARDSON: Thank you. You get to listen to me again.

The question that was asked in the discussion paper was:

> Does the principle of sharing the costs between the public body and the applicant strike a fair balance between access rights and the responsibilities of public bodies to use their resources for program delivery?

A minority of respondents, 28 percent, remarked that the fee structure is not appropriate in some way, and the comments of those respondents are outlined in the part of the paper that deals with the current fee structure not being appropriate.

So in terms of the commentary just a little explanation again about fees. Fees for general requests for access include a $25 initial fee. A fee estimate is provided when costs are estimated to exceed $150. Fees may be charged up to the maximums in schedule 2 of the FOIP regulation at $6.75 per quarter hour for locating and retrieving a record, preparing and handling a record, and supervising the examination of a record. Fees may also be charged for producing a record from an electronic record and for shipping a record, the actual amount charged or incurred by the public body, and for copying a record, such as photocopying at 25 cents per page or $10 per floppy disk. No fees other than the initial fee of $25 may be charged unless the estimate exceeds $150. So the $25 initial fee covers about six hours of search time and about 40 pages of photocopying.

A FOIP request for general records does not commence until the initial fee has been paid. Fees for personal information requests are limited to copying charges. There's no initial fee for requests for personal information, and fees are charged when the costs exceed $10, or 40 pages of records.

Fees may be used by public bodies to try to limit the scope of

FOIP requests. It's common for applicants to request all records related to a topic, so since public bodies have a duty to assist applicants, they work with the applicants to identify the records of interest. Often this can be worked out so that the amount of the fee would be less than $150, so the applicant then is just charged the initial fee.

10:10

Some statistics for the 2001-02 fiscal year. Provincial government ministries collected $53,897 in fees. Just to give you a little bit of an estimate of the cost of the program, information management, access and privacy spent $881,722 to administer the act over the same fiscal period. Now, that doesn't simply address access requests; that's other things as well. There's a fact sheet attached about that. Of course, additional costs were incurred by each public body subject to the act. Expenditures by the office of the Information and Privacy Commissioner for the 2000-01 fiscal year, the previous fiscal year, were $2,568,301 to administer both the FOIP Act and the Health Information Act. So those are just some comments on fees, what's recovered and what's spent.

Then there were some comments on fee waivers. The fee waiver provision in the act is set out in section 93(4). It says that the head of a public body may waive or reduce fees, and the reasons for doing so would be if

(a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
(b) the record relates to a matter of public interest, including the environment or public health or safety.

The applicant would request a fee waiver of the public body, and if the public body says no, then the applicant can ask the commissioner to review that decision. The commissioner can then uphold the public body's decision or substitute his own decision by waiving all or part of the fees. Allowing fee waivers promotes access when individuals are unable to pay the fees or pay all of the fees or when the record relates to a matter of public interest. For the 2001-02 fiscal year the amount of fees waived by government of Alberta ministries was $1,050.

There were some comments about differences between the Health Information Act and the FOIP Act in terms of the way that fees are structured. Under the Health Information Act custodians are able to charge fees in accordance with regulations under that act for the cost of what is called producing a copy of the applicant's health information. As part of producing a copy, a custodian may charge fees for reviewing a record and determining whether the record requires any severing, and that's not chargeable under the FOIP Act.

The two questions that are posed, which Jann will discuss in further detail in terms of the policy option paper, are:

9(a) Should the fee structure for general requests be changed?
9(b) Should the fee structure for personal information requests be changed?

THE CHAIR: Does anyone have any questions before we go on to the second part of the presentation? Ms Carlson.

MS CARLSON: Yes, I have some questions with regard to the fees that were waived. It sounds to me like about 2 percent of them were waived in the past year. Do we have any information on how many requests that would entail and how many were a partial waiving of fees and how many were a complete?

MS RICHARDSON: I'm not sure what we have by way of statistics. I don't know what the tracking – I don't think we get those statistics. Also, I guess I would have to say that the figure of $1,050 was just for government ministries. We don't have those figures for all the local public bodies.

MS CARLSON: Would that be the figure that is reported in the annual report?

MS RICHARDSON: I believe that's where that fee came from. The local public bodies are not required to report that kind of information.

MS CARLSON: Do we have the number of how many requests were made last year? It seems to me that with that figure we're talking only one or two requests where fees were waived.

MS RICHARDSON: We could certainly figure that out based on the requests that were received and come up with a percentage for you. I don't know if we could get the information on whether there were reductions and by how much.

MS CARLSON: Yes, that would be fine. Thank you.

MR. MacDONALD: Mr. Chairman, it seems to me in this fax sheet that was handed out that since the act came into force on October 1, 1995, until the current time, there is definitely a use of fees in my view to restrict access to information. One just has to look at the trend in the increase of the number of fees. Certainly the files have doubled, but the total fees collected have more than doubled. It would be my view that we are restricting access to information by the use of these fees.

THE CHAIR: I'm certain we'll get into this discussion, Mr. MacDonald. What I wanted to know is if you have any questions for Ms Richardson regarding her part of the presentation.

MR. MacDONALD: Yes. Is there a direct link between the increase of the fees and government departments and/or other public bodies?

MS LYNN-GEORGE: There has been no increase in fees. The fees have not been increased since 1995, when the act was introduced.

MR. MacDONALD: No; but the total number of fees certainly has. We've gone from a little over $9,000 in 1995 to, like, $53,000 now.

MS LYNN-GEORGE: But there's also a difference in that the number of requests has been rising each year.

MR. MacDONALD: Yes, but the number of requests certainly does not correspond to the fee increases.

MS CARLSON: You're talking about the average cost?

MR. MacDONALD: The average cost certainly does not.

MS LYNN-GEORGE: We don't have extensive statistics on the way the level of fees affects the passion for requests in Alberta, but I will be presenting some quite detailed information on the research that is available on this from other jurisdictions, if that would be of assistance.

MR. ENNIS: One comment, just as a historical observation on the evolution of the FOIP program, is that the mix of users of the FOIP program has evolved over the years. One potential explanation for the elevation in fees collected is the rapid rise of business-to-business kind of activity under the FOIP Act, where businesses are making access requests. I think it's fair to say that it's more likely that businesses will be paying fees when they make access requests because they probably don't have access to some of the fee waiver justifications that individuals might have. So that might be one

explanation for the rise in fees, but it's probably a subject worth detailed analysis.

MR. MASON: I'd like to know a little bit more about the waiver policy. What are the principles underlying the decisions about who gets the waiver and who doesn't?

MS LYNN-GEORGE: I will be addressing that in some detail, if you would . . .

MR. MASON: Okay. I'm interested in that, but I sure can wait. Yeah.

THE CHAIR: Okay. Are there any other questions to Ms Richardson on her presentation? Perhaps we should just carry on because I don't know that it's easy to separate which one of the presenters should be answering the questions.

Carry on, Ms Lynn-George, and then we can ask both of you questions.

10:20

MS LYNN-GEORGE: Well, fees are always a contentious issue. In every jurisdiction when it reviews its FOIP legislation, fees are always one of the topics that attract a great deal of interest. So we've put together a policy option paper in which we have attempted to cover some statistical data on fees, some comparative data on Alberta and other jurisdictions, a survey of some of the research and analysis that's been done on the fee issue in Alberta and in other jurisdictions, and some policy options for the consideration of the committee.

Just to supplement what Linda has already told you about statistics, an important point to remember is that about 60 percent of the requests for access to information are from individuals seeking their own personal information. That has been fairly consistent since the act was introduced in 1995, and it's fairly consistent for both government and local public bodies. Once you consider that the majority of requests are for personal information, it's not surprising that the principal category of requester is the general public.

Once you remove those personal requests and you look at who is making the requests, the largest requester for government information is businesses. Last year nearly 68 percent of all requests were made by businesses. For the local public bodies the public is still the largest requester after you've taken away the personal information requests, and businesses are next at about 30 percent. This is something that jurisdictions have been considering when they've been trying to decide whether it would be worth having a different scale for commercial requesters since they do make up a large component of the requests.

The direct costs of administering the FOIP Act. Linda gave you some statistics, but just to reiterate. They've been increasing and were about $7 million in the last fiscal year and are expected to go to about $8.1 million in 2001-02. That includes the cost of administering the Health Information Act. The cost of processing requests represents a very small part of the total cost of administering the FOIP Act; there are a lot of other activities that are part of the FOIP program. However, it is the only aspect of the FOIP program that generates any revenue, so it's something that attracts attention. It's something that's a matter of concern to local public bodies, that the revenue from the program is a very small proportion of its cost.

The fee structure is set out in section 93 of the act. It says that the head of a public body can require an applicant to pay fees. Fees for an individual's own personal information can be assessed only for the cost of producing a copy. If an applicant is required to pay fees, the public body must provide an estimate before they provide the services. The fees must not exceed the actual cost of the services. The head of the public body may excuse the applicant from all or part of the fees under certain specified circumstances, which I'll come back to. If a request for a fee waiver is refused, then there's a right of review by the commissioner.

Linda has already described the rules that apply to requests for personal information and requests for general information. I would just supplement that by mentioning that requests for general information can be one of two kinds, a onetime request – and that's the information that Linda provided to you – or continuing requests. The act does allow an applicant to make a request that continues to have effect for a specified period up to two years. In this case the public body and the applicant would agree on a schedule of dates when the public body would reactivate the applicant's request and perform a new search for records. For that service they're required to pay an initial fee of $50, and there's a set of rules governing how the estimate applies to each installment.

On page 5 of the policy option paper we've reproduced the fee schedule for you, and that fee schedule has not changed since 1995.

We provided in an appendix a selective comparison of fees for general information requests in Alberta with fees in other Canadian jurisdictions, and we have tried to address some of the particular fees that have been mentioned by members of the committee. What you'll see, really, is that there are two points. One is perhaps that the Alberta act really provides quite a lot of detail on the fee structure. When you look at the regulations relating to fees in other jurisdictions, they're often quite vague. It's difficult to figure out what the exact cost is. It seems that quite a lot of the administration of fees is handled in policy, so it's a little difficult to do very precise comparisons, but I've made a list of some points that I think you can draw out of the comparison between other jurisdictions.

Just on the point of personal information, where the legislation is perhaps most vague, all jurisdictions provide personal information either free of charge or at a reduced cost, and in a lot of cases they just refer to the discretion to waive fees without quite identifying what the criteria for waiving the fees would be for a personal information request.

Now, on the point of fee waivers there are two criteria in the act.

> The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,
> (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
> (b) the record relates to a matter of public interest, including the environment or public health or safety.

In practice an applicant will normally take the initiative in requesting a few waiver either at the time of submitting a request or after receiving a fee estimate.

Now, the fee waiver in the public interest is usually the provision that attracts the most attention, and I've set out a table for you here which provides a little formulation of the test, a list of considerations that the commissioner has suggested that public bodies should take into account when considering whether there should be a fee waiver in the public interest.

If the head of a public body exercises his or her discretion to excuse fees, the head can decide to excuse all of the fee or part of the fee. If the head of a public body refuses an applicant's request, then the applicant has the right to request a review by the commissioner.

Now, the commissioner can then either review the head's exercise of discretion, in which case he would either confirm the decision or send the matter back to the head for reconsideration, or the commissioner may consider the request anew, in which case he would substitute his or her own decision for the decision of the head of the public body. There's no fee for making a request for review by the commissioner.

Mr. Mason, if you wanted any clarification on any of these criteria for fee waivers in the public interest, I could perhaps respond to that.

MR. MASON: Well, actually I have a number of issues I wanted to raise around fees and waivers, but I'll wait till you're finished.

MS LYNN-GEORGE: Now, the rationale for the current Alberta fee structure is set out in the next section of the policy option paper, and when we went back to research this, what we discovered was that there was really very extensive research undertaken on fees way back in 1994, when the fee structure was being developed, and it was really exhaustive and considered the principles underlying access to information and privacy legislation, experience in other jurisdictions, emerging trends in public administration, the report of the all-party panel, other Alberta legislation that has fee provisions, and Alberta Treasury guidelines on fees. There was quite a lot of research done on actual costs, including costs for particular services in different centres, so large cities and smaller municipalities.

Out of that research some principles were articulated and some decisions were made on the fee structure, and it was clearly recognized at the time that the fee revenues from the processing of requests would be considerably less than the cost of administering the access to information legislation. At the time it was noted that the Canadian federal government was collecting fees that were about 1 percent of total costs; Manitoba, 3 percent; and Australia about 4 percent. So 5 percent is really the maximum that most jurisdictions expect to get from the processing of requests.

10:30

The fee structure that was decided upon at the time was intended to reflect several basic principles that perhaps are relevant to any consideration of the policy options, and they were that in exercising their legal access to information rights, applicants should bear a portion of the cost of providing the information. The assessment of fees should be reasonable, fair, and at a level that would not discourage citizens from exercising their legal rights, and fees should be structured in such a way as to encourage applicants to be reasonably specific and precise in their requests.

Several models were considered, and it was decided to follow a model that had been adopted in the federal government and in Australia, whereby there would be an initial fee for general requests, which would purchase some time at a relatively low cost, and that initial fee was to be $25, with no initial fee for personal information. That was intended to cover the location and retrieval of records and the response to a simple request or a preliminary search and the production of a fee estimate for a more complicated request. So in a lot of cases $25 would be the only fee that would be paid. It was decided then that there would be a fee threshold of $150 under which no additional fees would be charged, and that was to encourage applicants to submit specific requests, and it was also the idea that you wouldn't be preparing estimates and getting involved in calculations of time and so forth for fairly simple requests. The idea was just to keep it simple and efficient.

The specific costs were based on comparisons with other jurisdictions and some consideration of commercial rates, and it was decided that it should be only the labour and costs that were set out in schedule 2 and only copying costs for personal information. Some of the details of that are discussed in that section of the paper, but we can come back to that if you have any specific questions.

There continue to be issues. It's basically that while public bodies are very supportive of the principles of the legislation, they are very concerned that the processing of requests diverts resources away from their primary programs. A lot of regulatory regimes do that, but in the case of FOIP requests the diversion of cost of resources tends to be seen in relation to individuals rather than in relation to the public as a whole, and that's part of the issue with fees for public bodies.

