Title: Monday, July 22, 2002 FOIP Act Review Committee

Date: 02/07/22

[Mr. Rathgeber in the chair]

THE CHAIR: Okay. I'm going to call this meeting to order. Good morning and welcome. For the record, my name is Brent Rathgeber. I'm the MLA for Edmonton-Calder, and I'm the chair of the special select all-party committee to review freedom of information and protection of privacy legislation in Alberta. Starting with Mr. Jacobs, if I could go down the line and have the members introduce themselves for *Hansard*, please.

[Ms Carlson, Mrs. Jablonski, Mr. Jacobs, Mr. Lukaszuk, Mr. MacDonald, and Mr. Masyk introduced themselves]

THE CHAIR: And I understand that Mr. Mason, the MLA for Edmonton-Norwood, is in the foyer.

If I could have the members of the technical team introduce themselves for the record, please.

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

THE CHAIR: From the LAO.

MRS. SAWCHUK: Karen Sawchuk, committee clerk.

THE CHAIR: And Mr. Mason is now present.

Documents were distributed to all the members on Thursday of last week. We have a two-day agenda, which we hope to get through today and on Thursday, the 25th. Does anybody have any questions or comments concerning the proposed agenda for the next two days, the second day being Thursday? If I could have somebody move that agenda, please.

MR. JACOBS: I so move, Mr. Chairman.

THE CHAIR: Thank you, Mr. Jacobs. Any discussion? All in favour? It's carried.

Minutes were also circulated last week for the last two meetings, which were on June 24 and June 25, 2002. Do any members have any questions or comments concerning the minutes as they were circulated?

MR. JACOBS: Mr. Chairman, I'd just like to note that I was not present on June 25.

THE CHAIR: I take it that there was an error, then, in the minutes, Mr. Jacobs.

MR. JACOBS: Yes.

THE CHAIR: Thank you. I think the clerk concurs with that. Can we make an amendment to the minutes?

With that amendment, are there any other comments or questions with respect to the minutes? Could I have somebody move them? Ms Carlson. Any discussion? All in favour? Anybody opposed? The minutes are moved.

That brings us to agenda item 4, Business Arising from the Meeting of June 25, 2002. The first is the jurisdiction and mandate of this committee, and I will speak to that at some length. The last time that this committee met, certain procedural developments occurred which brought the proceedings of this committee to a virtual halt. Before this committee reconvenes, the chair believes that it is important that these matters be fully addressed.

The first is with respect to a ruling that the chair made on the afternoon of June 25, 2002, with respect to a motion put forward on page 162 of *Hansard* by Mr. Mason, such motion reading as follows: 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." As the members are well aware, this motion set off a certain momentum which caused the work and the progress of this committee to grind to a halt. The chair ruled that the mandate of this committee was to deal with the act and not the regulations and undertook to provide an opinion regarding the scope and the mandate of this committee.

The chair has given this matter great consideration and has sought advice from Parliamentary Counsel. Conceivably the mandate of this committee could be drawn from any one or from a combination of three sources. The chair will deal with each of these potential sources of the committee's mandate. The logical starting point is the motion that created the committee. The committee will recall that it was moved in the Alberta Legislature by hon. Mr. Coutts on the evening of November 28, 2001, as follows:

> Be it resolved that
>
> (1) A Select Special Freedom of Information and Protection of Privacy Act Review Committee of the Legislative Assembly of Alberta be appointed to review the Freedom of Information and Protection of Privacy Act as provided in section 91 of that act, consisting of the following members, namely . . .
>
> (7) The committee must submit its report, including any proposed amendments to the act, within one year after commencing its review.

This motion was carried unanimously by the Alberta Legislature. The members will note that the motion in the House refers only to the act.

A second logical point of reference to look at for the jurisdiction of this committee, therefore, is section 97 of the existing legislation, which provides for a mandated legislative review of the act. Section 97 of the current act reads as follows: "A special committee of the Legislative Assembly must begin a comprehensive review of this Act" within three years after the coming into force of this section "and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee."

A third possible reference guide to the mandate of this committee is found in the terms of reference which were approved by this committee and circulated to Albertans in a discussion paper. The committee approved that the proposed scope of its review would be as follows: one, to determine if the act and its supporting policy administration provides an appropriate balance of access to information and protection of privacy in accordance with the original intent; two, to consider implications to all sectors governed by the act and/or any expansion of such governance; and three, to consider the impact of e-government concepts and the growth and sophistication of existing and emerging information technologies on privacy.

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

It should be noted at the outset that in none of the three possible reference points is any reference made to the regulations under the act. Furthermore, the committee members will be aware – and it has been pointed out by the chair and by Mr. Lukaszuk previously – that the act is the creation of the Legislature, as is this committee. However, regulations are a creation of a different body. They are the creation of the Lieutenant Governor in Council. After

researching this matter and seeking a legal opinion, the chair retains its original position that a select special committee is bound by the terms of reference assigned to it by the Legislative Assembly. Technically, therefore, it appears that regulations per se are not the subject of the committee's mandate under either the motion passed by the House or under the act or by the committee's self-approved terms of reference.

With respect to the governing provisions of a committee, Marleau and Montpetit state at page 804 of *House of Commons Procedure and Practice* in the year 2000: "Committees, as creations of the House of Commons, only possess the authority, structure and mandates that have been delegated to them by the House." Similar statements are found at 831 of *Beauchesne's Parliamentary Rules & Forms*, sixth edition, 1989; namely, that "a committee can only consider those matters which have been committed to it by the House" and that "a committee is bound by, and is not at liberty to depart from, the Order of Reference." It is submitted that this is logical as this committee reports to the Assembly and it is the Assembly that has the ability to implement the recommendations, if the Assembly chooses, by amending the statute. Conversely, the Lieutenant Governor in Council is the only body that can amend regulations, and this committee does not report to the Lieutenant Governor in Council.

It should be further noted on the question of whether this committee is empowered to review the regulations per se that in some legislation – and I draw to your attention the Wildlife Act. This act is defined as including the regulations. This is not the case with the Freedom of Information and Protection of Privacy Act. In short, a reference to this act in section 91 means just that: the act as opposed to the regulations.

This strict interpretation of the mandate of this committee should in no way hamper or, to use the words of Member Jablonski, castrate the committee. It must always be remembered that the regulations are what is known as delegated or subordinate legislation. In short, the Assembly through legislation delegates to a body, in this case the Lieutenant Governor in Council, the ability to make regulations on certain specified subjects. There is no doubt that statutes are paramount to regulations, so any changes in legislation would take precedence over regulation.

In dealing with the motion that gave rise to this issue, section 93 and section 94(1)(o) of the act specifically deal with the ability of the Lieutenant Governor in Council to make regulations about fees and waivers. Without these provisions in the act there would be no authority to make regulations. So as was pointed out to Mr. Mason on pages 162, 163, 164, and 165 of *Hansard*, by rewording the motion, the member was able to achieve his desired result. Accordingly, the chair rejected the following motion, 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," but accepted the motion 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." This is more than just a subtle or a technical distinction. The former calls for an amendment to the regulation; the latter calls for an amendment to the act. The former is ultra vires and the latter is intra vires of this committee, but they accomplish the same thing.

A necessary corollary of this exercise is whether or not this committee has jurisdiction to deal with other pieces of legislation. Clearly, while this committee is charged with reviewing one act, it may be the case that its reviews uncover issues that not only touch the Freedom of Information and Protection of Privacy Act but other legislation in the process. Specifically and without limiting the generality of the foregoing, it may be necessary to recommend changes to the Traffic Safety Act and/or the Motor Vehicle Administration Act to give meaning to this committee's recommendations to the FOIP Act.

It is clear from the motion and the act that the role of this committee is to review FOIP. However, it is not unusual for a review of one act to lead to necessary alterations to another act as long as there is a clear nexus and linkage to the original act being reviewed. If this committee were to propose amendments to FOIP that touch upon another piece of legislation, it would seem entirely appropriate to indicate that consequential amendments would be required to other acts. Similarly, if this committee chose not to recommend amendments to the FOIP Act because it would be more appropriate to address certain issues in another act, this would also seem appropriate and within the scope of our legislative mandate. However, there must always be a clear link to the FOIP Act as that is the subject of this committee's review. If there is a linkage to the act, then the committee as part of its comprehensive review would necessarily seem justified in making such recommendations.

10:20

The members may very well question how I reconcile this ruling with the one concerning the regulations, but the answer is easy: legislation is the creation of the Legislature; regulations are the creation of the Lieutenant Governor in Council.

At this point the chair wishes to note that it is most unfortunate that this procedural entanglement caused the committee's work to grind to a virtual halt and that in so doing, the committee lost one and one-half days of what could have otherwise been very productive time. The chair notes with some reservation that it observed what it believes to have been a deliberate attempt by certain members to hijack the chair's agenda on the afternoon of June 25, 2002. The chair was fully cognizant that the whole issue of fees and fee waiver was going to be complicated and controversial and therefore proposed that a broad discussion be undertaken with respect to the whole issue of fees. Thereafter it was hoped that some sort of consensus of this committee might have been reached with respect to fees and that thereafter that consensus might have been synthesized into some sort of meaningful motions which could have been dealt with in some sort of orderly fashion.

This procedural outline was put forth by the chair at 12:39 p.m. on the afternoon of June 25, 2002. Prior to 12:50 p.m. Mr. MacDonald had put forward a motion that costs not exceed $150 in total. That motion was ultimately defeated but was followed at 1:10 p.m. by a motion by Mr. Mason regarding the regulations, such motion having already been the subject of much discussion. Moreover, following a brief adjournment on the afternoon of June 25, 2002, at 2:10 the chair stated:

> 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 . . . 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.

However, Ms Carlson immediately said thereafter:

> 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?

Again there was an alteration to the chair's agenda, and the committee went down a path and entertained a motion put forward by Mrs. Jablonski that ended in another dead end.

The chair will momentarily discuss its role in these proceedings, but clearly it is the prerogative of the chair to direct the agenda once

approved and to attempt to have debate and discussion flow in a meaningful manner. The chair takes some exception to what it perceives as a deliberate attempt to overtake that agenda. The members are well aware of the result of this attempted coup: procedural entanglement which ended in chaos and ultimately handcuffed the progress of this committee, and the committee lost one and one-half days of working time in the process. The chair will not tolerate any further attempts at chicanery.

That brings me to the last point which must be addressed, and that is the role of this chair of this committee. During the aforementioned procedural entanglement and chaos the chair was accused of abusing its position as chair and of "editorializing." The chair takes these criticisms very seriously. Accordingly, the chair sought legal opinion regarding the role of the chair in guiding a special select committee, specifically the parameters under which the chair might participate in the discussions of the committee.

As we have discussed, the committees of the Assembly are creatures created by the Assembly and therefore only possess the authority that the Assembly delegates to them. Similarly, committees are governed by the provisions of the Standing Orders as far as they may be applicable with the exception of the rules governing the number and length of speeches. In all other respects committees are considered to be, according to *Beauchesne's Parliamentary Rules & Forms,* sixth edition at page 760, "masters of their own procedure."

The primary role of a chair of a special committee of the Assembly is to maintain order and decorum during the proceedings of the committee subject to an appeal to the committee. The duties of the chair and the limitations on the chair are further described by Marleau and Montpetit in *House of Commons Procedure and Practice* at pages 827 and 828, where the learned authors state:

> The Chair of a committee is responsible for recognizing members and witnesses who seek the floor and ensuring that any rules established by the committee concerning the apportioning of speaking time are respected. Furthermore, the Chair is also responsible for maintaining order in committee proceedings. However, the Chair does not have the power to censure disorder or decide questions of privilege; this can only be done by the House upon receiving a report from the committee.
>
> As the presiding officer of the committee, the Chair does not move motions. Furthermore, the Chair does not vote, except in two situations: when a committee is considering a private bill, the Chair may vote like all other members of the committee; and, in . . . cases where there is an equality of votes, the Chair has a casting vote.

Although the role of the chair of a committee of the Assembly is not precisely analogous to the role of the Speaker or another presiding officer in the Assembly of the committees of the whole, the chair of a committee must as part of his or her responsibility in maintaining order and decorum be a neutral arbiter over the proceedings and must ensure that all members of the committee are capable of exercising their right to participate.

The only reference that I am aware of in a Canadian jurisdiction that addresses the issue of the participation by the chair in a committee of the Assembly can be found in the material on the Ontario Legislative Assembly web site under the heading Role of the Chair, which states the following: "While occupying the chair, the Chair does not generally take part in proceedings."

Apart from the above-noted excerpt from Ontario there is no clear statement in any of the Canadian parliamentary authorities on the extent to which a chair of a select or standing committee may participate in the proceedings of the committee. However, it is clear that in Alberta the extent to which a chair may participate is restricted by virtue of the fact that the chair isn't able to move a motion and isn't able to vote except in the situation of a tie. These conventions suggest to this chair that the chair's participation in debate before the committee is therefore limited as there is no mechanism by which the chair can formally take a position on a decision item because the chair isn't able to bring forward a motion and is unable to vote. Moreover, the chair's participation should be conducted in such a way that does not affect the chair's ability to fulfill its primary function as the neutral arbiter over the committee's proceedings, which includes ensuring that all members can fully exercise their right to participate.

Accordingly, the chair must reluctantly agree that on the afternoon of Tuesday, June 25, 2002, it was much too proactive in entering into the debate regarding the merits of matters under deliberation. The chair admits that it has on occasion found the transition from advocate to arbiter somewhat awkward. Regardless, this chair will refrain from entering into the fray of the debate on substantive issues.

In closing, the chair believes that it is most unfortunate that the informal procedures have failed this committee thus far. However, if the chair is to insist that certain members respect the chair's ability to direct processes and procedure, it too must strictly follow the conventions that limit its role during substantive debate.

The next item on my agenda. . .

MS CARLSON: Wait just a second.

THE CHAIR: Ms Carlson.

MS CARLSON: I would like to have some discussion, and I have a couple of points I would like to make, Mr. Chair. The first one is that I would like to put you on notice that I will be bringing a point of privilege against you personally based on the allegations that we have heard this morning in those comments, starting with your talking about a deliberate attempt to hijack the agenda here at the last meeting and "chicanery" and some other comments that I will detail further when this point comes before the House.

I have spent my entire career in this Legislative Assembly trying to work in co-operation whenever possible, and particularly when I have been a member of all-party committees, I have deliberately tried to work in co-operation with other committee members, and I believe that was going along very well in this particular committee until you made a particular ruling and then subsequently had a hissy fit. I will not stand or sit at this table and allow any chair to defame me in the manner that you have this morning without taking some sort of action against it. So I want that on the record now, and it will be the first privilege dealt with when we go back into the House in the fall.

My second point is that I am very surprised and dismayed, perhaps not surprised but certainly dismayed, that we as members of this committee do not have a copy of your legal opinion, and I would request that we all be provided with one.

10:30

THE CHAIR: The legal opinion was provided to you and will be printed in *Hansard*.

MS CARLSON: I would like a copy of the legal opinion with the appropriate headers on it, not those excerpts that you read in today's discussions.

THE CHAIR: I'm also disheartened that we are going to continue to deal with procedural entanglements rather than getting back to the business, Ms Carlson. However, if that is how you wish to conduct yourself, the chair has no ability to censure you.

The chair invited you to get legal counsel. You chose not to. The chair got legal counsel, and it was the position of legal counsel that the chair was the client, and therefore the communication between counsel and chair is privileged communication, as between solicitor and client.

MR. MASON: Well, Mr. Chairman, I have to say that I'm disappointed by the way you started off the meeting. You know, you seem to be saying right off the bat that if we take exception to anything you have said, the problems are with us. I do appreciate your comments relative to the role of the chair. I appreciate that, but I just want to go back and refresh people's memories a little bit.

The motion that I originally made was something that I was going to make relative to the legislation, not to the regulations, but it was a suggestion of the administration that it would be more appropriate to be dealt with not in the legislation but in the regulations, so I changed what I was putting forward. I agree; there are a number of ways to accomplish the same goal.

I've sat on committees on city council for 11 years, and you know, I sort of know how to make motions if necessary in a different way, and I certainly was prepared to do that. That wasn't the issue. The issue was that I was concerned that the blanket ruling about not dealing with regulations took away a big chunk of the mandate, as I saw it, of the committee. I think that if you look at our working documents and so on, the administration has assumed all the way along that we would be dealing with a whole range of issues, including regulations.

I know that in our terms of reference, which we adopted, it says under Proposed Scope of the Review: "To determine if the Act and its supporting policy and administration provides an appropriate balance of access to information." So, in my view, it's very clear, especially given the second point, which is "to consider implications to all sectors governed by the Act," which includes regulations, "or any expansion of such governance."

It's clear to me that that takes a big chunk out of the committee, and if you just didn't like one motion, then I think it's unfortunate that a ruling has such a wide-ranging effect and I think will be problematic to the work of the committee. So I was disappointed that you're sticking with the ruling.

I am also disappointed with the provocative language that you used in describing the events in the committee, which I think just emerged quite naturally from committee members trying to do their job as they understood it, and I'm quite disappointed that we don't have a legal opinion. I thought we'd agreed at the last meeting that the committee would receive a legal opinion relative to the terms of reference of this committee rather than your interpretation as chair of that.

So I want to place those points on the record, Mr. Chairman. I really think we had a chance to go away and cool down and think about how we can conduct ourselves in a positive manner, but your language this morning at the start of the meeting I think really sets us back again, and it's unfortunate. As an all-party committee and as a chair of an all-party committee I think you need to make sure that everybody's rights are looked after.

That's all. Thank you.

THE CHAIR: Anything else?

Okay. If we can move on to the agenda item with respect to the War Amps. Mr. Thackeray, you were going to address this.

MR. THACKERAY: At the meeting on June 25 in the afternoon there was a motion by Mrs. Jablonski dealing with requesting that Alberta Government Services find a way to deal with the issue of War Amps. Mr. Mason subsequently put forward a motion referring this to the administration to have discussions between Government Services and the office of the Information and Privacy Commissioner to come back with a recommendation.