In certain public bodies there are concerns about specific fee provisions. For example, some public bodies that have records in electronic format would like to be able to charge the cost of pulling an individual's record out of a database. Other public bodies are concerned about some practices on the part of applicants that they consider to be wasteful or unfair in some way. One of those is splitting requests. It has been dealt with in a lot of jurisdictions. A public body does a lot of work to produce a fee estimate for a particular request. They produce it, and then the applicant withdraws that request and puts in enough separate requests to reduce the fees to nil.

Sometimes applicants also put in a lot of requests. A commercial applicant might put in a number of requests for information for different clients, and the public bodies sort of feel that that's not quite the way it should work. Some applicants make requests for personal information that is routinely available outside the act and then they don't come and collect the records, so it's an expense in addition to the expense of maintaining this other routine disclosure process. One of the ones that is particularly of concern to public bodies is that applicants sometimes insist on an inquiry before the commissioner, which is very expensive for public bodies to participate in, and then the applicant doesn't really participate in the inquiry or perhaps not with the same degree of involvement as the public body is obliged to undertake.

Applicants, on the other hand, argue that higher fees can create barriers to access and would therefore be contrary to the spirit of the FOIP Act. Some also argue that as taxpayers they've already paid for the information once and they shouldn't have to pay for it again. Others argue that they represent interest groups or perform roles that are really crucial to informing the public about the activities of public bodies and that they shouldn't be obliged to bear large fees for performing that public duty. Applicants have also raised some very specific concerns about particular fees and so forth.

Now, just to give you a bit of an overview of some of the research and analysis that has been done in this area. First of all, in Alberta we had the all-party panel report which established some recommendations that have been implemented in the act, then the select special review committee of 1999, which endorsed the existing fee structure and recommended that it be continued with a couple of minor changes. Then another important report was the Fees and Charges Review Committee final report in 2000, and that was a report that was done in response to the Eurig case, which was a decision of the Supreme Court of Canada that said that for a compulsory fee to be constitutionally valid, the amount charged must reflect the cost of the service provided, and if it didn't do that, it would be considered a tax. So the Fees and Charges Review Committee was established to ensure that Alberta's fees and charges were consistent with the Supreme Court ruling.

The committee found that most of the charges leveled by the Alberta government didn't come close to recovering the cost of services, and that included providing information under the FOIP Act. It should be noted that the committee didn't consider FOIP fees in any detail, partly because there was no issue of the FOIP fees exceeding cost recovery levels and therefore being unconstitutional in any way. What the committee did say was that where there's a clear rationale for charging less than the cost of providing services, the province should not increase the charges to cost recovery levels, and where that's the case, if it's decided not to charge cost recovery level fees, then the rationale for the charges and the degrees to which services are subsidized should be communicated to the users of those services.

Just a little bit of comparative information from other jurisdictions. There was a report by a Professor Alasdair Roberts, who's done extensive research on access to information legislation in Canada. What he did was he looked at the changes that were made in the Ontario fees in 1995 and tried to extrapolate from the

data that he analyzed what the effect of the increases might be. What he found was that as the average cost increased, the number of requests received by provincial public bodies declined, in this case by roughly 35 percent. Now, that would actually contradict the pattern that has just been noted, where in Alberta as the cost of a request has increased not because of a fee increase but simply because the average cost has been increasing, the number of requests has also been increasing.

10:40

The decline in requests for personal information was the most dramatic. When Ontario introduced fees for personal information requests, there was a dramatic decline and an increase in the number of withdrawn or abandoned requests. The public bodies that were least affected by fee increases were those that had a large proportion of requests from businesses. So to extrapolate from that, probably what would happen in Alberta would be that Environment might not be affected because they have the largest number of requests from business applicants, but perhaps Human Resources and Employment or Children's Services might receive considerably fewer requests if there were any increase in fees because they have a very low number of business applicants. When the fees for filing appeals with the Information Commissioner were introduced, there was a significant drop in the number of appeals, so about half over a period of four years.

Professor Roberts concluded that new fee schedules were needed, but he thought that a complete elimination of fees, as is sometimes proposed by access advocates, was not advisable since it would result in substantial increases in broad requests, that make an unreasonable drain on institutional resources. He suggested that fees play an important role in moderating demand so that the drain on institutional resources is not excessive. He did recommend that the fee schedule should differentiate between different types of requesters, that commercial requesters should pay more.

The government of Canada also did a fee review, and that has somewhat been overtaken I guess in our minds at the present by the fact that the Access to Information Review Task Force issued its report just a little over a week ago, and it made some recommendations on fees as well. So I might just skip to those.

In its final report, which was issued I think on about the 12th or 13th of June, the task force devoted considerable attention to the issues of cost and fees. With respect to the cost of administering the access to information program, the task force – and this is at the federal level – reached the following conclusion:

> The total costs of administering the Act are in the order of $30 million annually or less than $1 per Canadian per year. This is a modest cost, in light of the significant public policy objectives pursued by the act: accountability and transparency of government, ethical and careful behaviour on the part of public officials, participation of Canadians in public policy design, and a better informed and more competitive society.

With respect to the fees for processing access requests the task force found that there was no general standard of fees across jurisdictions and little common ground between public bodies and applicants. What they said was that the views on fees are so polarized that they're probably irreconcilable, something perhaps to bear in mind in your deliberations. So they made some recommendations. They wanted to increase the initial fee, which was really just to bring it up to what it would be after inflation. They wanted to modify the fee structure to differentiate between commercial and noncommercial requests. What they wanted for noncommercial requests, for the general applicant, was to provide about five hours of search and preparation time and about 100 pages of copying before charging any fee in addition to the initial fee. They figured that that would cover about 80 percent of all requests. They're applying a similar kind of logic to the logic that was applied when the $150 fee threshold was set for Alberta.

For the commercial requests they wanted to set an hourly rate for all reasonable hours of search, preparation, and review as well as a set rate for reproduction. Now, that's a very significant point there. They're suggesting a charge for the review of records. That's what we have in the Health Information Act; it is what was explicitly prohibited in the FOIP Act. That reviewing process is estimated to constitute about 70 to 75 percent of the actual cost of processing a request. They wanted to update the fee rates to reflect inflation in new media reproduction, and they wanted to establish an alternate fee structure that would allow for the full cost recovery of any reasonable costs that can be directly attributed to the processing of a request to be applied when the cost of processing a request exceeds $10,000. So for large requests a whole new fee structure would kick in.

The policy options that we've presented in this paper. The first is the status quo again; no change. The second is to amend the act or the regulation as applicable to allow some relatively minor changes to address specific concerns. So these are changes that wouldn't really affect the fundamental principles as far as we can see. We've provided a little bit of a menu of options there that address some of the specific concerns that have been raised by public bodies and applicants.

The third option is to change the fee structure to allow for a significantly higher level of cost recovery. This would involve revisiting some of the principles that were established when the fee structure was developed.

Option four suggests that the act might be amended in certain ways that streamline processing and reduce the cost of administering the act, processing requests, without actually amending the fee structure or the fee schedule.

THE CHAIR: Thank you very much for that very thorough and still concise overview and for the four options.

I think we're going to take about 10 minutes and stretch our legs. When we come back, I propose that we do this in sort of three stages, because I'm anticipating some discussion and some interesting debate regarding these options. The first portion will be specific questions to either Ms Lynn-George or Ms Richardson regarding the presentation. Then we'll embark on a more general discussion as to how the members feel about the whole issue of fees, sort of a philosophical debate, and then we'll address the issues specifically and entertain motions.

So we'll take 10 minutes.

[The committee recessed from 10:46 a.m. to 11:04 a.m.]

THE CHAIR: Okay. If we can recommence, please. Before we get to the questions for the technical team, Ms Lynas, in response to a question posed by Ms Carlson, has some information regarding the number of requests and the generated fees. I'd ask you to respond to that query, Ms Lynas.

MS LYNAS: Thank you. Last year for requests that were made to the provincial government, there were 845 requests where a $25 initial fee was charged for a general request, accounting for about $21,000 in revenue. Other fees were charged for 29 general requests, generating another $15,000 in revenue. For example, the Department of Environment had 11 requests where they charged an additional fee, accounting for a total of $4,000. Human Resources and Employment had three requests, generating $2,200. The WCB had two, generating about $2,400, and a number of other departments had one request that generated $300 to $500. There was a fee charged for 287 personal requests, generating about $17,000, so an average of $60 per request. So for the last year there were

about 1,245 personal requests completed, and for 287 of those there was a fee charged.

THE CHAIR: Thank you for the thoroughness and for the expedient manner in which you got that information.
Does that help you, Ms Carlson?

MS CARLSON: Absolutely. Very helpful. Thank you so much.

THE CHAIR: Okay. Now, as I indicated before the break, we're going to split this off into three areas to try to keep it flowing. The first step is sort of general or technical questions to pose to any member of the technical team regarding the presentation, the paper, or the issue of fees generally, and thereafter we will move into more of a deliberative session.
Ms Carlson.

MS CARLSON: Thank you. I have a question on appendix 1 at the back of the presentation. It's very helpful, and I thank you for that. This lays out the fees charged by other provinces and the feds. My question is this. We see the search and preparation fee, and I'm wondering how often in other jurisdictions as compared to us fees are actually charged for search and preparation over and above the initial application fee and also how often photocopying charges are. It's my understanding – and this may be an incorrect understanding – that Alberta charges extra fees more often than other jurisdictions. So if anybody could answer that.

MS LYNAS: I guess we don't have that information. We don't know what fees have been collected in other jurisdictions and what the breakdown is for the source.

MS CARLSON: Then would you have a general kind of knowledge of the policy in other jurisdictions in terms of whether they generally do charge fees over and above the application fee or generally don't?

THE CHAIR: Tom, do you want to take a shot at that?

MR. THACKERAY: I don't want to take a shot at it, but what I will commit to is that I will contact my colleagues from across the country by e-mail later today and try to get a response as quickly as I can.

MS CARLSON: Sure. That would be completely satisfactory.

MR. THACKERAY: Then we'll provide the information to all the committee members if the committee doesn't meet again until the end of July.

THE CHAIR: Except for this afternoon and tomorrow.
Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. My questions have to do with the exemptions. I was interested to see that exemptions are primarily determined by the boss of whichever public body is being asked for the information, and there doesn't seem to be a very clear framework around what fees should be exempted and what ones shouldn't. In other words, there just seem to be guidelines that the commissioner's office has handed out but no requirement that the guidelines be followed. Is that correct?

MS RICHARDSON: Mr. Mason, you're talking about fee waivers; are you?

MR. MASON: Yes, fee waivers.

MS RICHARDSON: Okay. There are certainly materials, resources that public bodies can use. Certainly they follow the act, and in terms of fee waivers the reasons in the act for giving a fee waiver to an applicant are set out in the act. In terms of guidelines there are guidelines in the FOIP Guidelines and Practices manual. There's also a FOIP bulletin on both estimating fees and dealing with fee waivers. The commissioner's office has dealt with the issue in a number of orders, so public bodies are certainly encouraged to look at those orders to get some guidelines as well.

11:10

MR. MASON: Well, according to our policy paper there are a couple of things that are in the act. One is that the head of a public body may excuse the applicant from paying all or part of a fee if in the opinion of the head the applicant cannot afford the payment or for any other reason it's fair to excuse payment or the record relates to a matter of public interest, including the environment or public health or safety. So that's pretty broad. Then it says that the commissioner has suggested in his order 96-002 that these things should be taken into account. So I just wanted to confirm. My understanding is that there is very little in the way of clear guidance or a requirement on the part of the head of a public body that specific guidelines must be followed. Is that correct? I think Sarah wants to say something.

MS DAFOE: The point I wanted to make was that if a head of a public body refuses to waive fees because they don't believe that it's in the public interest or necessary, the applicant can appeal that decision to the commissioner, and at that point the commissioner is going to take a look at those 13 points that he thinks are relevant to whether fees should be waived or not and come to a conclusion that way, whether the head of the public body has made a correct decision, whether they need to reassess it, whether that decision should be replaced by the decision of the commissioner to waive fees.

MR. MASON: Do you know how often that happens?

MS DAFOE: I don't have statistics on that. Does anyone else?

MR. ENNIS: I would estimate that on part 1, requests, something in the order of 5 to 10 percent of the requests that come to our office are fee requests where people have challenged a fee decision.

MR. MASON: And this is made clear when people apply in the first place, that this is the option?

MR. ENNIS: In the correspondence that public bodies return there's a standing phrase in that correspondence that reminds them of their right to take a matter to the commissioner if they disagree with the decision, including for fees.

MR. MASON: Leaving aside appealing, in the first instance I'm wondering if people think it's desirable to give greater certainty to the heads of public bodies and to the public as to when fees should be waived.

THE CHAIR: Was that a question?

MR. MASON: That was a question: whether or not from a policy point of view people think that that would be useful. I personally think that this looks to me like a big area where everything is real fuzzy, and there's way too much discretion. That's my personal view.

THE CHAIR: Does anybody from the technical team have any input or advice? Mr. Thackeray? Or any from an administrative standpoint? Ms Dafoe?

MS DAFOE: I would think that even aside from the appeal process most of the heads of the public bodies would be looking at the guidelines set out by the commissioner. Even if they want to assume that it's not going to get to appeal, they'll still look at those factors when determining that there should be a waiver. So there's an awareness that those factors are out there, and I guess you're suggesting that maybe those should be put in the legislation itself.

MR. MASON: Not necessarily, but certainly I think there's the potential for a lot of subjectivity on the part of some of these bodies who may have had dealings with individuals or it may involve cases. I see that one of the reasons for weighing against a fee waiver is that somebody might be involved in a conflict with a public body. It seems to me that if I'm dealing with the WCB and feel they've denied me a claim, for example, the public body's got an obligation to give the information at their cost for me to make my case. This is a particular one that I question as a consideration against a fee waiver. It seems to me it would weigh in favour of one.

MR. THACKERAY: In responding to Mr. Mason's question, the Guidelines and Practices document, that we circulated at an earlier meeting and that provides assistance to all FOIP co-ordinators in responding to access requests, lists all of the criteria, which are in the table, that public bodies should look at when determining whether or not a fee waiver is appropriate. So that information is available to the FOIP co-ordinators. When they're looking at a record that relates to a matter of public interest and they're considering a request for a fee waiver, they would go through that list.

MR. MASON: When they waive fees, it comes out of their budget; right?

MR. THACKERAY: They would absorb the cost.

MR. MASON: The public body does?

MR. THACKERAY: Yes.

MR. ENNIS: Just to be sure that the committee understands the criteria that are laid out in the discussion paper, these criteria were developed on the argument that it's in the public interest to waive the fees. So the one criteria that was pointed out by Mr. Mason on records related to a conflict between an applicant and the public body – that would take it outside the realm of public interest in many cases, and that's simply what the commissioner was alluding to in designing these criteria.

This case, 96-002, was a landmark case in that it was a case brought by a Member of the Legislative Assembly arguing for a reduction of fees relating to the work being done by Members of the Legislative Assembly. [interjections] These are past Members of the Legislative Assembly. It was in that context that these criteria were first developed. There have since been other decisions that while perhaps not landmark decisions have applied these criteria in new ways.

THE CHAIR: On this point Ms Carlson and then Mr. Thackeray.

MS CARLSON: Thank you. I agree with what Brian is saying, that in spite of what we have before us – that is, criteria for considerations weighing in favour of fee waiver – we have several appeals that go forward every year asking for fee waivers just from the Official Opposition. So in terms of that landmark decision there was that decision, and then that was used as criteria for deciding a more recent decision by one of our members on the committee here. So while you say that the overriding criteria is that it's in the public interest to waive the fees, I don't not necessarily see that following through in the interpretations that we've seen come down.

So I would at the very least like to put to the top of the list and perhaps in bold that that is the primary consideration that needs to be made, because I don't think it happens. While it's an option always to take this further and to appeal, that's a timely, costly process for everybody involved, and I think that it is not something we should view as being an option that we take a look at using regularly. So I firmly feel that we need a little heavier weighting, at least, in terms of how these interpretations are made.

THE CHAIR: I'm going to remind members that we're trying to get through the papers. Ms Carlson, I appreciate your comments, but you will appreciate that that was commentary and advocacy as opposed to a question. We need to get through this, so I'm going to ask the members to ask questions to the technical team regarding the presentation and the papers, and thereafter we will get into a discussion and into a debate.

Now, we were responding to Mr. Mason's question. Tom, did you have some supplemental information that you wanted to add? I thought I saw your hand go up.

MR. THACKERAY: The only thing I was going to add, Mr. Chairman, was that any fees that are payable for accessing information go to general revenue. They don't go to the ministry.

11:20

THE CHAIR: Okay. The next person on my list is Mr. MacDonald.

MR. MacDONALD: Thank you, Mr. Chairman. I have at this time two questions. The first I believe will be in light of Mr. Ennis's remarks, and that is decision 96-002. That decision may be in the brief, but I don't recall seeing it there.

MS RICHARDSON: I believe that's on page 7. That's where the table comes from in terms of the factors that the commissioner looked at in terms of whether or not fees should be waived in the public interest. I think that's basically where that table comes from.

MR. MacDONALD: Okay. Now, did the commissioner in 1996 indicate that the user should pay in that decision?

MS LYNN-GEORGE: Yes, I believe so. There were two principles: the user should pay part of the cost, and the other one is – he cites the two principles in every decision on this matter.

> (1) the Act was intended to foster open and transparent government, subject to the limits contained in the [legislation], and
> (2) the Act contains the principle that the user should pay.

The commissioner usually prefaces any order on fee waivers by citing those two principles, and then he gives the list.

Just a small point. When in this policy option paper the word "suggested" is used – the commissioner has suggested that the public bodies consider these criteria – it should be understood that public bodies consider the suggestions of the commissioner very seriously, and they consider that the opinions of the commissioner are very persuasive. They don't consider them lightly.

MR. MacDONALD: My next question then, Mr. Chairman, would be: where is the principle of user pay imbedded in the act?

MS LYNN-GEORGE: Section 6(3), "The right of access to a record

is subject to the payment of any fee required by the regulations," and then in section 93, "The head of a public body may require an applicant to pay . . . fees for services." So it's quite clear that fees are payable for services under the act.

MR. MacDONALD: Then above and beyond what's in the act, you're telling me that a commissioner's decision, in this case 96-002, would have paramountcy over the act.

MS LYNN-GEORGE: The act allows at the same time for a head of a public body to excuse the applicant from paying all or part of a fee under the fee waiver provisions if the applicant can't afford to pay or if it's fair to excuse payment for some other reason or if the request relates to a matter in the public interest.

THE CHAIR: Ms Carlson, you're the next person on my list.

MS CARLSON: Thank you. Just to follow that up, I didn't think that the sharing of costs was enshrined in the purpose clause in section 2. Is it? And isn't that what is the deciding criteria there?

MS RICHARDSON: Well, I might just respond. You know, certainly one of the purposes is to allow any person a right of access to records in the custody or under the control of a public body, but section 6(3) says that "the right of access to a record is subject to the payment of any fee required by the regulations." So I think that's how those work together.

MS CARLSON: I'm just trying to get in my own head what's an overriding criteria, and I still see openness, accountability, and transparency as overriding principles. Thank you.

THE CHAIR: Ms Carlson, your name was on my list before you came up with that question, so I'm assuming you have another one.

MS CARLSON: No, no. That's good. Thank you.

THE CHAIR: Mrs. Jablonski.

MRS. JABLONSKI: Thank you. My question is: what kinds of information are people seeking when they seek personal information? What are the reasons for seeking personal information?

MR. ENNIS: Just the statistics tell the story there in that the very large bulk of the personal information access requests were made to one cluster of public bodies that surrounds the Ministry of Human Resources and Employment, and that cluster has within it responsibility for the child and family services authorities, the Department of Children's Services, and the Department of Human Resources and Employment. People are very often there looking for files relating to the history of themselves under the Child Welfare Act or files related to their history with the government in the area of income support or AISH or areas like that where they're receiving benefits. The WCB is also an area that attracts a lot of personal information access requests, where people are looking at their claims file and perhaps other information such as investigation files. So those are the areas that are very much magnets for personal information access requests under the act, to the point where among those departments is the lion's share of all personal information access requests.

MRS. JABLONSKI: A supplemental. One of the suggestions that we have in our comments from the public is that we consider charging a $10 fee for a personal request. What hardships would people encounter if we were to have a $10 fee for a personal request?

MS RICHARDSON: Well, I think in those departments that John Ennis has talked about, they often do have applicants even under the current fee structure where they could receive up to 40 pages of copied records for free. They do have situations where applicants request fee waivers, and it's quite often on the basis of an inability to pay.

In talking to the co-ordinator about that issue, the approach in that public body is to try to encourage applicants to pay something, even if it's a very, very small token amount, if they have requested, for example, a large number of records or to try to work with them so that they get the request under that 40 pages of records. I guess for those departments there might be a bit of a hardship, depending on the fee. Some of them might say that they can't even afford to pay the $10, I suppose.

MRS. JABLONSKI: I'm just referring back to – I forget who stated the fact – how when a fee was implemented I think in Ontario, requests were reduced by 40 percent. Were those personal information requests that were reduced?

MS LYNN-GEORGE: When the $5 fee for requests for personal information was introduced in Ontario in 1995, requests for personal information declined by 47 percent over the following four years.

MRS. JABLONSKI: Thanks very much for that information.

THE CHAIR: Mr. Mason, you're next.

MR. MASON: Thanks very much, Mr. Chairman. I'm curious as to how we can use the fee waiver to encourage public bodies to make records readily accessible to the public so they don't have to FOIP them. One of the considerations in favour of a fee waiver is that the public body should have anticipated the public need for the records. So I guess to the commissioner's office: does the system work in a way that actually makes it so that it is in the interest of the head of a public body or in the interest of a public body to actually get stuff up on the web and make it publicly available so that they don't have to pay to search the stuff?

11:30

MR. ENNIS: We have a case that was precisely on that point, going back about three years now, involving an environmentalist, one whose name was raised here yesterday, and her attempt to get forestry information from the department responsible for that information, which I guess today would be Sustainable Resource Development but then I believe was Environment. The issue was: should annual operating plans of forestry companies be accessible and at what fee? This involved the copying of some very awkward documents, including large hand-coloured maps that were done by the forestry company, a very large number of documents.

The department had at that time a plan or strategy pointing toward making the information available on the Internet but hadn't really executed the strategy yet. The commissioner in that case waived a large fee – I believe the fee was in the order of $5,700 – and waived the fee not only for that instance but for any recurring instances involving that applicant and that information. As long as the department did not have the information in an easily disseminated shape of some kind, then the public body would be on the hook for absorbing the cost of copying this information and providing it to the applicant. So there was a message to a public body that to get around the problem of having to absorb these rather high costs for copying this information, they should move ahead with their plans

to get the information up and out on the Internet.

MR. MASON: Is there anything we can do in terms of our work on this committee to actually send the same message through a fee policy?

MR. ENNIS: Well, the message is out there in the form of an order, although that was a very specific case.

MR. MASON: But in terms of how we recommend that fees be structured, how can we do that in a way that sends the same message to public bodies?

MR. ENNIS: I suppose it's conceivable that a criteria could be added to the considerations of a head, but that consideration would read something like whether the information should, with the application of current technology, be accessible to people without having to make an access request. The Internet of course is very elegant on that score because people can just go and pull the information right off the Internet, so it's the solution to many of these large general information access problems.

THE CHAIR: Mr. MacDonald is next.

MR. MacDONALD: Thank you, Mr. Chairman. Does the FOIP Act require that a fee waiver request be in writing?

MS LYNN-GEORGE: This of course was raised in the adjudicator's decision that was recently released. I think we may have had some difference of opinion with Justice McMahon on this matter, because I think it was our understanding that the request would need to be in writing. I think the reason why we made that inference was because the head has to advise the applicant of the decision at the time of deciding whether or not to allow the request. [interjection] We're on section 93. The applicant has the right to request a review by the commissioner. It uses the term "notify," and the act has provisions for notification that clearly require notification to be in writing. So that's something where some clarification might be needed, but I think that's in the realm of a technical amendment perhaps.

MR. MacDONALD: Okay.
Now, on page 14 here of your policy option paper, would you have any idea again how many requests are made that you would consider to be bad-faith requests? Is it a huge problem, or is it just a nuisance?

MS LYNN-GEORGE: I think there are some public bodies that encounter requests where the applicants don't come and collect the information. I think the one that comes particularly to mind is the WCB. I don't know that they have quantified how many that would be, but a provision was added to the act last time to allow public bodies to deal with abandoned requests, and that was specifically for the purpose of requests where the applicant just disappears and there's no way of closing the file. So that provision was introduced.
I guess we might have statistics on abandoned requests. Do we, Hilary?

MS LYNAS: I'm not sure.

MS LYNN-GEORGE: That's not to say that all abandoned requests have been made in bad faith. Sometimes requests are abandoned because perhaps the need for the information has passed, but that would probably be a case where the applicant would contact the public body and withdraw their request.
I don't think that this would be considered a huge problem. It's just a specific kind of perhaps wastefulness that has been drawn to our attention. The different public bodies have different concerns with respect to fees. They're not uniform across government at all, and I think that's part of the reason why you don't see any recommendation on fees in the government submission. There's just not that general consensus on the way it should go.

MR. MacDONALD: Thank you.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. With respect to requests for personal information, Mr. Ennis indicated that the majority of those requests are to the Department of Human Resources and Employment, and many of them pertain to income support programs. My experience tells me that the majority of those requests would have been made by a solicitor on behalf of the applicant. Many of those requests are to establish a past income pattern for purposes of litigation. Am I correct? If that is the case, are other provinces or jurisdictions charging for that type of information?

MR. ENNIS: If that is the case, those cases are not reaching our office, so I can't really comment further than that. That would be an unusual pattern of activity for a case reaching our office. The normal case that we would see is an individual attempting to get their own file to clear up some misunderstanding that has come between them and their ability to access a service from the organization, or they have had an interpersonal problem with a staff member and are concerned that that staff member is reducing their chances to get access to benefits by the way the reports are being written.

MR. LUKASZUK: I must have misunderstood you then. Thank you.

THE CHAIR: Are there any other questions of a technical nature regarding the presentation of the papers?

MS LYNAS: I could just note that last fiscal year there were 56 general requests that were abandoned and there were 212 personal requests that were abandoned.

MRS. JABLONSKI: Could I have those numbers again, please?

MS LYNAS: Fifty-six general and 212 personal.

THE CHAIR: I have a couple of questions.
Mr. Thackeray, when we heard from the Deputy Minister of Government Services yesterday, if my recollection is correct, he never made any reference to fees and/or fee waivers. Does the government of Alberta not have a position with respect to cost recovery?

11:40

MR. THACKERAY: As was mentioned a few minutes ago, there is not consensus across government, so the issue of fees was not put in the government submission. The government is of the view that the comments made in the discussion paper about a fair sharing of the costs between applicants and public bodies is still the appropriate method for responding to access requests under this legislation.

THE CHAIR: My final question is with respect to the presentation from the Alberta School Trustees' Association.* I remember Mrs. Mulder indicating that she was of the view that when a public body was put to the task of responding to a FOIP request, especially those of a frivolous, vexatious, or otherwise bad faith nature, there should

be some compensation for them having to deal with that. Now, are we going to be dealing with that issue at some other point, or is that ultimately a fee issue?

MS RICHARDSON: I recall the presentation. I think there were two possibilities. One was maybe some sort of a fee for request for review, but the other was perhaps the awarding of damages or compensation in some way, such as a court does.

THE CHAIR: What a lawyer would call costs.

MS RICHARDSON: Uh-huh.