Over the past six to eight months there's been a lot of work going on between Alberta Transportation, Alberta Government Services, both the information management, access, and privacy division as well as Registries and the office of the Information and Privacy Commissioner to come forward with some sort of resolution to who should have access to the motor vehicle database. The consensus was incorporated into the government submission at recommendation 12, which deals with consequential amendments to the Traffic Safety Act and/or the Motor Vehicle Administration Act, incorporating an amendment to the Freedom of Information and Protection of Privacy Act giving the commissioner authority to hear a case if someone was not happy with the decision of the registrar.

That is the recommended approach from administration for dealing with the issue of War Amps or others that seek access to the motor vehicle database, and I believe that is up for discussion later on today in the agenda under question 3: exclusions – registries.

THE CHAIR: Mrs. Jablonski, I think it was your motion that gave rise to Mr. Thackeray's undertaking to provide information. Do you have any questions?

MRS. JABLONSKI: I just want to get something clear. What we're saying, then, is that the War Amps can approach the registrar, the registrar makes a ruling either for or against giving the information, and then if the War Amps does not like what the ruling is, they can then go to the office of the Privacy Commissioner.

MR. THACKERAY: That's what is incorporated in recommendation 12 in the government submission. Yes, that's the process.

MRS. JABLONSKI: Thank you.

THE CHAIR: Any other questions on this point for Mr. Thackeray?

Mr. Thackeray, I apologize. I think I missed an agenda item. You were also going to deal with 4(b), Fees for applications in other jurisdictions.

MR. THACKERAY: That's correct, Mr. Chairman. Committee member Ms Carlson asked: how often do other jurisdictions as compared to Alberta actually charge for search and preparation over and above the initial application fee and also how often photocopying charges are charged? I attempted to contact my colleagues in all of the provinces, the federal government, and the territories to get their comments on this question. I've received responses to date from five provinces and the federal government. The essence of the responses are – it's all over the map. Everyone adheres to the schedule that is in their specific legislation, but very few provinces keep statistics as to how they actually calculate the fees.

10:40

For example, in Newfoundland they just recently passed a new freedom of information and protection of privacy law, and they don't have any statistics available yet because the processes are still developmental, but basically it's left up to each individual ministry as to how they would interpret the fee schedule. In Nova Scotia they use the fee schedule for requests of significant size, where the scope has not been narrowed to less than a couple of hours, and they use a schedule in other cases. In New Brunswick it's left to the discretion of individual ministries. In Manitoba they charge the fees as per the schedule. In British Columbia they also charge the fees as per the schedule. In Canada they found that they use the fee schedule now more than they did in the past, and occasionally they use fee waivers to keep applicants from going to the commissioner on appeal.

MS CARLSON: Thank you for that information. If it becomes available from the other provinces at some point, could you provide it to the committee?

MR. THACKERAY: I'll send out a reminder to the other jurisdictions that didn't get back to me and hopefully have some information before the meetings next week.

MS CARLSON: Thank you very much.

THE CHAIR: Any other questions?

MR. MacDONALD: Mr. Thackeray, could you tell us, please, or could you find the information out, please, what percentage of requests in those other jurisdictions have fees waived? Do you have any idea what that would be and how that would compare to us in Alberta?

MR. THACKERAY: I don't have any information on that. I will contact them again and ask that specific question. A lot of the provinces don't keep the same types of statistics that we do in Alberta, but I'll see what information they can provide me with.

MR. MacDONALD: Do we keep statistics here on the number of FOIP requests that have fees waived? If we do, how many FOIP requests have had fees waived, on a yearly basis?

MR. THACKERAY: The information that is provided to us is not always complete. We do know how many applications there are for requests under the FOIP Act to the provincial government. Some ministries do report if there was a fee waiver. Others do that as part of their negotiation with the applicant for narrowing the scope of the access request. I believe that at the meeting on the 25th Hilary provided some information about fee waivers and the percentage, but I'll go back and check *Hansard*, and I'll get back to the committee.

THE CHAIR: Any other questions for Mr. Thackeray on the issue of fees, waivers, other jurisdictions?

The fourth item of business arising from our last meeting was a copy of the commissioner's order in 96-002. I believe that was distributed for information purposes only. Are there any questions or comments regarding the commissioner's decision in the ruling of Mike Percy versus Alberta Treasury?

All right. If we could go to New Business, item 5 on my agenda, Continuation of Deliberations. I believe when we last met we were dealing with question 9 until we got sidetracked, but most of the afternoon of June 25 dealt with question 9, Fees. The notes and the policy paper have been attached and were distributed prior to that meeting. I once again would like to have some sort of discussion regarding generally where we want to go with respect to this, but we can entertain motions at any time. We have already passed one motion with respect to the commissioner's order 96-002. Anybody from the technical team or Tom: is there any further advice or consideration that anybody wants to put forward before I open it up to the committee members?

MR. THACKERAY: In the policy option paper dealing with fees – and this will go to other policy option papers that have been prepared and circulated to the committee members – we did talk about the regulations. I believe that the motion, if that was one of the options the committee was in favour of, could be worded in such a way as is similar to the way Mr. Mason redefined the motion on fee waivers, that it could be referred back to the statute rather than dealing with the regulations. I don't think the options should be tossed aside just because they state something about the regulations. I believe that it can be tied back to the act.

THE CHAIR: Any questions to Mr. Thackeray on what he just put forward? Okay.

Who wants to have first kick at the can with respect to fees? Mr. Jacobs.

MR. JACOBS: Well, Mr. Chairman, having looked at the options which are presented in the policy paper, I'm certainly prepared to make a motion on option 2 that the fees for services referred to in section 93(1) of the act be revised as needed to more accurately reflect current costs. If there's no other debate, I'm prepared to put that motion on the floor.

THE CHAIR: Well, why don't you make your motion, Mr. Jacobs? I think you have. Then we will open it up to debate, and then we'll vote on it eventually.

MR. JACOBS: Very good.

THE CHAIR: Did you wish to summarize your position or speak in favour of your own motion?

MR. JACOBS: Well, when applications are received for freedom of information requests, it's fair that the fee schedule does reflect current costs accurately and that other minor changes need to be made, so I think this motion does reflect that.

THE CHAIR: Comments or questions for Mr. Jacobs on his motion? Ms Carlson.

MS CARLSON: Is it your expectation in making that motion that fee waivers would still be available as they had been in the past?

MR. JACOBS: I would certainly welcome technical advice on this, but I wouldn't see that that would change. Would that be correct, Mr. Thackeray?

Mr. THACKERAY: Yes, that's correct. Fee waivers would still be dealt with as appropriate given the individual circumstances.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you. That answered my question.

THE CHAIR: Any other deliberations?

We'll put it to a vote, then. The motion put forward by Member Jacobs is that – could you repeat it, Mr. Jacobs? I didn't write it down.

MR. JACOBS: It was that the fees for services referred to in section 93(1) of the act be revised as needed to more accurately reflect current costs.

THE CHAIR: All those in favour? Oh, sorry. Mr. Mason.

MR. MASON: I apologize, Mr. Chairman. I just have a question. My understanding is that the fees that are now charged are well below the actual cost. Is that correct?

THE CHAIR: I believe that's correct, but I'll allow Mr. Thackeray to answer that.

MR. THACKERAY: I believe that if you look at the fee schedule, you'll find fees that are above actual cost and you'll find fees that are below actual cost.

MR. MASON: But on balance?

MR. THACKERAY: On balance and compared to other

jurisdictions, I would say that they're fairly consistent.

MR. MASON: So if this motion were passed and implemented, then we would not expect to see a dramatic increase in fees across the board?

MR. THACKERAY: To use the terminology that the former commissioner used when he was addressing the committee, I think you would see some tweaking. I believe that you may have raised the issue earlier in the deliberations about floppy disks at $10 a disk when you can now buy a dozen for $10, so that would be an example of something that would be reviewed.

MR. MASON: And for large-scale photocopying for large requests?

MR. THACKERAY: The fees listed in the schedule are maximums, so those are always open for negotiation.

MR. MASON: So in general you would see, if this motion were to be passed, that there would not be an undue impact on accessibility. I'd also like to direct that question to the commissioner's office.

10:50

THE CHAIR: Mr. Ennis, do you want to comment?

MR. ENNIS: Thank you for the question. I think one of the key things is that if the application of fees across the current categories of applicants remains the same, I don't anticipate there would be large changes here. What I'm saying there is that if personal information access requests remain at just the photocopying charges and no other charges, it's possible that photocopying charges have been reduced by the advent of digital copying. Many organizations are now moving electronic documents right through to photocopiers instead of the traditional printers, so there's some reduction in costs there.

I think we've heard anecdotally that the cost of systems analysts' time in preparing records might be a little short of actual costs right now, so there may be pressure there to recognize more appropriately the real cost of employing a systems analyst to generate information from a record bank.

MR. MASON: The overall impact on accessibility to individuals requesting information is on balance more or less the same?

MR. ENNIS: Yes. It hasn't been an area where we've heard that there are outrageous discrepancies.

MR. MASON: That being the case, Mr. Chairman, I support the motion.

MS CARLSON: I'll be supporting the motion, too, based on what we've heard about fees falling more in line with tweaking than rising dramatically and that waivers will still be available.

Thank you.