THE CHAIR: But was she also advocating for some sort of – I don't know – deterrent fee? Was that part of her submission? Do any members of the committee that are listening recall? Yes, Hilary.

MS LYNAS: There are a number of local public bodies in particular that have raised issues around funding and resources for carrying out FOIP, and we've put them under question 18, on administration. So it's related, but it's bodies that are really requesting funding to do FOIP rather than saying: increase fees to cover the costs of processing requests.

THE CHAIR: John, am I correct in assuming that the commissioner's office has no authority or power to award costs for or against a successful or unsuccessful applicant? Is that correct?

MR. ENNIS: That is correct the way the law now stands. I suppose we see this in the grand scheme as being investment in better government. So the issue of costs for public bodies is one that we haven't turned any attention to.

We've had cases that we know of where there's been a run-up to an inquiry and then there's been a settlement, if I can use a court metaphor, on the court steps. That's not unusual in the legal world, and it also happens in the world of administrative law that we live in. In that case, there have been costs incurred, but there generally has been a benefit as well in that a properly done submission by a public body is often useful in another context or it gives them at least an anchor position to use in further cases. So the work is not completely lost. I would view that, as well, as part of the investment in more accountable government.

THE CHAIR: Tom, do you know of any other jurisdictions where they have a commissioner that has powers similar to ours as opposed to a pure ombudsman commissioner? Do any of those other commissioners have the authority or jurisdiction to award costs?

MR. THACKERAY: Not to my knowledge.

THE CHAIR: John?

MR. ENNIS: I have not seen that, and I've also seen the situation, of course, where occasionally we go to judicial review, and I've seen the reluctance of the courts to award costs even at the judicial review stage in this process.

Just on a point of information, Mr. Chairman, I believe it was the Alberta School Boards Association that made that request in its submission.

THE CHAIR: Isn't that what I said?

MR. ENNIS: Well, I think the fine point is between Alberta School Trustees' Association and the School Boards Association.

THE CHAIR: You're right. It was Michele Mulder from the School Boards Association.* Thank you.

Anything arising? Mr. Lukaszuk.

MR. LUKASZUK: Just one quick question. Are there any jurisdictions that have a fee schedule that would differentiate between viewing information and actually obtaining copies of information? Is there room to encourage that?

MS LYNN-GEORGE: Alberta has the ability to allow an applicant to view a record under supervision. There is a cost, but it would generally be cheaper to view a set of records and perhaps photocopy the ones that are needed rather than the whole lot. The problem with that is that in a lot of cases the records have to be severed, so you virtually have to copy them anyway. Then the public body could say that those records were not appropriate for viewing, and the applicant would have to pay for the cost. I think generally most applicants and most public bodies prefer to provide copies. Is that fair to say? But certainly there is an option.

MR. LUKASZUK: You're saying the applicants prefer to obtain a copy and the public bodies would prefer to allow viewership rather than . . .

MS LYNN-GEORGE: No. Generally speaking, they prefer to provide copies, but the option is there, and certainly it's something that a public body might suggest if there's a large volume of general records. Then there's no need for severing. The applicant perhaps is looking for some particular item in a series, and that would be a clear case where supervision would be more appropriate and better for all the parties.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. I'm wondering if there's an issue around how records are kept and with what technologies: if you go to one school board that has everything on computer and you ask for something and they're able to find it instantly and transmit it to you electronically at your computer in your office versus another school board that doesn't have that and they have to spend hours and hours digging through records. And they charge you for that time; right? So is there an issue about people being penalized because the institution that they are dealing with is less efficient than another one? Has that ever come up as an issue?

MS LYNN-GEORGE: It's a huge issue. We have an information management framework within government that has it as its function to look at the whole of information management across government. It's certainly an issue for local public bodies as well, and the information management issue has been raised by the federal Privacy Commissioner. It's addressed in detail in the latest Access to Information Review Task Force report. One of the things that is discussed in the Guidelines and Practices manual is the idea that little provision for excusing all or part of a fee where for some other reason it's fair to excuse payment – public bodies would normally be encouraged to consider whether their information management practices might not allow for the most efficient search, and in that case that would be grounds for a public body to initiate a fee waiver.

MR. MASON: I'm sorry. Where does that from?

MS LYNN-GEORGE: That's section 93(4), and it's the grounds for excusing fees. "The head of a public body may excuse the applicant from paying all or part of a fee if . . . the applicant cannot afford the payment or for any other reason it is fair to excuse payment." This

is specifically addressed in the Guidelines and Practices manual, to consider the information management practices.

MR. MASON: Maybe I could get a comment from the commissioner's office. It's not included in the criteria under order 96-002. Should it be?

MR. ENNIS: Well, the question you raise is probably more one of quantum in terms of how much a person should pay and should they be penalized if an organization is in disarray or has an old-fashioned system – well, I shouldn't say that; some of the old-fashioned systems work pretty well – but has a system that's not serving the public properly.

11:50

MR. MASON: It could be a high-tech system that doesn't work.

MR. ENNIS: It could be a high-tech system that's really balling up, yes.

I'm not sure that it belongs in those criteria because those criteria have to deal with the issue of: is something in the public interest or not? But it's something that we have seen departments consider, perhaps in the reverse fashion in that we've had at least one government ministry that's so proud of its records management system that it applies a cut rate, if I can put it that way, to this portion of the fee schedule, saying that they don't have to approach the maximums allowable in the fee schedule. They essentially provide a discount because they're in particularly good shape. So we see that application of flexibility to the fees. It's something that conceivably could be made more explicit in the act. It is something that does come into the consideration of fairness though, and we have seen that applied in that regard.

MR. MASON: Mr. Chairman, if I may, it's also part of trying to incent public bodies to make their information as readily accessible to the public as possible.

THE CHAIR: Any other questions of a technical nature for the support team before we embark on a philosophical discussion regarding fees? Mrs. Jablonski.

MRS. JABLONSKI: I think this might be technical. Under option 4 you suggest that we might "simplify the Act to reduce the amount of time spent on reviewing and severing . . . by allowing routine disclosure of business contact information." What harm or hardships would we encounter with the public if we were to do that?

MS LYNN-GEORGE: We have a policy option paper on that, and it's going to be considered as an issue in its own right when we come to personal information. So that is perhaps something that we might want to consider deferring.

That example was given as one area where the ability to disclose routinely, as Mr. Mason has suggested, might be a more efficient way for public bodies to do business. One of the reasons why a lot of information isn't disseminated routinely has to do with the question of whether it would be an unreasonable invasion of personal privacy to disclose it. For example, there might be an enormous public interest in a report relating to a child in care, but the problem is that it may contain a great deal of personal information of the child and the foster parents and so forth, so it can't just simply be put on a web site. But something like this, where it's business contact information, is a possible candidate for more routine disclosure, take it outside the act and perhaps create some efficiencies.

MRS. JABLONSKI: I would suggest that much of that same kind of information is found in a telephone book, and one of the ways that the telephone people avoid any hardship is to accept requests from someone who would say: please don't publish that information. Otherwise, without that request the information is published, and I don't think there's a problem with that at all.

THE CHAIR: Okay. Any final questions?

All right. Well, as I suggested earlier, I think to do this logically and sequentially, before we entertain any specific motions or specific recommendations, I'm actually going to open up the floor to a more general discussion. We've already heard from Ms Carlson. I had to chastise her for jumping the gun. I think we've heard from Mr. MacDonald. Certainly now is the appropriate time for anybody to share any views, opinions, thoughts, commentaries on this whole large issue, and hopefully we'll be able to eventually boil it down to some meaningful motions at some point. Mr. Mason, the floor is yours.

MR. MASON: My philosophy, Mr. Chairman, is always to have lunch.

THE CHAIR: Well, we broke at 11 o'clock. I would prefer if we could carry on at least for a little bit longer, but I can be overruled on this. Is it the wish of the committee that we break now?

MR. MASON: Yeah, it just seems an appropriate place to break.

MS CARLSON: Because we'll just repeat everything we say now after lunch.

THE CHAIR: You don't think we can get through this in 30 minutes?

MS CARLSON: No. Probably not. It's easier on a full stomach, when we're not grouchy and hungry. Trust me on this one.

THE CHAIR: Okay. We'll break for 35 minutes, to 12:30.

[The committee adjourned from 11:56 a.m. to 12:39 p.m.]

THE CHAIR: Good afternoon and welcome back. I hope everyone feels refreshed. The next part of the agenda is to open it up for broad discussion with respect to the whole issue of fees. What I propose that we do is that I'd keep two lists. So if you want to make a point or make an argument, you'll go on a list, and the way to do that is to raise your hand. But if you want to address the point that is currently on the table, raise a pen or a pencil, and then you won't go on the main list to make a new point, but I will allow you to address the point that a previous member has made. Does that make sense?

MR. LUKASZUK: Say that again. Pen for what?

THE CHAIR: Just remember: P for "point" means pencil or pen; hand means you want to address another issue. [interjections] Well, otherwise, the conversation will become completely disjunctive.

Who wants to start?

12:40

MR. MASON: Did I do it right?

THE CHAIR: No.

MR. MASON: Well, generally, in terms of the fees I think they're really important because it sort of determines whether or not there's access to information. It can actually be a real barrier to getting

information that you're legally entitled to get. So I don't mind a fee structure. I don't mind, you know, certain disincentive fees to keep out frivolous applications and so on.

What I see as a real weakness in the system we have here is the rules around the waiver of fees. I think that if you've got a really strong policy around the waiver of fees where people are legitimately entitled to it, you can have a fee structure, and you can have some confidence that there are not going to be people being prevented from getting information that they ought to have. You know, alongside that, I mean, it really looks to me that there's a huge opportunity for subjective decisions by the heads of public bodies in the system that we have. So what I'd like to see is some way of giving greater certainty in terms of what kinds of things are and are not candidates for fee waiver and reduce the amount of discretion to a reasonable level.

THE CHAIR: I have Mr. MacDonald on my list on a different point.

Does anybody want to address Mr. Mason's comments regarding waivers? Hold up a pen.

MRS. JABLONSKI: I actually think I agree with Mr. Mason in that we charge the fees, which in themselves would be a deterrent for frivolous claims. However, for a claim that is bonafide, we have the option then to defer the fees. So we'll charge much higher fees so that we can defer more. No. I was joking. That was for the record.

THE CHAIR: Mr. MacDonald on a new point.

MR. MacDONALD: Yes. Well, I listened with interest to what Mr. Mason had to say about the waiver of fees. I think that at this time, Mr. Chairman, it would be appropriate to present a motion to eliminate, and for good reason, the whole notion of a fee waiver and certainly one to reflect the number of nuisance claims or however you would like to describe the files that appear before various FOIP commissioners that may be considered vexatious or a nuisance, that the $25 fee be left in place, and a ceiling of $150 for any file. After that there would be no more fees, whether it be a member of the media, whether it be a member of the general public, whether it be a member of the opposition, a business group, or an individual. We simply put a ceiling of $150 on the amount that can be charged in fees.

Now, it would be my view to support this. Freedom of information is certainly not in any way, shape, or form a device to recover costs for a government or an individual department. Certainly, we're looking at a government that has increased spending by 45 percent in the last five years. We look at this series of rooms that we're in. This cost $700,000, I'm told. I've been negotiating FOIP files with various government departments. One comes to mind where there was a roomful of department officials. So I can't think that cost is a factor when they have so many people involved in this file to meet one other member. I can't accept the fact that we can't carry on business in this government and that FOIP fees would be a burden. I think that the government can use that to halt and slow down FOIP requests. This fee estimate in my view is excessive, and at this time I would like to make a motion that freedom of information, or FOIP, fees in this province under this act be limited to a $25 initial fee and that costs are not to exceed $150 in total.

THE CHAIR: Mr. MacDonald, the chair has no jurisdiction to preclude you from making a motion at any time. However, it was the preference of the chair that we have an open and frank debate and discussion. It was the position of the chair – and I believe I had the support of the committee – that we would discuss all of the issues concerning fees and then hopefully reduce them to some intelligible motions. However, I have no jurisdiction to preclude you from making a motion, should that be your wish.

MR. MacDONALD: Well, Mr. Chairman, I would note that if this motion is accepted by the committee, then that's a pretty strong statement on how we feel about a fee waiver on a $60,000 or a $649,000 question, when we would like to see a ceiling of $150 on the fees. That would be the maximum. So the whole argument of fees and waivers would be redundant if this motion were passed.

THE CHAIR: I guess I agree with you that if your motion were carried, it would certainly shorten our afternoon, but I would suggest to the members that this topic is much more complicated than the simplistic solution that you have put forward.

Mr. Mason.

MR. MASON: No. "The simplistic solution that you have put forward, Mr. MacDonald. Mr. Mason."

THE CHAIR: Some punctuation between "solution" and "Mr. Mason."

MR. MASON: I just didn't want the chair's comments to be attributed as if to me.

You know, I did want to say that I think this is a little bit more complicated than that. I certainly sympathize with a member of the opposition trying to get information from the government, and I think that a fee waiver should be standard for elected members of not just the Legislature but other elected members, MPs or councillors or school trustees, in the course of their job. I think it's unreasonable to levy very large fees.

I'm thinking for example of company-to-company types of applications, where one private company is seeking from the government information that's been lodged with the government by its competitor. So for purely commercial purposes, then, do we want the taxpayers paying for that kind of access thing? In my view, those kinds of things should be full cost recovery with no waivers at all. So I do think that we need to work through it a bit.

I agree with Mr. MacDonald about requests that are directed by people who are trying to influence public policy. I think that's quite a different matter, and there should be waivers. That's why I believe that a strong and more developed waiver policy is something that's worth while.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. For the benefit of Mr. MacDonald's constituents I think that implementing the $150 ceiling would not be the right thing to do because Mr. MacDonald would spend most of his productive time putting in FOIP requests, and that wouldn't be good.

But joking aside, there is a legitimate reason to have waivers. There are among us citizens who have legitimate reasons for which they may wish to request materials and simply may not be in a financial position to afford to obtain a copy of those materials, or perhaps there is a greater benefit to society at large to have those materials released to an individual. He or she may not be requesting them for a selfish reason but rather to benefit a greater good, and those may be legitimate instances where a waiver would be applied. So simply doing away with a waiver would prejudice the ability of those who either don't do it for themselves or can't afford to do it by way of paying and would limit their access to information.

12:50

Now, putting on a ceiling, although I was joking at the outset of my comment, would definitely do just that. There would be

individuals who would more likely than not file many more requests than they normally would have because of not having a price barrier or a disincentive, and $150 is hardly a disincentive. If we just look for example at an average WCB file, if it's a lengthy file, it could be thousands, tens of thousands of pages. For Workers' Compensation Board issues I understand the first file is free, but any repeat requests are at 25 cents per page. Well, $150 is only 600 pages. The rest of that would have to be absorbed by the board or in other instances by taxpayers, and I don't see why taxpayers should have to pay for repeat requests for the same information, for that matter, as the WCB policy is.

Cost recovery I think is the most appropriate way by which to address this matter. It is not the core business of government or any of the public boards to collect information. They collect the information simply by virtue of providing other services. If there is information that is requested by anybody at large, cost recovery perhaps is the proper way of approaching this matter.

THE CHAIR: Thank you.
On this point, Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. I have to disagree with the principles put forward by Mr. Lukaszuk. First of all, I don't believe that the primary reason for waiving fees is because people can't afford it. I think that is often a reason to waive fees, but for me the primary reason to waive fees is because it's in the public interest to waive fees. When it means providing information from government and other public bodies, that adheres to one of the very principles for which this committee was ever struck, and that's open and transparent government and accountability within that government. So I am completely supportive of Mr. Mason's comments when he says that what we need perhaps is a stronger policy for criteria for waiving. Particularly when it comes to information within government bodies, the first principle – and that has come forward not just in terms of discussions we've heard today but in court rulings when people have applied for information – is that it's in the public interest to provide that kind of information. So I disagree with what you said almost entirely.

THE CHAIR: On this point, Mrs. Jablonski.

MRS. JABLONSKI: I have a problem with cost recovery because of the issue that was raised earlier, and that was one public body being far more efficient than another, so in one office it could take 12 to 15 hours to search for something when it might only take an hour in another department. The inconsistencies that would come from cost recovery would be significant, so I wouldn't support cost recovery.

THE CHAIR: I have no more speakers. Mr. MacDonald, are you putting forward a motion?

MR. MacDONALD: I certainly am. Yes, Mr. Chairman.

THE CHAIR: Thank you. Could you remind me what it is.

MR. MacDONALD: The motion would be that

> freedom of information fees in this province be limited to the $25 initial application fee and that there be a ceiling of $150 for each application.

UNIDENTIFIED SPEAKER: And no waivers?

MR. MacDONALD: No waivers. There would be no need for any waivers, of course.

THE CHAIR: And $150 includes all photocopy fees?

MR. MacDONALD: It includes all costs.

THE CHAIR: Regardless of the size of the file.

MR. MacDONALD: Regardless of the size of the file. That is correct, Mr. Chairman.

THE CHAIR: Okay. Do we have any final comments or questions to Mr. MacDonald on his motion? Mrs. Jablonski.

MRS. JABLONSKI: I don't agree with the motion. However, I just wanted to ask a quick question about it to clarify it for myself. This $25 initial application fee: would that be for personal information as well?

MR. MacDONALD: Yes. That's to deal with the frivolous or vexatious applications that we discussed before the lunch break.

THE CHAIR: Any further questions? Mr. Ennis.

MR. ENNIS: Mr. Chairman, I'm trying to understand a point here, and it's for my own tracking purposes, if you'll indulge me a moment. Currently there is a $150 threshold for free service on general access requests. If that continues to be in play, then there would be no fee for general access requests with this motion. I'm wondering if it is the intention that this motion apply only to personal access requests and that they be limited to the $150 ceiling or that the $150 ceiling be established and do away with the current free $150 threshold.

THE CHAIR: It's my understanding that it's the latter, but I'll allow Mr. MacDonald to answer the question.

MR. MacDONALD: It certainly is the latter. I think that would be an improvement over the current system.

MR. LUKASZUK: I must ask Mr. MacDonald: sir, do I understand that if this motion were to pass and be implemented in the act, I could request for instance a copy of an extensive government record where just the copying of it or making it available would cost thousands of dollars and the maximum would still be $150? For instance, if a parking lot company wants to request every day tens of thousands of abstracts from registries based on licence plate numbers, they would only pay $150. Am I understanding you correctly?

MR. MacDONALD: For each FOIP application there would be a set fee, yes, and it could go no higher than $150.

MRS. JABLONSKI: For each request.

MR. MacDONALD: For each request. It's quite straightforward.

MS DeLONG: In regard to personal information I believe that people have a certain right to their information, and to be charged a considerable amount of money for, say, 40 pages I don't think would be right. I guess I'm a little confused because right now we have two rates. We have rates regarding personal information, and then we have rates regarding general information. I guess if you're going to throw them all together, then you're going to be sort of increasing the personal and decreasing the general, and that's sort of not where I want to go.

THE CHAIR: Certainly the chair and Mr. Mason have expressed concerns that this solution may be somewhat simplistic. Unless there's further commentary or questions, I think we'll put it to a

vote. All those in favour of Mr. MacDonald's motion, please raise your hand. All those opposed? It's defeated.

MR. MASON: Mr. Chairman, I wonder if I could get help from the administration and the office of the commissioner. I'd like to formulate a motion that would be useful in giving the direction that I've talked about, and that is that we make the waiver provisions a little bit firmer and clearer based on I think the principles that are outlined in the little box here under 96-002. So how would I do that so that these were more clear, more binding, gave more direction to the heads of public bodies?

MR. ENNIS: I thank Mr. Mason for that question. The difficulty here is that we have a situation where the heads currently have very broad latitude, which can be interpreted as subjectivity in how they apply a waiver of the fees. To give them direction might actually reduce that latitude unless the direction were put to them in the form of some kind of illustrative preference, I guess some kind of list of examples where they would be expected to use their discretion. But any examples that are put in might have the effect of reducing discretion, as people would read those as the allowable cases and would not see the ability to use their discretion in more imaginative ways.

1:00

MS LYNN-GEORGE: I just have in front of me a table that provides a comparison of waiver criteria for all jurisdictions in Canada and also a number abroad: Australia, Ireland, New Zealand, U.K. I don't find anything that I think would particularly help move in that direction, but I could just give you some examples of some of the waiver criteria that there are.

Manitoba has something quite similar to Alberta. In Ontario one of the criteria is whether access to the record will be granted and if the amount is too small to justify, so it doesn't really address the public interest idea. Quebec doesn't put anything into legislation. Nova Scotia is the same as Ontario, considering whether access is to be granted. Australia considers whether access is in the public interest. Ireland looks at whether a waiver would assist understanding of an issue of national importance. New Zealand looks at financial hardship, whether it would facilitate public relations, assist the department in its work, or enhance public interest in government. The U.S. looks for a significant contribution to the public interest, and the federal government looks at public benefit.

MR. MASON: So they're all very, very general.

MS LYNN-GEORGE: Pretty much.

MR. MASON: What I hear Mr. Ennis saying is that there could be a boomerang effect. You want to strengthen people's right to have their fees waived in certain circumstances, yet it could turn out to have the opposite effect.

MR. ENNIS: Yes, that's a fair summary of it. Back in 1996 when the commissioner decided to codify an understanding of the public interest, we went searching for examples of where that had been done, especially in North America but also across the British Commonwealth. We found that no one had done it. Alberta chose to do it in that the commissioner here chose to lay out an understanding of how to assess whether something is in the public interest or not, and the Alberta codification, if you will, has been picked up and used in other jurisdictions as a working tool. But it isn't an area where people have really tried to nail down definitive criteria.

MR. MASON: There are regulations under the act; right? Can we say that there'd be regulations established that would give a certain amount of flexibility? The regulations should deal with the public interest, public understanding of the issue, and so on.

THE CHAIR: Did you want to address that question, Mr. Thackeray?

MR. THACKERAY: Just a comment. Currently in the act there is regulation-making power respecting fees to be paid under this act and providing for circumstances when fees may be waived in whole or in part.

MR. MASON: So would it be helpful to have something in that section that sets out the broad principles that the regulations should contain?

MS DAFOE: I would think that if you want to address it anywhere, you wouldn't put it in the act. As Tom has pointed out, the act allows for regulations to outline issues about fees and fee waivers, so you'd put it in the regulation if anywhere at all.

MR. MASON: It's not currently there?

MS DAFOE: The regulations set out the fees that have been discussed earlier, but there's nothing in there about what should be considered on waivers, no.

MR. MASON: Maybe you can come back to me, Mr. Chairman. I just want to think a little bit about this some more.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you. Even though Mr. Mason hasn't put forward a motion, I must agree with some of the comments that he has made prior, and in saying that, I see a benefit in introducing a clause where there is a qualifier that would require a significant public benefit to occur from a FOIP request in order for a waiver to take place, not just a benefit. That would perhaps narrow down the latitude for the commission later on in determining whether a waiver should be applied and would at the same time do away with some frivolous requests and would then also allow the commission to determine whether the potential benefits stemming from releasing the information outweigh the hardship that the search of that information can potentially cause to a public body.

What comes to mind is the example where environmentalists requested over $6,000 or $7,000 worth of photocopying material on forestry. A bit of an irony, but perhaps there was a legitimate cause for which those materials were requested. Those decisions then can be made by the commission, but I am not convinced at this point with the current rules and regulations that we have that the system is not working well. We may want to narrow it down by simply introducing "significant benefit." Unless our administrative support can help us out: are there any actual problems with the status quo?

THE CHAIR: If I could just jump in on that one. When I look through the materials here, I don't see that we were inundated with requests for extended fee waivers and/or any voluminous submissions that were a problem with the current fee waiver system. So it's just a supplemental to Mr. Lukaszuk's question.

MS CARLSON: Is it my turn?

THE CHAIR: No. We're waiting for an answer, if there's one forthcoming.

MS RICHARDSON: Mr. Chair, I'm just looking at the paper on fees. When we were summarizing the comments, two of the

respondents supported fee waivers, and two respondents indicated that fee waivers weren't helpful. That's it in terms of the responses to the discussion guide.

THE CHAIR: Okay. That's my sense as well.

After we hear from Ms Carlson, Mr. Mason is next on my list, and I'm going to put the question to him as to what the big concern is here.

MS CARLSON: I'm in support of what Mr. Mason is saying, and I believe that we need to expand the considerations given in favour of fee waivers. This box we have before us that lists the number of items that are used as criteria for deciding if fee waivers should be given I think could be expanded, and I think it could be expanded to include: disclosure will add to open, transparent, and accountable government. That addresses most of the concerns that I have seen where the problems come in deciding how much of a cost should be assessed to people who are trying to access public records from government departments.

1:10

THE CHAIR: Mr. Mason, unless anyone has any questions for Ms Carlson.

MR. MASON: Mr. Chairman, I'm willing to put a motion. We'll try it out, and I'd certainly be interested if administration or the commissioner's office think that it's going to create a disastrous situation. They should feel free to say so, and I won't be offended. I would move that

> the committee recommend that regulations established under the act provide for criteria for the waiving of fees consistent with commissioner's order 96-002.

I'll speak to it. I note that a majority of people who respond to the question about fees – not an absolute majority, because most people didn't respond, but of those that did, a majority said that the current fee structure was not appropriate. There are a number of reasons. There's not a lot of consistency when you go through the information, but it's just based on my feeling that you do need a fee structure. It would provide some benefit, but we need to make sure that people are not being denied their rights because the fee structure gets in their way. Almost all the discretion lies with the head of the body that's being asked to provide the information, and if that organization denies the request, they save the money. If they grant the request, there are costs that they have to pay. I think there's a potential at least for the fee structure to be a tool of a particular bureaucracy in whether they do or don't want to provide the information, and there is what in my view is too great a latitude. So I do want to bring the latitude down, to a degree.

THE CHAIR: The chair has a couple of concerns when the mandate of this committee, as I understand it, was to review the legislation. I was told specifically that we had no jurisdiction to evaluate or make recommendations concerning the regulations. Now, I guess I'm looking for direction both from legal counsel and Mr. Thackeray as to the appropriateness of Mr. Mason's motion. Our terms of reference are quite specific. They are to review the act.

MRS. JABLONSKI: Fees are part of the act.

THE CHAIR: I understand that fees are part of the act, but Mr. Mason's motion deals with the regs.

MR. MASON: Well, then, you have to move it out of order.

THE CHAIR: Well, I'm looking for advice before I rule it out of order.

MS LYNN-GEORGE: There were certainly recommendations relating to the regulations in the last review, and I don't think that we have seen amendments to the regulations as being beyond this scope when we've been preparing options, for example. I mean, the fee schedule is in the regulation, so if you were going to make any changes to the schedule of fees, that would be amending the regulation.

THE CHAIR: I understand that. Tom, do you have terms of reference handy? I think the terms of reference are to determine

> whether the Act and its supporting policy and administration provides an appropriate balance of access to information and protection of privacy, in accordance with the original intent; [to consider] the implications to all sectors [governed by] the Act and/or any expansion

of such governments; and to consider the impact of e-government concepts "and the growth and sophistication of existing and emerging information technologies on privacy."

The following should be excluded from the scope of the review: access and privacy of health information under the Health Information Act and privacy protection in the private sector as a result of the federal Personal Information Protection and Electronic Documents Act.

MS CARLSON: So this falls under the scope of considering all implications.

MR. MASON: Well, Mr. Chairman, if I might. The policy options we're being asked to consider deal with the fees; right? In fact, that's the whole subject of this particular session. The fees are set in the regulations; they're not set in the act. So, you know, I think it's pretty clear that if we're going to consider the fees, we're going to consider what's in the regulations.