THE CHAIR: Just for clarification, I'm not sure that the motion states that it's going to be tweaking. As I understand it, that's more of a prediction, is it not, Mr. Thackeray? The motion, as I read it, is that it be revised as needed to more accurately reflect current costs. That's still giving a lot of flexibility and discretion to the policymakers. I don't wish to enter into the debate or read into Mr. Jacobs' motion, but that's how I hear Mr. Jacobs' motion.

MR. JACOBS: Mr. Chairman, I think the key words here for me were "to . . . reflect current costs." I think it's fair that, you know, that be the reasonable approach, and in some cases it may be that there will be some adjustment to fees because, as has already been pointed out, some of them may be a little bit high and some of them may be a little low. This motion allows for that to be looked at, and currently what it costs to produce would be the key factor here, so I think that's one of the reasons I'm prepared to make this motion.

THE CHAIR: Thank you. Any discussion on what the chair said or what Mr. Jacobs added? Any further discussion on the motion generally?

If we could put it to a vote then, the motion before the floor is that the fees for services referred to in section 93(1) of the act be revised as needed to more accurately reflect current costs.

All those in favour of that motion, please raise your hand. It's carried unanimously. Thank you.

That answers the only question with respect to fees in the discussion paper, does it not, Mr. Thackeray?

MR. THACKERAY: The only other subject that I would suggest the committee may want to have some deliberation on is dealing with section 93 of the act and the requirement that for a response from a public body to a fee waiver request the response should be in writing. This is a direct fallout of a recent decision by an adjudicator appointed under the act where there was some difference of opinion between the applicant, the public body, and the adjudicator as to whether or not a verbal response by the public body to the applicant, saying something to the effect that "we're not going to waive the fees," was an official response of the public body. So if you look at the government's submission, recommendation 9 tries to put a little clarity in that to ensure that if an applicant is looking for a fee waiver, the request is in writing and the response from the head of the public body is in writing as well.

THE CHAIR: Mrs. Jablonski, did you have a comment?

MRS. JABLONSKI: Yes. I'm actually surprised that this isn't already done. I'm such a visual person that I need to have things in writing and in front of me. So I would like to make the motion that section 93 be amended to clarify that a request for a fee waiver must be made in writing and that the decision of the head must be communicated in writing.

THE CHAIR: Okay. Thank you. Any questions for Mrs. Jablonski on her motion? Mr. MacDonald.

MR. MacDONALD: Yes. What sort of time frame do you have in mind for this, and why do you think it is necessary?

MRS. JABLONSKI: Well, I think it's necessary, Hugh, because as you know and I know, sometimes when a conversation is happening, people hear it differently and sometimes their perceptions are wrong, but when you have a decision on paper or a request on paper, there is no mistaking what the question was or what the result of that question was. So I just think that in writing clarifies everything for me, just like this morning, when we asked to have something on paper. It's just something that I think is more professional and more efficient.

I actually hadn't thought about time lines. I don't even know if time lines are addressed in the act. But I would ask Tom to give us some advice on time lines in requesting a waiver.

MS LYNN-GEORGE: The decision of the adjudicator in this matter was that he inferred that the time should be 30 days, which would be the time line for making a request. When our advisors at Justice looked at it, they felt there was no particular reason to draw that

inference, but at the same time there was no particular reason to reject the proposal that 30 days was a reasonable time frame. That decision is now to some extent a precedent, and probably if nothing happens, that will be the way it's interpreted. That will be the time line that public bodies will have to observe, and we would be inclined to put that into the next edition of the Guidelines and Practices manual. It could be put into the act by way of an amendment, but there's no particular reason to do that other than clarity, I guess.

MR. MacDONALD: Well, Mr. Chairman, for the record I'm very concerned about this because it is my view that this formal time line could be used by a government department to delay the entire file. Certainly I think that in the decision that was discussed previously, there was a ruling made. I don't see why we would have to even change section 93. It seemed to work, and let's leave it at that. If we're going to start this, then we're certainly going to have to start formal correspondence or letters in regards to negotiations around the narrowing of requests, which in this member's view is also a means of stalling information that may be in the interest of the public and may shed some light onto what in my view is a very secretive, closed government.

THE CHAIR: Okay. I take it then that you'll be voting against Mrs. Jablonski's motion?

MR. MacDONALD: You bet.

THE CHAIR: If hers is defeated, I will entertain a motion from you.

MR. MASON: Well, just to Mr. Ennis: do you believe that the motion to put requests for waivers and rulings about those requests in writing will either unduly delay the access for information or could be used by a government department in order to thwart or delay a legitimate request for information?

MR. ENNIS: I believe that it could be if a long time line were allowed for the process. It's important to consider that up to this point normally we do see requests for fee waivers coming in writing and responses going back in writing. It has been a fairly clear process. The adjudicator's decision that Mr. Thackeray talked about was I think a bit of a surprise in how the adjudicator picked up those events. I don't want to comment on that much further than that because it is the same as a commissioner's order, and while it does have a precedent value, commissioners are not bound by their own precedents. So it may be that the 30 days is the right standard or not. It strikes me, though, that there's an opportunity here for a public body to delay an access request while they're considering whether or not to grant a fee waiver.

11:00

MR. MASON: Can you specify that the access request has to be dealt with as a matter of course and not be held up and that the waiver issue can be settled later? Does that work?

MR. ENNIS: Well, the waiver issue often would have to be settled first, especially in cases where someone has exceeded the threshold and there will be a fee applied on a general access request. An applicant who is requesting a waiver will sometimes request that the waiver be dealt with before the applicant commits to paying the fee that's been asked for. The commitment involves paying half up front and half on delivery, so the fee waiver couldn't be put off until the end of that process.

THE CHAIR: Any supplemental, Mr. Mason?

MR. MASON: Mrs. Jablonski wants to say something.

THE CHAIR: It's Mr. Jacobs' turn.

MR. JACOBS: Thank you, Mr. Chairman. I don't believe that the intent of the motion we have before us is to thwart the process or impede the process or make it more difficult for people. I think it's a reasonable expectation that, you know, when people want this, they would be prepared to do it in writing. As has already been pointed out, most of them come in writing already. So with a reasonable time frame for a response I don't see this being problematic, and definitely I'm in support of this motion.

THE CHAIR: Thank you.

MRS. JABLONSKI: I was thinking that whether the request was verbal or in writing doesn't make any difference on the time line. You can drag something out or hurry it up verbally as well. Whether it's in writing or verbally that can still happen. I think that if you're concerned about a time line, maybe you should make another amendment, because this is simply to clarify the request and the answer. If you think that we need it, if you think that there's a reason why we need to have deadlines, then maybe you should have a motion.

MR. MacDONALD: Well, in light of this section there's certainly no need to change it. We've only had one example. It doesn't seem to be a widespread trend with FOIP to have just a verbal exchange. Certainly in my experience with it there is correspondence. There are lots of phone calls whenever you consider the narrowing of requests, all kinds of phone calls, but in light of this and in light of Justice McMahon's ruling I don't understand why we need to change.

THE CHAIR: Mr. Thackeray, can you perhaps address the need for this proposed motion? I think it's something that came out of one of your discussion papers.

MR. THACKERAY: Yes, Mr. Chairman. I guess the way we're looking at it is that it adds clarity to the section dealing with fee waivers. The ultimate decision on waiving fees rests with the head of the public body. From time to time the person handling the file may have telephone discussions or verbal discussions with the applicant and may make some comment, saying: well, I don't think the head will waive the fees. Without having it clearly stated that a fee waiver refusal has to be in writing, then based on that conversation an applicant could proceed to the commissioner on appeal when the head hasn't made the ultimate decision.

THE CHAIR: Does that help, Mr. MacDonald?

MR. MacDONALD: No.

THE CHAIR: Any specific questions for Mr. Thackeray?

MR. MacDONALD: Not at this time, no.

MR. MASON: I'm wondering what sort of time line Mrs. Jablonski was thinking about. Would it be just a simple motion that the fee request would be processed within 30 days and the applicant would receive the decision in writing within 30 days? Is that what you had in mind?

THE CHAIR: I'm not sure that the motion had any time lines in it, but I'll allow Mrs. Jablonski to address it.

MRS. JABLONSKI: That's correct. I didn't have any time line in my motion. I was just suggesting that if Mr. MacDonald was very concerned about that, then he should perhaps move a motion. As far as I'm concerned, I didn't realize that there were any concerns about time lines or that there were any problems that have happened to date, so it was never a concern of mine.

MR. MASON: Well, Mr. Chairman, I'd be more comfortable if it was made as an amendment to the motion rather than a subsequent motion. Because if the amendment passes, I can probably support the motion.

THE CHAIR: Well, Mr. MacDonald indicated that he was not going to be making an amendment. Did you wish to make an amendment, Mr. Mason?

MR. MASON: I guess I'll try it, Mr. Chairman. I'll move an amendment that a written response to a request for a fee waiver will be provided to the applicant within 30 days of the receipt of the initial written request.

THE CHAIR: Could we get some technical comment on the proposed amendment to Mrs. Jablonski's motion?

MS DAFOE: I just have a question to clarify. You said: within 30 days of the initial request. You mean the initial request for fee waiver, not the initial request for information?

MR. MASON: Yes.

THE CHAIR: Thank you, Ms Dafoe.

Tom, is there someone from your team who can comment on what Mr. Mason is proposing?

MS LYNN-GEORGE: I don't think that the government would have a strong position on this because with most requests for a fee waiver there would be a response within 30 days. It might very well be a much shorter time period. Justice McMahon's decision has made this for the time being the guideline that will be followed regardless. So I don't think it would be a matter on which there would be very strong views.

THE CHAIR: Anyone else from the technical team?

Mrs. Jablonski, did I see your hand?

MRS. JABLONSKI: I was going to ask for advice from the technical team. My final comment would be: asking that a response be provided within 30 days of the initial request for a fee waiver is not an unreasonable amendment then.

THE CHAIR: Tom, do you have anything to add?

MR. THACKERAY: Yeah. I think that that amendment would be reasonable. Public bodies are given 30 days to respond to the initial request for the information, so a determination as to whether or not some of the criteria are met for a fee waiver shouldn't take any longer.

THE CHAIR: Any other comment on the motion proposed by Mrs. Jablonski as amended by Mr. Mason?

MR. MASON: Actually, it's my amendment that needs to be first.

THE CHAIR: Can we not do it all at once?

MR. MASON: Well, if people didn't like my amendment but they liked Mrs. Jablonski's motion, then it might scuttle her motion altogether.

THE CHAIR: You know, if the amended motion is not passed, we can vote on the unamended motion.

MR. MASON: Okay.

THE CHAIR: So the amended motion – correct me if I'm wrong, Mr. Mason – will read that section 93 be amended to clarify that a request for a fee waiver must be made in writing and that the decision of the head must be communicated in writing within 30 days of receiving that application.

MR. MASON: Yeah.

THE CHAIR: That covers the motion and the amendment?

MR. MASON: I think that does. Yeah.

MR. THACKERAY: In the motion is it specifically dealing with the request for fee waiver?

MR. MASON: Yes.

MR. THACKERAY: Okay.

THE CHAIR: Yes. I thought I said that. If I didn't, let the record reflect that the motion is that

> section 93 be amended to clarify that a request for a fee waiver must be made in writing and that the decision of the head must be communicated in writing within 30 days of receiving the request for a fee waiver.

Any comment on that? All those in favour of Mrs. Jablonski's motion as amended by Mr. Mason? It's carried unanimously. Thank you.

Mr. MacDonald, do you have something to say, or were you voting in favour of the amended motion?

11:10

MR. MacDONALD: Well, my recollection, Mr. Chairman, is that you got very indignant – perhaps it wasn't at the last meeting but the meeting previous to that – whenever I did not vote. Now I want to vote in the negative.

THE CHAIR: I apologize.

MR. MacDONALD: Thank you very much.

THE CHAIR: Let the record reflect that the motion was carried, but it was not carried unanimously. I apologize.

MR. MacDONALD: Okay.

THE CHAIR: I think that covers the issue of fees. Anything else that needs to be dealt with, Mr. Thackeray? I think we've answered the questions in the discussion paper.

Okay. The next item that I have on the agenda is exclusions from registries, and this in many ways is the War Amps issue. I take it we tried one round of this on June 25. We didn't get very far. We now have a definitive opinion, from the chair at least, that if it's necessary to make consequential recommendations to other pieces of legislation, those are intra vires of this committee. So that being said, do we want to open up to general discussion before we entertain motions? Did I see your hand, Mr. Lukaszuk?

MR. LUKASZUK: No, Mr. Chairman.

THE CHAIR: From the technical support team, was there anything to add on the issue of War Amps or exemptions from registries?

MR. THACKERAY: You know, just continuing from my earlier comments on this issue, the government submission, recommendation 12, as well as the submission from the office of the Information and Privacy Commissioner, recommendations 5, 6, 7, 8, and 9, are the result of significant consultation that has taken place over the last six to eight months dealing with the issue of access to the motor vehicle database. As I said earlier, we believe that amending the Traffic Safety Act to delete the reference to section 40 of the Freedom of Information and Protection of Privacy Act, which is the disclosure section, establishing specific criteria in the TSA dealing with the release of motor vehicle information, and giving the Information and Privacy Commissioner the power through the Freedom of Information and Protection of Privacy Act to hear an appeal of a decision of the registrar in our view is the most workable solution to having a fair determination as to who should receive access to this database.

THE CHAIR: Finally, Mr. Lukaszuk, I do actually see your hand.

MR. LUKASZUK: Thank you, Mr. Chairman. You're very attentive today. If there are no other discussions on this matter, I do have a motion that I want to bring forward.

THE CHAIR: Are there any questions for Mr. Thackeray on his brief presentation? Mrs. Jablonski.

MRS. JABLONSKI: I just wanted to say that on the previous motion that I made, the basis of that motion was that our Government Services department find a way, and I actually think that they did, so I'm very happy with the results of your recommendations.

THE CHAIR: Any questions for Mr. Thackeray or comments generally on the issue of exclusions to registry information, which, as the members are well aware, is the War Amps issue?

That being said, does anybody have a motion to put forward? Mr. Lukaszuk, I think you indicated that you might have one.

MR. LUKASZUK: Thank you, Mr. Chair. Considering the intricacy of the matter, it's a rather lengthy motion. You may want to put pen to paper so you can reread it after. My motion relevant to this matter would be that the Traffic Safety Act be amended to delete the reference to section 40 of the Freedom of Information and Protection of Privacy Act as it relates to information concerning individuals and prescribe specific criteria for permitting the disclosure of personal information from the motor vehicles registry by the registrar, that a new subsection be added to the Traffic Safety Act allowing a decision of the registrar to be reviewed by the Information and Privacy Commissioner, and 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.

Now that I have everyone confused, perhaps we should bring this matter to a vote.

THE CHAIR: Thank you, Mr. Lukaszuk.

Mr. Thackeray, if I heard that correctly, that was essentially one of the government recommendations in the policy paper; was it not?

MR. THACKERAY: That was essentially recommendation 12 in the government submission to this committee.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Yes. I would just like Mr. Thackeray to tell me in layman's terms how it would work if this motion were passed for review. How would this solve the problem that we've heard about from the War Amps people? How would it give them the information that they need to continue the service? Could you just simplify that and tell me how that would work in view of this motion that's being proposed?

MR. THACKERAY: Mr. Jacobs, the first step would be to develop the criteria, which would be inserted into the Traffic Safety Act, as to when this type of personal information should be or could be released to a third party. Then the third party – let's use War Amps for an example, because they're fairly up front these days. War Amps could make an application to the registrar of the motor vehicle database to seek access to name and mailing address, which they got prior to 1997. The registrar would use the criteria in the Traffic Safety Act and make a decision as to whether or not access should be granted. If access is granted, then a contract would be drawn up between the registrar and War Amps to ensure that there's no secondary use of the information that is being released to War Amps. It would only be for their key tag program.

If the registrar decided against entering into an agreement with War Amps, then War Amps could appeal that decision or ask the Information and Privacy Commissioner to review the decision of the registrar. The commissioner then would have the opportunity to hold an inquiry, allow War Amps to make their presentation, allow others to make representation, and then, based on the merits of the case, make a decision which would be binding on all parties.

MR. JACOBS: Thank you.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. I'd like to get the view of the commissioner's office on the implications of this recommendation.

MR. ENNIS: Well, we've heard the basic thread of the recommendation from Mr. Thackeray. There is another side to this though, of course, and that is the side of the data subjects involved, the citizens or constituents that you represent. The way I'm seeing this motion, it would include a right of appeal to those individuals so that they could take a complaint to the commissioner, request an inquiry by the commissioner, and possibly benefit from an order from the commissioner that would protect their privacy. So there is the ability of individuals to come forward and have their privacy protected. That might mean the commissioner reversing a decision of the registrar in some particular circumstance by order.

The commissioner, I note, has also asked for the power to do a decision de novo, which would mean a decision from the ground up that wouldn't have to take into account the precise decision that had been made by the registrar but would allow the commissioner to redo the decision on factors that the commissioner had established. How this works in practice might be interesting in that there may be the problem of the registrar allowing access to information and access being granted and being operationalized, if I can put it that way, and then individuals coming alive to what they believe to be a problem and taking that problem to the commissioner and saying: I don't want my information going in that direction or this direction or to this particular private investigation company or that particular insurance company or that particular charitable group. So there's some work to be done here in terms of figuring out how the commissioner would respond to that kind of demand from constituents.

MR. MASON: So this motion, if it was passed, would also apply to

private investigators if they wanted to dig up information on someone.

11:20

MR. ENNIS: Well, we've heard in very dramatic terms from the War Amputations of Canada, but the representations we heard from the insurance industry in this room and from the private investigators were in the same vein. They would like to have the question of their access settled somehow. So it would be the same process, and the criteria would have to address not only organizations that do the kind of work, for example, that War Amps does but other organizations that are customary users of motor vehicle information under the current Motor Vehicle Administration Act.

MR. MASON: You mean the insurance industry.

MR. ENNIS: The insurance industry being a major customary user.

THE CHAIR: A supplemental, Mr. Mason?