THE CHAIR: The chair disagrees with you, Mr. Mason. Section 93 sets out the jurisdiction for a public body to pay fees, and it sets out criteria for the waiver of fees. It's set out in the act. The regulations prescribe what the current fees are. The waiver is dealt with in the act.

MR. MASON: Well, that's a fine point, but the fact is that we're still considering what the fees should be, and they're set out in the regulations.

THE CHAIR: As I understand this discussion and as I understand your motion, it's not dealing with prescribed fees; it's dealing with waiver.

MS CARLSON: But you just listed that as being part of what's in the act: the waivers.

MR. MASON: I received advice from the legal counsel that it would be more appropriately dealt with in the regulations, and that's why I put it in the regulations.

THE CHAIR: I understand that. The chair is taking the view that reviewing the regulations is outside the mandate of this committee. Now, in that ruling nothing precludes you from proposing that section 93 be amended to include whatever it is that you're proposing.

MS DeLONG: Could you read the beginning of that in terms of what's covered? It seems to me that it was the legislation and policy.

THE CHAIR: To determine

> whether the Act and its supporting policy and administration provides an appropriate balance of access to information and the protection of privacy in accordance with the original intent.

MR. LUKASZUK: Mr. Chair, this committee is a creature of the Legislature and as such has jurisdiction over the act, which also is a creature of the Legislature. However, the regulations are drafted by cabinet. Hence this committee has no jurisdiction whatsoever over any section of the regulations. I thought that was apparent.

THE CHAIR: The chair has taken that view, and I thank you for your support, Mr. Lukaszuk.

MR. MASON: Well, Mr. Chairman, I think this is an important question. It goes far beyond my motion. It has an impact on virtually everything we're doing today, and if that interpretation is to be applied consistently, then most of the work that we're planning to do this afternoon and most of the options which are set out for our consideration in this policy paper are outside of our jurisdiction. So I urge the chair to take this under advisement and consider how to deal with it more broadly.

On the specific point that I'm making, it's an easy matter for me to modify the motion in order to deal with the legislation. But the broader question of the mandate of the committee I think is a fairly serious one, and I don't want my motion to trip us up so that we can't do the rest of our work. So I'm quite prepared to change the motion, with your permission, to provide that we recommend that section 93 of the act be changed to provide for the creation of regulations which set out clear criteria for the waiver of fees and that we recommend these be consistent with the commissioner's order 96-002. Does that do it for you?

1:20

THE CHAIR: The chair will accept that motion, but you still haven't answered my question as to what all the hoopla is about, given the dearth of respondents with respect to waivers. I think, Mr. Mason, with all due respect, you misquoted statistics. Twenty-eight percent of the respondents indicated that the fee structure is not appropriate. You said that it was a majority. Now, I'll agree with you that it's a majority of those that answered the question with respect to fees, but it certainly wasn't a majority of the respondents.

MS CARLSON: Point of order, Mr. Chairman.

THE CHAIR: Go ahead, Ms Carlson.

MS CARLSON: You should reflect on what his actual comments were. He did not say a majority of the whole. He said a majority of those who responded.

MR. MASON: Actually, Mr. Chairman, I have a couple of points. I think you're abusing the chair, and you're also misrepresenting my comments. I was very specific that a majority of people actually didn't respond to this question, but a majority of those who did felt that the current fee structure was not appropriate. That's exactly what I said.

THE CHAIR: And how am I abusing the chair, Mr. Mason?

MR. MASON: Well, you're constantly editorializing after everybody speaks.

THE CHAIR: So I take it, then, that you have provided the answer to my question that you intend to provide.

MR. MASON: I've made my arguments, yes, Mr. Chairman.

THE CHAIR: Thank you.

Okay. There's a motion before the floor.

MR. MacDONALD: I've been trying to gather your attention here for quite some time. It's a real shame I didn't get an opportunity to get this – I got busy at lunchtime – but I'm told that 96-002, the Privacy Commissioner's decision, is available on-line. In light of the fact, as I understand that decision, that user fees were part of the process of FOIP in this province, if I am correct in my interpretation of that decision, how will that affect your motion, Mr. Mason?

MR. MASON: I'm not quite following your question.

MR. MacDONALD: Well, the commissioner, if my interpretation is correct – and again I wish I had that decision here. We're referring to it, but we do not have it. We're incorporating it into a motion.

MR. MASON: Well, it's actually in the document. It's in a box in the fee document on page 7: the considerations that weigh in favour of a fee waiver and the considerations that weigh against a fee waiver. It's a summary, to be sure.

MR. MacDONALD: Yeah. It is a summary. I thought the commissioner dealt distinctly in that decision with the use of fees involving cost recovery; correct?

MR. MASON: My motion is that these should be the criteria for fee waivers only. That's all.

MR. MacDONALD: Okay.

MS CARLSON: On this particular point I have part of the excerpts of that decision as quoted by the judge, and this is what was said. In decision 96-002, the commissioner in Alberta described two principles to be considered when determining whether a record relates to a matter of public interest under the Alberta act. The first is that it was intended to foster open and transparent government subject to the limits provided, and to that I would add accountability. The right of the people to require that government account to them is fundamental to a strong democracy. It is with our consent that we are governed by others, and that consent is given conditionally upon good government. The decision to continue or withdraw that consent requires that the people have the information required to make an informed decision. Access to information legislation is a means by which people get that information from sometimes reluctant government hands.

With regard to whether users should or should not pay, Justice McMahon stated that none of the parties suggested that this fee estimate would have any impact on the operations of Alberta Justice and that the public body does however argue that the principle of user pay is embedded in the act.

So that was the commissioner's argument. It is true that the act permits regulation requiring fees and that such regulations are in place. Although that fact is outside the parameters of these criteria, it is useful to consider who the user really is when the applicants are an elected member of the Legislature and a newspaper. So that's with regard to what Mr. MacDonald was saying.

My comments are that I would like to have a copy of the documentation you have before you, Mr. Chair, in terms of the mandate of this committee before I vote on Mr. Mason's motion. I would also like your interpretation, given your earlier interpretation, on how the whole concept of addressing the issue of fees fits within our mandate.

THE CHAIR: Well, you have the document that I referred to. It was the original document entitled Select Special Freedom of

Information and Protection of Privacy (FOIP) Act Review Committee: Terms of Reference.

MS CARLSON: My point is that I don't have that with me today. I would like to see a copy of it.

THE CHAIR: Not only was this provided by the minister and/or the department, but it was voted on by this committee and accepted.
Okay. Who's next? Mrs. Jablonski.

MS DeLONG: You didn't answer Debby's question.

THE CHAIR: I'm giving her the documents. What else do you want?

MS CARLSON: The other question was if you could give us a ruling, given your earlier ruling with regard to Mr. Mason's motion before it was amended, in terms of how the question of fees can be addressed by this committee.

THE CHAIR: I've already answered that, and I'm not giving hypothetical rulings.

MRS. JABLONSKI: May I suggest that the criteria that Mr. Mason has cited for his motion would be the same criteria that the commissioner would use anyway if somebody came to him with an appeal. It's the criteria that he set out for himself, and I would suggest that if he were consistent, he would use it anyway. So if we were to include it in our legislation under section 93 and people were able to refer to it, then it may save time and money as far as appeals are concerned.

MS RICHARDSON: Just one point of clarification. I guess I just wondered. The criteria that were suggested in the commissioner's order just have to do with fee waivers where the request has to do with a matter of public interest. So I gather there isn't a suggestion to do away with the other criteria in terms of the applicant not being able to afford the fee or fair to excuse payment.

MR. MASON: Absolutely not. Those would stay.

MS RICHARDSON: Okay. Just one other small point. It's not to take away from the motion; it's just to add maybe another way of thinking about it. I had the impression in the earlier discussion that Mr. Mason was concerned that public bodies weren't even considering the issue of whether or not a fee waiver would be granted, even though they had the ability to waive. I wondered, to look at it another way, if it might be helpful to suggest in the legislation, especially with respect to a noncommercial type of request, that a public body has to in the first instance consider a fee waiver. So it would be a new step that would be added, that they have to consider a fee waiver first and then, you know, sort of go on with the rest.

MR. MASON: That's a good idea, but I think we can come to that, and I'd also like to come to the question of commercial requests for information as well. I don't think it has to be in this motion necessarily.

MR. LUKASZUK: Just a few short points. Since Mr. Mason just brought it up, coming back to commercial requests, I also would like to come back to this matter. I think there are some issues unresolved from yesterday that we should discuss perhaps at a little bit more length and arrive at some common conclusion.
I'm looking at the document that you just handed out, Mr. Chairman, the Select Special Freedom of Information and Protection of Privacy (FOIP) Act Review Committee: Terms of Reference, and I'm looking at point 1, to which you made reference earlier. It says, "To determine if the Act and its supporting policy and administration provides an appropriate balance of access to information," and it goes on. It clearly makes reference only to the act and to the policy, which is the policy manuals and/or unwritten policy that the department may be utilizing. It also mentions administration. Administration is the carrying out of the act and the policy, but it is not regulation. Regulation is one additional document, which is drafted by the cabinet and not by the Legislature. I think this clause in itself gives us a very clear scope of what the mandate is. It's the act, the policy, be it written or unwritten, and the administration, which is the act of carrying them out. That's the heart and the limit of the scope of this committee.

1:30

Not withstanding this, we can embark on this academic journey and we can get some clear legal opinions on this, but I'm wondering if that's even necessary, because one of the questions that was raised at least two or three times already within the last 15 minutes by yourself, Mr. Chairman, and myself is: is there a bona fide need to address this matter to begin with? Is there any evidence that the commissioner is using the latitude that's currently available to him in the legislation inappropriately? Are there many complaints or significant hardships stemming from the current legislation? From what I've gathered up to now, the answer is no. From all those who have responded to us – and the question was posed to every single one of them – only a few have taken the time to respond to this question, which means that this question was not relevant to them or of little relevance, so little that they would not bother responding to this particular question, and from the few that have responded to this question, I believe 50-50 or a small majority raised this point to be of an issue.
So if it is of so little issue and if there is no hardship and if there are no cases before us which warrant such lengthy discussion, I'm wondering whether we want to tie ourselves up on this point and not just carry on. The academic issues of the scope of this committee can be resolved, and as long as they don't hinder us at this point, should we not be carrying on with the work?

THE CHAIR: Thank you, Mr. Lukaszuk, both for your vote of confidence on my ruling and with respect to the larger issue. At the expense of having an opinion, which I believe the chair is entitled to have, once again with respect to the statistics I concur with Mr. Lukaszuk. It's not only that only 28 percent of the people responded that the fee structure is not appropriate; that was their global response. We don't know what percentage of them had anything specific to say about waivers, only that 28 percent indicated that the fee structure is not appropriate. It wasn't 28 percent or a majority of those that responded, Mr. Mason, who said that waivers were not appropriate. They said that the fee structure was not appropriate.

MR. MASON: I'd really like to let this go, but I can't. You know, you just said that I said something which is different from what I said. What I said was that of the people who did respond to this question, 28 percent or more of those felt that the fee structure was inappropriate. I did not say that it was specific to the waivers. I did not say that. You're putting words in my mouth, Mr. Chairman.

THE CHAIR: Mr. Mason, with all due respect, you used that to support your argument that there was support for the proposition that fee waivers be revisited, and I am pointing out to the members of the committee to have them open up their minds that that is a huge quantum leap in logic.

MR. MASON: That's different than misrepresenting what I said.

You can disagree with it; I don't care.

When you're ready for me to close on the motion, I'd like to do that.

THE CHAIR: Are there any other questions for Mr. Mason on the motion?

I'm ready for you to close.

MR. MASON: I just want to make one point, Mr. Chairman. There's obviously an issue here because the commissioner felt obliged to make an order. He is going to apply these criteria when he receives an appeal, and he's brought it forward as a suggestion for heads of public bodies to consider when they make their decision at the first level. But it's not mandatory at the first level; it's not. That's what I'm trying to do. I'm trying to set out a consistency with the first level so that the heads of bodies have some obligation to take these into account so that it doesn't have to be appealed. But if it is, then there are consistent criteria at both levels. That's all I'm trying to do here.

THE CHAIR: Any other comments?

The motion, as I understand it, is that

> this committee recommend that section 93 be amended to call for regulations under the act to provide for criteria for the waiving of fees consistent with the commissioner's ruling in decision 96-002.

Have I correctly stated that? All those in favour of that motion, please raise your hand. It's carried.

Okay. We can go back to a general topic: on fees, on any other topic. Apparently the committee has not acceded to the chair's request that we have the discussion first and the proposed motions later, but that's fine.

Ms Carlson.

MS CARLSON: I think, given your earlier ruling, that option 2 needs to be reverted, Mr. Chairman. Option 2 states: "Amend the Act or Regulation, as applicable, to allow relatively minor changes to address specific concerns." I believe we need an amendment to that option or to withdraw it.

THE CHAIR: What are you looking at?

MS CARLSON: Option 2, page 14, on policy options, as laid out in the policy option paper on fees provided to us by the administration. One of the options is to amend the act or regulation. You made a ruling that we can't do that.

MR. MASON: We can't do that. So this option is off the table.

MS CARLSON: So we have to withdraw it.

THE CHAIR: We don't have to amend anything. That option is not practicable. We can't amend the regulations.

MS CARLSON: Then I'm saying that we have to withdraw the option, so you need to make a ruling on that: yes or no, we withdraw the option.

THE CHAIR: Well, if that comes in the form of a motion, I'll rule on it.

MS CARLSON: I'm making a motion then that you make a ruling on how we need to handle option 2 as laid out on page 14, given your earlier ruling that we can't have any dealings with regulations.

THE CHAIR: If the committee members think that option 2 is the most practicable solution to the fee problem, then we'll deal with it at that time. If the members are not in favour of option 2, we don't have to reword anything.

MS CARLSON: We need to know whether or not it's a reasonable option to choose. There are four options here. We need to know whether or not they are viable, given the interpretation of the rules that you have made.

THE CHAIR: Ms Carlson, the chair has already ruled that it will not make hypothetical rulings. Unless this is before the committee, I'm not ruling on it.