There's a motion on the floor. If anybody has any further comments, I'd like to hear them. Nothing? Okay. Mr. Lukaszuk has put forward – now, I hope I have this correct – a motion that

> the committee recommend that the Traffic Safety Act be amended to delete the reference to section 40 of the Freedom of Information and Protection of Privacy Act as it relates to information concerning individuals – for example, names and addresses collected for operator and vehicle licensing purposes – and prescribe specific criteria for permitting the disclosure of personal information from the motor vehicle registry by the registrar and also that a new subsection be added to the Traffic Safety Act allowing a decision of the registrar to be reviewed by the Information and Privacy Commissioner, and finally, 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.

Was that it, Mr. Lukaszuk?

MR. LUKASZUK: That's precisely it. Thank you.

THE CHAIR: Mr. MacDonald and then Mr. Jacobs.

MR. MacDONALD: Yes. I have a question that I would like to direct to Mr. Thackeray. If this motion was to eventually become law in this province, for Albertans who did not want to have their information disclosed for any reason, would it be possible to set up a system where when I go to a registry office and apply for a licence or renew a licence, I can simply check off a box that my information is not to be disclosed and where the person would be assured that that information would not be passed on to either the War Amps or the insurance industry or a private detective or any other agent? Can that be done?

MR. THACKERAY: It's my understanding that technically it can be done, but I don't know whether it is affordable to do. That's something I'd have to go back and talk to the folks at registries about and find out what the cost for that option would be. Then you get into the second issue, where I may consent to my information being given to A, B, and C but not to D, E, and F, and that adds another level of cost to the whole system. But I will try to get some information from the registries people and report back to the committee on that issue.

MR. MacDONALD: Thank you. Mr. Chairman, in light of that, would it be possible to table this motion until after we hear?

THE CHAIR: It's possible that we can table it, but we'll have to hear from the members on that.

I thought I saw another hand. Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I was just going to ask the question: as it relates to the recommendation of this committee, assuming that this motion were to pass, what obligation does, I assume it is, the Department of Transportation have to amend their act? Is this committee's recommendation binding on them? Would the committee's recommendation as contained in this motion, if it were to pass, be binding on another department to amend their legislation appropriately?

MR. THACKERAY: My understanding of the process is that the committee will report to the Legislative Assembly. The Assembly will accept the report and then refer it to the government for implementation of whichever recommendations they believe should be implemented.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Any other comment? Okay.

There's a motion on the floor by Mr. Lukaszuk, and there's a suggestion by Mr. MacDonald that that motion be tabled pending some advice from the government with respect to cost for implementing, as I understand, some sort of consent model. Mr. MacDonald, is that fair?

MR. MacDONALD: Certainly on a licence application form or a renewal form there would be just a check.

THE CHAIR: And it would have the ability to consent for their personal information to be released or alternatively to withhold consent. Now, it appears to the chair that if the members are interested in going down that road, that's an entirely different matter than the motion currently put forward by Mr. Lukaszuk. So what I'm saying there is that if Mr. Lukaszuk's motion is accepted, that means that we're doing something much different than the consent model you're proposing. I'm certainly open to being dissuaded on this by the membership, but it would appear to me at first glance that if Mr. Lukaszuk's motion is accepted, the consent model therefore becomes moved and therefore there's no need for the information that you're requesting.

MR. LUKASZUK: Not necessarily, Mr. Chair. We may go ahead with my motion and put it on the table for a vote and if it passes obviously will become part and parcel of this committee recommendation. But Mr. Hugh MacDonald can bring forward another motion on his own initiative that could be parallel to that of mine, saying that even though we have developed this new process where the registrar will have the authority to make a decision to release information and then that decision is subject to the commissioner's review, a person who registers a vehicle can veto that by way of not consenting to the registrar releasing that information in the first place.

THE CHAIR: Thank you, Mr. Lukaszuk. Your point is well taken, so I'll put it to Mr. MacDonald. Was it your intention to at some point put forward a motion that this committee recommend to the Legislature that some sort of consent model be developed regarding release of information from the motor vehicle registry?

MR. MacDONALD: It certainly would be, Mr. Chairman, and I think with our databases now it should not be that expensive a policy. If someone for whatever reason does not want their information to be made public, whether it's for War Amps or for anyone else, they could simply on their application form check it off,

and as the changes proposed by Mr. Lukaszuk went through, those changes would then not apply to that person. If they have a desire to keep their information private, well, then fine; in the future just a simple box check. We're doing it these days for rebates to drought-stricken farmers, just having a check. Perhaps we should entertain using it with driver registrations.

THE CHAIR: I tend to agree with Mr. Lukaszuk that voting on his motion does not preclude the committee providing the information that you've requested, and then if necessary we may propose amendments at some later time. Is that fair?

MR. MacDONALD: That's fair.

THE CHAIR: Okay. Then dealing strictly with Mr. Lukaszuk's motion, are there any further comments, questions, deliberations, or debate? Does everybody understand it, or does the chair need to reread it? Does everybody understand it?

All those in favour of the motion as put forward by Mr. Lukaszuk, please raise your hand. Opposed? It's carried.

That answers question 3 I believe, Mr. Thackeray.

11:30

MR. THACKERAY: That answers the first part of question 3. We'll be talking about question 3 again later on in combination with exclusions and paramountcies.

THE CHAIR: So for purposes of this morning's deliberation if we can then go on to question 11, which I believe is trailblazing new ground. I don't think we've talked about personal information previously. A paper was circulated, and I'm assuming the members all had an opportunity to peruse it. I expect that somebody from the technical team will be making an oral presentation concerning the issue and some of our options.

MS RICHARDSON: That would be me, Mr. Chair. Thank you.

The question before you is: is the definition of personal information in the act appropriate? A minority of respondents, 11 percent, remarked that the definition of personal information in section 1(n) of the FOIP Act was not appropriate in some way. The analysis of the submission paper points out a number of those comments. I won't go through all the comments, but six of the respondents suggested amending the definition to add certain other elements of personal information such as e-mail addresses, photographs, and so on. Five respondents suggested amending the definition of personal information to remove certain elements such as business addresses and business phone numbers. Five respondents felt that the definition needed to be clarified in some way.

In terms of comments the definition of personal information is set out in section 1(n) of the FOIP Act. It means "recorded information about an identifiable individual," and then there is a list which is intended to be an illustrative list, not an exhaustive list, of what kinds of characteristics make up the definition of personal information. As I said, it's illustrative and not an exhaustive list. So you'll see for example in section 1(n)(i) that personal information includes "the individual's name, home or business address or home or business telephone number." Certainly in various orders that the Information and Privacy Commissioner has given, there are other types of characteristics that have sort of added some meat to the definition. For example, facts and events discussed, observations made, the circumstances or context in which information is given as well as the nature and content of the information may also be personal information if there is shown to be recorded information about an identifiable individual. In a number of commissioner's orders and investigation reports many other types of information have been found to be personal information because they are recorded information about an identifiable individual. Things such as signatures, home fax numbers, e-mail addresses, third party's initials, official designations, information concerning the execution of a warrant for a third party, a student's grade, an access request, health and medical information, and a person's position or affiliation with an employer have been found to be personal information by the commissioner.

However, if an individual supplies information such as a professional or expert opinion in the course of their employment and as part of their employment responsibilities, the information will not be that individual's personal information. Part of the definition of personal information is that if you make a comment or an opinion about somebody else, it is that other person's personal information, not yours. So public bodies have to consider the context of a record to determine whether an individual may be identifiable to an applicant who may or may not be aware of a given set of circumstances.

Now, there is a policy option paper on the use and disclosure of business contact information, which is going to be discussed in a moment, and there is also a discussion paper under local public body issues about assessment role information, because there were comments raised about that part of the personal information discussion.

So, Mr. Chair, the question that was posed would be: should the definition of personal information in section 1(n) of the FOIP Act be amended, either by adding additional elements of personal information to it or by removing certain elements of personal information? But I think that that question may not be able to be answered before the discussion of the policy paper, Business Contact Information.

THE CHAIR: Thank you, Ms Richardson.

Any questions regarding the paper or the presentation thus far? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. So that's just basically expanding the information, like keeping up with the times so to speak, with technology such as e-mails and things of that sort?

MS RICHARDSON: Well, I think, as indicated, the current definition is not exhaustive, and certainly in various orders the commissioner has really written in to some extent other elements; for example, e-mail addresses. So the question is whether or not the committee would recommend adding to it further, making it a much more inclusive list, or leaving it the way it is.

THE CHAIR: Does that help, Mr. Masyk?

MR. MASYK: Okay.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. Could someone on the technical committee offer an opinion as to whether or not you think this list is comprehensive enough, given the fact that the availability of information today and what's going on in our modern society, certainly in my mind at least, creates some concern about, you know, are we protecting personal privacy enough? I guess basically I'm just asking for an opinion as to whether or not the people who deal with this information on a regular basis feel that we are protecting privacy. Or is there a need, in your opinion, to expand the definition and make it more comprehensive?

THE CHAIR: Mr. Thackeray, who from your team should take on that philosophical question?

MR. THACKERAY: I feel philosophical this morning. I guess, Mr. Jacobs, in my view whenever you define a term in a statute by listing a number of attributes, you always risk not listing them all. That's why, I believe, Linda said that the listing under the definition of personal information is illustrative, not exhaustive. The federal government, when they passed the Personal Information Protection and Electronic Documents Act, basically just defined personal information as information that can identify an individual or something. That's a very layman's view of what they said, but they didn't give an illustrative or exhaustive list of characteristics that would define personal information. I don't know if that helps you or made things worse.

MR. JACOBS: Well, it sounds like not only are you a philosopher; you're also a politician. But realizing the question, I appreciate the response, Mr. Chairman. Thank you.

THE CHAIR: Thanks, Mr. Jacobs.
Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. Mr. Jacob's question to Mr. Ennis, please.

THE CHAIR: Mr. Ennis, did you want to provide a supplement to Mr. Thackeray's answer?

MR. ENNIS: We all have to read the act more or less the same way I suppose. We haven't found a difficulty in this area. This hasn't been a stumbling block for the act or a hard thing to explain to people, because the definition actually includes a bit of test: not only is it this kind of information, but does it point to an individual? It seems fairly clear, when you're reading information, whether or not you can point to an individual from what you are reading.

There are some cases where additional safeguards have been added; for example, in statistical reporting when very small groups are being reported. Let's say there's what the statisticians call a cohort, a cohort of five people, being reported in a test result or whatever. There are some conventions about not reporting that particular test result because there are so few people. You may not be able to identify the individual from the result, but if you had a bit of inside knowledge, you might be able to isolate the individual. So there are some finer tests that are applied to information just as a matter of good practice, but generally we've seen this list as pointing the way to the kind of information that would identify an individual, and it hasn't been operationally a hard thing to do.

11:40

MR. MASON: Okay. Thank you. That's helpful.

Mr. Chairman, another question is: should people's genetic information be included in the list? I see that it is "inheritable characteristics," but I'm thinking about actual DNA.

MR. ENNIS: Mr. Mason, this takes us to a very unusual point of philosophy. You and I both have genetic information. My genetic information is information about my mother and my father. Together it's me, individually it's them, and I guess you could factor it back to their mothers and fathers along the way. It's a very interesting problem that we actually carry the genetic information of third parties in our own genetic information.

MR. MASON: So we're all covered by the act.

MR. ENNIS: I appreciate that point.

Genetic information normally appears in the realm of health information. At least it has up to this point, but it could some day surface in the worlds of insurance, finance, human resources, lots of places where we might want to think twice about sending it. Currently genetic information would normally occur in the health world, and that would be governed in Alberta by the Health Information Act and has fairly ironclad protection in the Health Information Act. It would be unusual to see a public body under the FOIP Act holding genetic information. I think it's conceivable that, for example, the Research Council or someone might have genetic information, but likely they would have gone through a testing protocol that would have eliminated the identity of the individual from that information or somehow safeguarded the identity of the individual. But the point is taken: genetic information is another kind of identifying information and possibly the most invasive of all.

THE CHAIR: A supplemental, Mr. Mason?

MR. MASON: Well, I just think that this is potentially significant. I don't think it's just health organizations that could ultimately be using DNA information. It's all kinds of organizations, and I just wonder if we should maybe not deal with it today, but maybe we should come back to it, Mr. Chairman. I'd sure like to know more about this area, because if we're trying to be forward-looking with the legislation, this is a piece that I think we should address.

THE CHAIR: I have a couple of names on my speakers list, and then we'll come back to that. Okay?
Mr. MacDonald.

MR. MacDONALD: Yes. I don't know Mr. Mason's genetic background, but he has an ability to read minds because I was looking at the same definition of 1(n)(v), "inheritable characteristics."

Certainly since this act has become law in this province, genetic information and the tracking of that information has moved forward at a very rapid pace. If we look at the insurance industry, for instance, regardless of whether we go back 400 years with floods, with war, it has prospered. The life insurance industry has prospered, and I believe that they can prosper without knowing the information.

With respect to Mr. Ennis and the Health Information Act I think that now is the time that we take a look at that definition and consider excluding genetic information. There are many families who have, unfortunately, characteristics or tendencies towards certain types of diseases, and that's no one's business. I think we may have a unique opportunity here at this committee to perhaps deal with this, and if the experts here could provide a definition of what is considered an inheritable characteristic, I would be very grateful, and if we could somehow consider what has happened in the last 10 years in the medical or the scientific community and apply it to this act, I think we would be doing the citizens of this province and the families of this province a public good.

Thank you.

THE CHAIR: Mr. Thackeray, who among you is a genetics expert?

MR. THACKERAY: We're looking it up right now, Mr. Chairman.

If I could I ask a question of Mr. MacDonald.

THE CHAIR: Please.

MR. THACKERAY: You were suggesting, I believe, that genetic information be included in the definition of personal information.

MR. MacDONALD: Well, let's first find out, Mr. Thackeray, whether it is included now or whether it is excluded, and if it is included, I believe we should deal with this in light of the advances in genetic mapping. My family or anyone else's family history is their business. I can see the day coming where an applicant could go before a life insurance company and that application be denied because of: well, so-and-so, your aunt, your uncle, whatever, perhaps died of a certain disease. I don't think that is what we need to do in this society with that information, and if we could somehow plug a loophole here, I think we should entertain it.

Thank you.

THE CHAIR: Do we have an answer or an attempt thereat?

MS LYNN-GEORGE: We've done a lot of research on genetic information, also biometric data. What we've assumed is that DNA is covered under inheritable characteristics. Biometric data, incidentally, is not as clearly covered within this present definition of personal information. The real, I guess, guiding principle behind perhaps not making a recommendation in this area was that there is so much information that could be included. One of the areas that's been rather problematic recently has been things like an IP address – that's the address of your computer – and whether that's personal information. There are a lot of emerging issues, and the question really has been how to deal with these emerging issues without unintentionally appearing to be excluding something from the definition simply because it hasn't been added in. We could certainly provide some more information on DNA and the state of legislation, whether it's beginning to include DNA or not and what the implications might be.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I have a comment and then I have a question, if you would allow.

THE CHAIR: I will.

MR. JACOBS: It seems to me that in discussing personal information and all the consequences and effects, we could spend a lot of time on what should be and what shouldn't be. Certainly I believe we should protect people's personal information, but it seems to me that motion 10 in our government recommendations simplifies this process by amending the act to define what information would be restricted to business information. You know, I want to put that on the table, that we may want to talk about that also before we start getting into too much philosophy on DNA and so on and so forth. I offer that as a comment only.

My question relates to comments that were made earlier in this paper on page 3, and I'd like some clarification on this. You know, I'm a little confused as to exactly how I could be identified by what I say.

> Public bodies need to consider the context of a record to determine whether an individual may be identifiable to an applicant who may or may not be aware of a given set of circumstances.

The sentence previous to that:

> However, if an individual supplies information, such as a professional or expert opinion in the course of their employment . . . the information will not be that individual's personal information.

Could someone from the technical committee please clarify that information and maybe give me some examples so that I could understand that better?

11:50

MS RICHARDSON: Maybe I can help with that. There are two different points actually here. They look like they're related, but they're not supposed to be necessarily related.

The first one, as I said, is that normally if I give an opinion about you, my opinion about you is your personal information. I think the distinction that's being made here is that if an individual is supplying a professional or expert opinion in the course of their employment – usually if I give an opinion, for example, about a program within my employer's jurisdiction, then that would be my opinion, but if it's a professional or expert opinion that's part of my employment responsibilities to give, then that wouldn't be considered my personal information. So that's just sort of dealing with that one aspect.

Then the next point is that public bodies need to consider the context of the record to determine whether or not the recorded information would actually identify an individual. Sometimes the name of an individual may reveal their gender. Sometimes a set of circumstances that is part of the record might reveal the identity of an individual that you're trying to protect.

So public bodies have to look very carefully before they release records in terms of what the context is and whether there's other information that they might also have to sever because that would also reveal the identity of the individual.

MR. JACOBS: Supplementary. Who makes those kinds of decisions?

MS RICHARDSON: Well, in an access request public bodies are reviewing records before they're released and trying to determine, first of all, if there is personal information in the record. They'd have to look at the entire record in the context. But it's more than that. The second part of that is that it may be personal information, but then they have to make the determination of whether or not the disclosure of that would be an unreasonable invasion of the individual's personal privacy. Then that takes them to section 17, and they have to go through an analysis of that section. So it isn't just whether it's personal information; it's whether or not it would be an unreasonable invasion of personal privacy to disclose that.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Does that help?

MR. JACOBS: Yes.

THE CHAIR: I don't have any other speakers on my list. Does anybody else want to comment generally before we deal with the business at hand or put questions to the technical team?

Mr. Mason had suggested that we table this question for some time to get further information regarding genetics and DNA, a position that seems to have the support of Mr. MacDonald. Do we need to put that into a motion? How does the membership feel about that, or can we deal with this question now?

MR. MASON: Mr. Chairman, maybe I can just get some guidance from yourself. I'm quite aware that what the act covers is information within the possession of the government and public bodies and it doesn't govern, for example, what insurance companies might require of somebody before they get a policy, and I entirely agree with Mr. MacDonald on that point. I think that's something that ought to be legislated. To have your DNA scanned before you can get a life insurance policy I think is a very likely move on the part of insurance companies, but I'm not sure that it falls directly under our mandate, so I'm really asking for direction. I do think that genetic information is an important, emerging issue, and if the committee feels that it would be worth while to study it further, then

I would be prepared to make a motion asking for a report from the department.