Mr. Thackeray.

MR. THACKERAY: Mr. Chairman, to provide some information as to why in the policy option paper and again in the government submission we put forward recommendations dealing with the regulation, we were basing our position on the mandate of the previous committee, which also had the same wording as the scope of this committee and talked about the act and its supporting policy and administration. In that case the committee did look at the regulations under the act and made specific recommendations throughout the report on changes to the regulations. So that was why we drafted the scope of the review the way we did. We probably in retrospect should have put "enactment" rather than "act," but it was the intent to have the committee look both at the act, the supporting policy and administration, and the accompanying regulation.

THE CHAIR: Thank you.

As the chair has indicated, unless the majority of this committee sees some applicability to option 2 and votes in favour of it, I will not make hypothetical rulings.

MS LYNN-GEORGE: Just one sort of practical consideration. One of the matters that the government submission addresses is the scope of the act, and that is really largely in the regulation insofar as there is a regulation-making power that allows for the criteria for inclusion within the scope of the act to be put into regulation. The Law Society, when it made its submission, I guess was assuming that that is within the jurisdiction of the committee. I guess if it's going to be removed from consideration, that might be a little bit problematic for the people who have addressed it in their responses to the consultation document and the people who have made submissions on that issue, including submissions in person.

1:40

MRS. JABLONSKI: Mr. Chairman, is it significant that we're not recommending that we change the regulations, only that we look at them?

THE CHAIR: I don't believe that we have any jurisdiction to review regulations. Now, if somebody wants to challenge the chair, I invite them to talk to Parliamentary Counsel.

Ms DeLong.

MS DeLONG: I move that we take a 10-minute break.

MR. LUKASZUK: Prior to our taking a break, I'd like to make a motion. Obviously we're at odds here, and I don't think anyone at this table is in a position to make a definitive argument or conclusion on this matter. We may be in dire need of seeking an outside legal opinion on this particular matter. So it is my motion that we defer the vote on the options before us until such time as we receive a legal opinion pertaining to this committee's jurisdiction, particularly as it pertains to the regulations under the act.

THE CHAIR: Well, we'll vote on your motion. I have to disagree with your suggestion. When I ruled Mr. Mason's motion out of order, he rephrased it to fit it within the purview of an amendment to the act and accomplished exactly the same thing that he wanted to do.
Ms Carlson.

MS CARLSON: I support Mr. Lukaszuk's request. I would like to have some interpretation. I would also like to have an opportunity to review the transcript of today's proceedings on this particular issue before we're placed in a position where we have to vote. So I also support taking a short break and tabling this until tomorrow morning and coming back and dealing with the issue that Mrs. Jablonski wanted to deal with today, which was question 3.

MR. MASON: Well, Mr. Chairman, I think we would all benefit from the break. I think that's a really good idea. I think the way out of the impasse for all of us quite frankly is also to go with Mr. Lukaszuk's thinking so we can get back to business. I think that's what we need to do right now: just take a little break, get a second opinion, just back up a little bit, and then let's get back to work.

THE CHAIR: I guess the question is: are we going to be able to deal with the access issue without coming to the same problem?
We're adjourned until 2 o'clock.

[The committee recessed from 1:44 p.m. to 2:10 p.m.]

THE CHAIR: If we can go back on the record. Obviously we have some small problems here that need to be ironed out. The chair had initially requested that we enter into a discussion and debate generally regarding the whole issue of fees and waivers and blah, blah, blah. We've already dealt with two motions, and we haven't had any real debate on a macro issue. Now, I agree with Mr. Lukaszuk that we're probably not going to be able to resolve this, so I'm going to go back to my original plan with the support of this committee that we open this up to debate and we open this up to the sharing of ideas as to where we want to go with respect to fees and with respect to waivers, and after we have a determinable legal position regarding whether or not we can deal with the jurisdiction of regulations, we will then entertain motions. If we complete our general discussion without motions regarding fees, then we will go to the next topic.
Ms Carlson.

MS CARLSON: I agree with what you're saying, but I would prefer to defer the rest of this conversation until after we have dealt with question 3, access to registries information. Could we just table this discussion for the time being? Mrs. Jablonski won't be here tomorrow and it's almost a quarter after 2, and she has a motion she wants to put forward that has the support of the committee.

THE CHAIR: I appreciate that one of the members will not be here tomorrow. Perhaps other members will not be here tomorrow, and perhaps other members will be here tomorrow that aren't here presently, so I'm not sure that that in and of itself is reason to alter the agenda.

MS CARLSON: To comment on that, I thought that we had an agreement before the close of time yesterday to deal with question 3 today.

THE CHAIR: We had an agreement that we would deal with certain questions in a certain order. We have not finished dealing with question 2 on today's agenda.

MS CARLSON: Well, I'm not prepared to continue with that discussion at this time even in a macro sense until I have a little bit more information and I have time to reflect on what was said today.

THE CHAIR: You're challenging the chair to call for an adjournment.
Mr. Mason.

MR. MASON: Mr. Chairman, would it help you to determine the wishes of the committee if I just made a motion to bring forward question 3 so that we can deal with Mrs. Jablonski's motion? I want to be helpful.

THE CHAIR: Go ahead. Make your motion.

MR. MASON: Then I'll move that

we bring forward question 3 and entertain a motion.

THE CHAIR: Any discussion or debate concerning the motion? In favour? It's carried unanimously. Okay; the issue with respect to fees and waivers and all other issues there are tabled sine die, and we'll go on to the next question.
Does somebody have a presentation with respect to access and registries? Mr. Thackeray, the floor is yours.

MR. THACKERAY: Thank you, Mr. Chairman. Question 3 in the documents that were circulated earlier to the committee deals with exclusions with registries information. The committee has heard from a number of organizations, not the least the War Amputations of Canada, as well as private investigators and others who made submissions to the committee about receiving access to personal information; namely, name and address from the motor vehicle registry. We provided a briefing note to the committee on April 24 talking about the issue of submissions that have been received regarding the disclosure of personal information from the motor vehicle registry, and I won't go into that this afternoon.
The interesting thing is that the use and disclosure of information from this registry is excluded from the Freedom of Information and Protection of Privacy Act on the basis of section 4(1)(l). What we have before the committee in both the government submission as well as the submission from the Information and Privacy Commissioner is a suggestion as to how the committee might want to make recommendations to the Legislature on how to deal with organizations who seek access to names and addresses from the motor vehicle registry. Specifically, it's recommendation 12 on page 11 of the government submission, and it's recommendations 5, 6, 7, 8, and 9 on pages 8 and 9 of the Information and Privacy Commissioner's submission.
What we're suggesting is that the Traffic Safety Act or the Motor Vehicle Administration Act – those are the pieces of the legislation. The Traffic Safety Act has yet to be proclaimed, and the Motor Vehicle Administration Act is in force until the TSA is proclaimed. It contains references in section 8(3) to section 40 of the Freedom of Information and Protection of Privacy Act as the bar for releasing information. We are suggesting that the TSA be amended to remove the reference to section 40 and to substitute specific criteria for permitting the disclosure of personal information from the motor vehicle registry by the registrar. We're also suggesting that a new subsection be added to the TSA which would allow a decision of the registrar to either give access or refuse access to be a matter that would be reviewable by the Information and Privacy Commissioner. Finally, we're suggesting that the Freedom of Information and Protection of Privacy Act be amended to give the commissioner the appropriate authority to review the registrar's decision, investigate complaints, hold an inquiry into the matter, and issue an order.

The second recommendation dealing with registries is recommendation 3 in the government submission, located on page 5. In this one we're suggesting that section 4(1)(l)(vii) be amended to make the exclusion for registry information applicable only to registries authorized or recognized by law to which public access is normally permitted. The Deputy Minister of Government Services made reference to this in his presentation yesterday. The intent is to put a fence around the creation of registries so that they are bona fide registries and they aren't just a compilation of names and addresses that public bodies can call a registry and release whenever they want to.

So that, Mr. Chairman, is the basis of the presentation.

THE CHAIR: Well, Mr. Thackeray, given the chair's disputed ruling concerning the regulations under FOIP and the previous ruling that the Health Information Act cannot be reviewed by this special select committee, how do we get around the problem of the Traffic Safety Act?

MR. THACKERAY: I guess we felt that because the committee was reviewing an issue brought forward by numerous parties in either written or oral submissions about access to a motor vehicle registry, the committee could recommend an option by consequential amendments to the TSA as well as amendments to FOIP to provide a solution to the current impasse.

THE CHAIR: Before we entertain discussion and debate, do we have any questions of a technical or historic nature for Mr. Thackeray? Do we have any commentary, any synopsis, any submissions? This is an important issue, folks.

MR. LUKASZUK: I don't believe that there is anything that prevents this committee from making cursory observations. However, when the final report is drafted and signed by this committee, the only matters that can be considered by the minister from whom this appointment stems originally are matters that are in the form of a recommendation. I don't think we have any ability and/or jurisdiction to make recommendations to other ministries. This committee was not appointed by other ministries, and the mandate is very limited, to that of FOIP. So I guess what I'm saying is that we can make cursory observations in the form of an appendix to our report, but I don't think we can make recommendations to other pieces of legislation with the mandate as currently drafted.

2:20

MS CARLSON: I'd be interested to hear Mrs. Jablonski's motion and get an interpretation from the support staff here in terms of how it fits in with the recommendations.

MR. THACKERAY: If I could just respond to Mr. Lukaszuk's comments. The document that was handed out earlier about the scope of the review talks about the act and its supporting policy and administration. A number of the submissions dealing with access to motor vehicle information deal with the administration or the policy of the Freedom of Information and Protection of Privacy Act. So in my mind that is how it would be tied in, because people are of the view that it's the legislation that is prohibiting the release of the information, whereas it is the policy of Alberta Registries, as we heard yesterday, that doesn't allow for the continued release of the information to the War Amps organization.

MR. LUKASZUK: I appreciate that, and I think we're in agreement in that sense, because my position is that this committee's jurisdiction is limited to, one, the FOIP Act, and, two, any policies, be they written or unwritten, that stem from the act, and, three, the administration, which in my mind is the act of implementing number one and number two, and not any other piece of legislation, regulation, or policies that may be pertinent to other acts or other departments within the government. So if the limiting factor for War Amps, for instance, stems from the FOIP Act or FOIP policies or the way we the administration interpret those and implement them, then we have a clear jurisdiction to recommend on this matter. If it is a policy of a department that has nothing or little to do with FOIP, however, and stems from an interpretation of a different piece of legislation, then that could be outside of our scope. Would you agree with that?

MR. THACKERAY: Yeah, I think I agree with it, but then you have to look at the reference in the Traffic Safety Act to section 40 of the Freedom of Information and Protection of Privacy Act, which sets the bar for allowing the registrar of the motor vehicle database to release the information to an organization. So I think it's all tied in, and what we were trying to do was find an amicable solution that would respond to most of the issues that have been raised before the committee. This was done in consultation with other ministries as well, so we're not trying to pull any surprises on anybody.

THE CHAIR: I'm sure Mr. Lukaszuk is concerned both from a jurisdictional standpoint and from a practical standpoint. This committee's report will be tabled in the Legislature and thereafter given to the Minister of Government Services to do with as he or she pleases. It really cannot direct or even give advice to the Minister of Transportation. Now, if this committee is resolved to solve the War Amps issue – and we haven't really addressed whether we are or whether we're not – it appears to me that we may have to come up with a FOIP solution and not rely on any other statutes or any other ministries. But I make that only as an observation.

Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. I would make the point that when another piece of legislation such as the Traffic Safety Act refers to and involves the FOIP Act, then if we need to make a recommendation so that the FOIP concerns are dealt with by dealing with the other act in concert with FOIP, I don't see any harm in making those recommendations.

THE CHAIR: I don't see any harm in them. I'm just not convinced there's going to be any good come from them either.

Ms Carlson, did I see your hand?

MS CARLSON: Yes, you did. Thank you, Mr. Chairman. I would agree with Mrs. Jablonski on this issue. I felt that the recommendations that we just looked at or just heard about did fall within the mandate of the committee and were supportable by myself.

MR. LUKASZUK: I just want it to be perfectly clear on the record that I definitely would not have any difficulty in resolving the War Amps issue. I would like to see that issue resolved and, in my personal opinion, to the benefit of the War Amps. It would be practical if we could make recommendations to other pieces of legislation or to other ministries in order to make this resolution come about in an expedient manner. I think all of us around the table over here agree with that, so I agree with Ms Carlson and Mrs. Jablonski. It would be a nice thing to be able to do that, but my concern however is: would it be an appropriate means or legal means by which to come to this solution? We all agree on the solution, but I am not sure if we have the privilege of reaching the solution in this expedient manner.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. If I can just make a suggestion, it would seem to me that there are certain questions about our jurisdiction that need to be resolved, and I think some of us would interpret it a little more broadly than others. I think we're going to have to wrestle with those issues, but what I'm afraid of is that we wrestle with them sort of in the abstract partway through our mandate instead of trying to achieve some consensus on how things should be done.

I guess what I'd like to suggest is that we defer those questions, that we sort of continue with our work, we in principle adopt a broader context for our work, and then when we've got some decisions and we've worked through it and it comes time to finalizing the report, then we need to review those things and determine if in fact they fit within the committee and can form part of our report or not. I think we all want to sort of grapple with freedom of information issues in a general sense. What we can actually recommend under our mandate is something that will have to be addressed, but if we do it now, I think we run into difficulties in the committee.

THE CHAIR: Mr. Mason, you'll be happy to know that I agree with you. You will recall that it was the chair's position that we should carry on with the general discussion on fees, but the committee felt otherwise.

MR. LUKASZUK: If we were to take Mr. Mason's advice and yours, I'm fearing that we would arrive at conclusions and then perhaps later on find out that those conclusions don't fall within the mandate of this committee or within the jurisdiction of this committee and find that all this work has been done in vain. So I still go back to 15 or 20 minutes ago and suggest that perhaps we should vote on my motion and clarify once and for all what is the jurisdiction of this committee. Now we have an additional issue. Fifteen minutes ago we only had one: can we make recommendations on FOIP regulations? Now we have an additional one: can we make recommendations on other pieces of legislation that make reference therein to FOIP? So perhaps instead of, as Mr. Mason indicated, discussing this in abstract terms, why don't we obtain a legal opinion from Parliamentary Counsel and then proceed in a much more productive manner?

2:30

THE CHAIR: Well, Ms Carlson, do you want to put up your hand so then it's unanimous that everybody is . . .

I don't have a problem with that. I do have one comment. I think there's been a bona fide challenge to the chair, and I think that has to be dealt with. That being said, I do disagree with one of your comments, Mr. Lukaszuk. I think it is practicable for the committee to decide where it wants to go from a policy point of view and thereafter have the appropriate means to get there determined by the technical folks who are helping us do this.

I believe Ms DeLong was next.

MS DeLONG: I'm not sure that we have to deal with that particular question regarding the Traffic Safety Act. I do know that Mary Anne also has a proposal that she would like to put forward, and if we could move on to her proposal, I think we can wind our way around this one without having to deal with that particular issue right at this point.

THE CHAIR: Were you going to make a motion, or were you just going to comment?

MRS. JABLONSKI: I was going to make a motion.

THE CHAIR: Okay. Then we'll hear from Mr. Mason first.

MR. MASON: Well, I was going to suggest that if Mr. Lukaszuk wants to make the motion, we could do it, but there's no reason we can't proceed with Mrs. Jablonski's motion. Then if we deal with Mr. Lukaszuk's motion and get the report and the report clearly says that we erred in dealing with Mrs. Jablonski's motion, we'll have to reconsider it. So we don't have to be all tied up with . . .

THE CHAIR: I'm not sure what Mrs. Jablonski's motion is, but I'm assuming, then, that the committee members are satisfied that we have canvassed all of the alternatives as to how to deal with this issue, because I suspect that a recommendation is about to be put forward on the floor. Am I reading the committee correctly?

MR. LUKASZUK: I'll play that game with you. However, if Mrs. Jablonski makes a motion that again brings us to the same impasse, be it relevant to regulations or other pieces of legislation, then I will be that much more resolved that we should vote on my motion and put everything to rest until we get a legal opinion.

MRS. JABLONSKI: Mr. Chair, at this time I'd like to address the concerns of the War Amps separately from other organizations. I move that

> Alberta Government Services determine a method that would allow a special exemption to the War Amps so that they shall continue to receive access to vehicle registration lists, as they have for the past 50 years. The War Amps shall continue to receive access to these lists on condition that they pay a fee similar to the fee they have paid in the past two years and that the list is guarded by the War Amps and not released to any other group or person. The special exemption provided for the War Amps should not increase any costs to the government.

THE CHAIR: Okay. There's a motion on the floor. Can we have some commentary?

MR. MASON: I'd like to ask the administration for comments on this motion, and then I would like to ask the office of the commissioner the same question.

MR. THACKERAY: As I understand the motion, the first part of it was that Alberta Government Services find a way. Well, I guess the difficulty we have is that right now the release of information from the motor vehicle database is tied to the disclosure section of the Freedom of Information and Protection of Privacy Act, section 40. So we would have to be able to determine which part of section 40 would allow this to happen, and we may have to have some discussions with the folks at Registries to see if it's practicable. That's the comment that I have right now.

THE CHAIR: Mr. Ennis.

MR. ENNIS: Yeah. Speaking for the office of the Information and Privacy Commissioner and from our perspective on this, the motion that Mrs. Jablonski has put forward is not a motion for activity under the FOIP Act. It is a motion for action on an important issue. I'm trying to look at it from a Government Services perspective. I suppose the motion is really asking Government Services to suspend the impending implementation of the Traffic Safety Act and maintain the flexibility that is currently under the Motor Vehicle Administration Act, which is the act under which War Amps previously was able to achieve the information by contract, I understand.

The practical implication seems to be that the committee would be asking the government to hold off on implementation of a bill that has been given royal assent and that has since been amended I believe once, that is not yet implemented as law. The implementation of that act would kick in the mechanism linking it

to the FOIP Act, and within the FOIP Act there currently is no provision that I can see and that anyone can see that would allow the provision of motor vehicle information to the War Amputations of Canada or to a whole raft of other organizations that currently use motor vehicle information.

So that's sort of the practical run on the implications of the motion.

THE CHAIR: Thank you. As always, what appears to be the simplest solution is often the most complicated.

MRS. JABLONSKI: I think that Mr. Thackeray was able to capture the biggest part of this motion, which was to move that Alberta Government Services find a way. If that be making recommendations for the Traffic Safety Act, then I don't understand where the harm would be, but I do see a lot of good in that.

MR. LUKASZUK: With all due respect, then, if Mrs. Jablonski wishes to make a motion of this nature, she can rise in the House and make a private member's motion. That would be the appropriate place to do that, to urge that the government does whatever it is that she urges, but this is not the forum for such a motion. We have no means by which we may wish to influence departments other than FOIP.

THE CHAIR: I agree.

MRS. JABLONSKI: I don't understand, if it has nothing to do with what we're doing, why we allowed them to do a presentation to us, and I don't understand, then, why our own department and our very learned members of this committee, who've made recommendations about the Traffic Safety Act, now are being called into question. Their recommendation is being called into question. They know far more than we do, or I do in any case, about this matter. It's their recommendation. If it wasn't part of the terms of reference of this committee, then why would they have made that recommendation?

THE CHAIR: I can't answer that, other than obviously it's being called into question what exactly the terms of reference of this committee are.

MR. MASON: Mr. Chairman, I want to ask Mr. Thackeray a question. If in fact the new Traffic Safety Act is proclaimed and comes into force and if we have no jurisdiction to make recommendations with respect to that act, then what, if any, amendments to the FOIP Act could be made that would facilitate what Mrs. Jablonski wants to do?

MR. THACKERAY: There would have to be in my view an amendment to section 40, the disclosure of personal information section, to allow the disclosure of this information subject to the Traffic Safety Act, because the Traffic Safety Act points to section 40 of FOIP as the means for disclosing information to organizations.

MR. ENNIS: The one other thing that would be of course necessary is to bring motor vehicle information under the jurisdiction of the FOIP Act, and that opens up the front end of the act in terms of what is excluded from the act and what isn't, and that is the complication that we face. It would be one thing to say that public bodies could disclose motor vehicle information. Presumably the registrar of motor vehicles could disclose motor vehicle information to a particular group, but that would be ultra vires of the FOIP Act if the information itself is not within the jurisdiction of the FOIP Act, and right now that information falls outside the jurisdiction of the FOIP Act, as information made from a public registry is not under the jurisdiction of the FOIP Act. That's the catch-22 in all of this. It's one thing to empower public bodies to move, but the difficulty is that the information that would be the subject of that disclosure is not information that is under the jurisdiction of the act, and that would preclude the commissioner from making any comment as to whether it was a valid use of the FOIP Act if there was a contention around whether or not the director of motor vehicles was doing the right thing.

2:40

THE CHAIR: Mr. Ennis, then isn't part of the solution to the problem to bring Registries back under FOIP?

MR. ENNIS: Well, Registries has never been under FOIP and isn't under FOIP in most jurisdictions that I know of. Registries' information is kept away from freedom of information acts for a number of operational reasons, including the activation of third-party rights that would come if it were under the FOIP Act. So to bring Registries under the FOIP Act would be a new development.

THE CHAIR: Now, without getting into the merits of that, my simple point was: wouldn't that be the first step to finding a FOIP solution to the War Amps problem? I appreciate there may be a thousand other unintended side effects, but wouldn't the first step in solving the War Amps problem, in finding a FOIP solution, be to bring Registries under FOIP, leaving all the side consequences out of the equation?

MR. ENNIS: That would be a necessary first step.

MR. MASON: I would like to move that

> this motion be referred back to the administration in consultation with the commissioner's office to bring back at our next meeting . . .

Our next meeting is July 22.

> . . . a report on the advisability and steps that would need to be followed in order to accomplish the goals stated in Mrs. Jablonski's motion.

THE CHAIR: I guess we'll vote on Mr. Mason's motion after we've had any deliberation on that and then Mrs. Jablonski's motion and then Mr. Lukaszuk's motion, and hopefully that'll bring us to 3 o'clock.

Are there any questions for Mr. Mason?

MS CARLSON: Question.

THE CHAIR: A call for the question. All those in favour of tabling this until July 22?

MR. MASON: It was a referral motion.

THE CHAIR: Whatever. Referral. Thank you. Can I see the hands again? It's carried.

I take it, then, there's no need, Mrs. Jablonski, to vote on your motion.

MRS. JABLONSKI: Not if it's deferred, no.

THE CHAIR: Mr. Lukaszuk, do we need to vote on your motion?

MR. LUKASZUK: Well, if it means that we would be able next time to meet in a much more productive fashion, where the mandate of the committee and the limitations of the committee are clearly set out, then definitely yes. I don't believe we still have a clear understanding of what the limitations of the committee are with respect to making recommendations vis-a-vis other pieces of

legislation and the regulations stemming from the FOIP Act, but I will leave that to deliberation. We never deliberated this motion, so I would like to hear the opinions of others.

THE CHAIR: I'm sorry; the chair forgets what your motion is, Mr. Lukaszuk.

MR. LUKASZUK: The motion is that

> we seek legal opinion from Parliamentary Counsel relevant to this committee's mandate as it pertains to a potential making of recommendations on the regulations and other pieces of legislation not related directly to the FOIP Act.

THE CHAIR: Okay. Do we have specific questions or discussion concerning Mr. Lukaszuk's motion? The chair regards this as a challenge to the chair; therefore, I think those that wish to challenge the chair are the ones that ought to seek the advice of Parliamentary Counsel. I don't think it is the purview of the chair, since the chair has made an unequivocal ruling, to seek counsel. I think those who wish to take issue with my ruling ought to get that advice.

MR. LUKASZUK: And your ruling was not to seek legal counsel?

THE CHAIR: My ruling was that the purview of this committee was to deal with the act and not the regulations.

MR. LUKASZUK: And that was my argument initially, as the chair may recall, exactly the same. I am of the opinion that this committee is bound in its jurisdiction to the act, the policies written and unwritten that stem from the act, and the administration, which is the actual act of implementing numbers 1 and 2. However, I noted that there are members at this table who feel that perhaps our mandate is wider than that and that we do have the ability to make recommendations on the regulations and other pieces of legislation, with which I personally disagree.

THE CHAIR: I understand that, and all the chair is saying is that I think it is incumbent on those who advocate the role that you and I disagree with to seek counsel, not the role of the committee per se.

MR. MASON: Mr. Chairman, there may be members of the committee that don't know whether or not there are any grounds to challenge the chair on this matter and would like to get some information. Maybe the committee could benefit by that. Similarly, perhaps the chair, if the information came back indicating that the ruling may not have covered all aspects of the question, might decide that it's prudent to spare the committee a battle over the question and just modify the ruling. So that's another option. It could be that the information comes back and says that the chair is completely correct. So I think we would all, including yourself, Mr. Chairman, benefit by getting this information, and then we can get on with business.

MS CARLSON: I support that position.

One further point. I thought that we were waiting for some information to come back to us, that we had discussed that prior to the 10-minute adjournment we had this afternoon. Was I wrong in that assumption?

THE CHAIR: I'm not sure what your assumption was. Certain members indicated that they thought that they would like to receive legal opinion. I don't know if any members approached Parliamentary Counsel during the break. I didn't.

MRS. JABLONSKI: Mr. Chair, I believe it is in the best interests of this entire committee that this committee seek Parliamentary Counsel's advice on those issues, because at this point I feel that this entire committee has been castrated.

THE CHAIR: By the chair's ruling?

MS CARLSON: Yes. I want to go on the record and say that I agree with that.

THE CHAIR: So the chair takes the position that if you challenge the chair's ruling, get legal advice and show the chair that he is wrong.

MR. LUKASZUK: Well, let the record show that I don't feel castrated.

MR. MASON: Let the record show that we all feel uncomfortable.

MR. LUKASZUK: Since the chair has made a ruling and is sticking by the ruling and since the ruling reflects that which was my opinion to begin with, I agree with the chair to the effect that it stands to no reason for me to seek legal opinion. The chair supports my position. Whether it would be beneficial or not to the committee as a whole to seek a legal opinion is another story, and perhaps it would be, but since my opinion is being supported by the chair, I need not put a motion forward and I withdraw my motion.

THE CHAIR: Can we go off the record, please.

[The committee met off the record from 2:48 p.m. to 2:54 p.m.]

THE CHAIR: We have a motion on the floor put forward by Mr. Lukaszuk. He needs unanimous consent of the committee to withdraw that motion. Could I ask for unanimous consent that Mr. Lukaszuk withdraw his motion. It's given.

The chair will undertake to provide a legal opinion regarding the scope and mandate of this committee and to have that legal opinion preferably forwarded to the members of the committee prior to our next meeting but, if not, certainly at that next meeting. If need be, the chair will request that Parliamentary Counsel be present to advise the chair on any jurisdictional disputes that may arise thereafter.

The committee was scheduled to meet tomorrow for a full day. In light of some of the jurisdictional issues that have arisen and in light of in camera discussions, could I have a motion that the committee not meet tomorrow. It's been forwarded by Ms Carlson. Anybody opposed? It's carried. Therefore the committee will meet . . .

Mr. Lukaszuk.

MR. LUKASZUK: I just want to ask you not to adjourn this committee today because there's still one more issue before us that we need to deal with or would like to deal with.

THE CHAIR: It's 4 minutes to 3, and it was my understanding from our off-the-record discussions that we were not going to move any further until we got some more direction.

MR. LUKASZUK: Right on.

THE CHAIR: So could I have a motion that the committee adjourn and that we reconvene on Monday, July 22, at 10 a.m. That has been moved by Mrs. Jablonski. Is there anybody opposed? It's carried.

Thank you. We're adjourned.

[The committee adjourned at 2:56 p.m.]