THE CHAIR: I'd like to offer you guidance. Unfortunately, I'm at a bit of a loss. Mr. Thackeray, can you help me?

MR. THACKERAY: I guess a question to Mr. Mason. Would your intent be to have the committee send a message by including DNA, or genetic information, specifically as one of the illustrative parts of the definition of personal information?

MR. MASON: Not to send a message, but, you know, I do have a real concern about this information. It's going to become, I think, much more commonly traded information, collected and used information. Just how we ought to deal with it in terms of this legislation is not something I have exactly figured out, other than I do believe that it should be included, not to send a message but just for greater clarity. I think that at a minimum it should be included in the list, and if there are other implications that the administration or the commissioner's office feels the committee ought to consider so that we have forward-looking legislation, then I would like to get another report from them. I see Mr. Ennis is nodding his head. I don't know.

MR. ENNIS: The question of whether or not subsection (v), "the individual's fingerprints, blood type or inheritable characteristics," includes the considerations that you have in mind is one that we really should look at at this point and see whether it would be instructive to add a distinct mention of DNA. That's something that we could take back to the office and, at least from our perspective, have a view on I think fairly quickly.

MR. MASON: Okay. Mr. Chairman, then I will move that we request an additional report from the department and the commissioner's office with respect to DNA information and that when that comes back to the committee, we consider it at that time.

THE CHAIR: I accept that motion. Similar to what Mr. MacDonald requested some time ago, we were able to deal with the question in a larger sense and come back to his matter should it be necessary. I suspect we can do the same thing here. Or do you disagree with that?

MR. MASON: I'm not quite sure what you mean, Mr. Chairman.

THE CHAIR: Well, I think that with respect to the business record issue that's put forward in the policy paper, we can address that and then come back to your genetics/DNA issue once we get more information on that.

MR. MASON: Sure.

THE CHAIR: Okay. So the motion is that

> we request from our technical team some more information regarding the implications of FOIP and genetics, specifically DNA information, and that we revisit that issue if we feel necessary once we're in receipt of that information.

That fair? All in favour? Sorry.

MR. MASYK: Go ahead; go ahead.

THE CHAIR: Oh, no. Go ahead, Mr. Masyk.

MR. MASYK: I was just going to make a motion on the information excluding what Mr. Mason had to say about the other part of it.

THE CHAIR: Okay. We'll come back to that.

MR. MASYK: Okay.

THE CHAIR: Thanks.

Okay. I think I fairly captured Mr. Mason's motion. All in favour? Anybody opposed? It appears to be carried unanimously.

Now, dealing with the broader question of personal information, is there any further discussion? It sounds like Mr. Masyk wants to make a motion unless there's further discussion regarding personal information. Mr. Masyk.

MR. MASYK: Thank you, Mr. Chairman. I'd like to move that the act be amended to allow for routine use and disclosure of an individual's name, business address, business telephone number and fax number, business e-mail address, and other business contact information. That would be in line with what would normally be on a regular business card.

THE CHAIR: Okay. There's a motion on the floor put forward by Member Masyk. Any questions for Mr. Masyk? Mr. Thackeray.

MR. THACKERAY: Mr. Chairman, the motion by Mr. Masyk deals with the policy option paper that was prepared dealing with business contact information.

THE CHAIR: Yes. I see that it's essentially option 3.

MR. THACKERAY: Yes. Perhaps if the committee members are interested we could just give a brief overview or, looking at the time . . .

THE CHAIR: How brief? Less than five minutes?

MS LYNN-GEORGE: I think maybe a little more than five minutes.

THE CHAIR: Okay. Well, then, unless there's great objection, the chair would suggest that we break until 1 o'clock. Any problems? [interjection] We're adjourned till 1 p.m. Thank you.

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

THE CHAIR: Okay. If we could reconvene, please. I believe that when we broke for lunch, there was a motion on the floor put forward by Mr. Masyk regarding an amendment for personal information, and I believe, Ms Lynn-George, that you wanted to discuss that.

MS LYNN-GEORGE: The business contact information, yes. I just wanted to go through some of the key parts of the policy option paper. This paper considers the issue of business contact information, which has been raised by various public bodies. It's an issue on which it's been suggested there's a need for some relaxation in the application of the rules governing the collection, use, disclosure, retention, and protection of personal information. It's also been suggested that all that may be needed is more consistency in the application of the existing rules. At the same time, there is some concern that changes to the act may have some unintended consequences in terms of the disclosure of information that might fall within the definition of business contact information that might in certain contexts be quite sensitive.

Business contact information is commonly found on an individual's business card but may also appear on a card with other personal information such as the individual's educational credentials and/or business and professional designations. In addition to

situations where business cards are collected, business contact information may be collected by public bodies when a representative signs or is CCed on a letter on behalf of an organization, where a representative is in a role that involves promoting their organization and themselves as a contact, where an organization identifies an individual as a contact person in a publication or directory or on a web site, or where an agent represents a client to a public body and provides his or her own contact information. This could be a lawyer or a tax representative, an accountant. This kind of information is frequently found in stakeholder, enterprise, or contact databases, which may be stand-alone computer applications or may be integrated with other business electronic information systems, or it may be maintained in manual form, such as in a Rolodex file.

Under part 1 of the FOIP Act, disclosure of an individual's personal information, including educational or employment history information, is considered an unreasonable invasion of the individual's privacy unless the public body determines that disclosure is not an unreasonable invasion of privacy under section 17.

Under part 2, if information falls within the definition of personal information, then all the rules apply to it with respect to collection, use, disclosure, retention, correction, accuracy, and security of the information.

So how does it work? Under part 1, section 17 is the relevant section of the act, and it states that "the head of a public body must refuse to disclose personal information . . . if the disclosure would be an unreasonable invasion of a third party's personal privacy." Section 17(2) defines when disclosure is clearly not an unreasonable invasion of personal privacy. That would be in cases, for example, where the third party has consented or where there is some legislation that authorizes or requires the disclosure. Also, in 17(2)(j) there's a relatively new provision that allows for the disclosure of certain information such as class lists and attendance lists for public functions if it's "not contrary to the public interest" or contrary to the wishes of an individual. That particular provision has a test for "not contrary to the public interest," which was something that was added in the last amendment act.

1:15

Section 17(4) then sets out the types of information for which disclosure to a third party would be presumed to be an unreasonable invasion of privacy. There are a number of types of information that fit within that category; for example, information relating to an individual's employment or educational history.

Then section 17(5) sets out some circumstances that may be relevant to making the decision. So there are circumstances that weigh in favour of disclosure; for example, if disclosure would be desirable "for the purpose of subjecting the activities of the . . . public body to public scrutiny." There are other circumstances that weigh against disclosure; for example, if disclosure may unfairly damage the reputation of a person referred to in the record or if an individual would be exposed unfairly to financial or other harm.

It's a common practice in many public bodies to collect business cards at meetings and to add the business contact information to mailing lists for the distribution of various publications. Notice of this kind of use may or may not be given when business cards are collected, and many local government bodies also create business directories based on information received about business owners or operators from business licence applications. Some of the local public bodies might request consent to add this information to a directory. Others would consider it a consistent use and just go ahead and use it in this way. The government of Alberta recognizes the legitimate operational need to access the business contact information of its employees, and it puts contact information in a published directory and on the government of Alberta web site. This would not be the case for employees of stakeholder organizations or other businesses.

The commissioner has given some guidance on this matter. He has said that names and business addresses are personal information but that the professional and business context in which records were composed is a relevant circumstance in determining whether disclosure would be an unreasonable invasion of privacy. Other jurisdictions have fairly similar legislation, but the B.C. act has just been amended to state that the definition of personal information does not include contact information for employees of public bodies. In the Ontario act an individual's name on its own is not personal information, so it's not until there's other information added to it that it falls within the definition of personal information. But both the B.C. and Ontario Information and Privacy Commissioners have held a common view on business contact information, ruling that it's not an unreasonable invasion of personal information to disclose business contact information provided that it's not intertwined with other information such that the distinction between personal information and business information is lost.

Now, the problem with this issue is that it seems fairly reasonable that business contact information should be disclosable on a routine basis, but there are some cases where that would not be the case. These provide test cases of a sort for any kind of proposed amendment, and some of these are listed here in the paper. The first one has to do with maintaining the anonymity of a FOIP applicant. If somebody makes an application for information and they put in their contact information, which is there for the purpose of allowing the public body to get in touch and ask questions about the request, that should not be routinely disclosable.

Another case has to do with sole proprietors. We've heard from public bodies that there is a need to make a decision on a case-by-case basis as to whether disclosure of business contact information for sole proprietors would be reasonable, and the example that's been given is that of foster parents. If somebody requested a list of foster parents who are sole proprietors, the public body would have to determine whether disclosure of that information would reveal personal information of other individuals; for example, the foster children in their care. In that case the public body would have to consider all the relevant circumstances including potential uses of the information. For instance, the applicant may be an association representing foster parents or a nonprofit service agency that provides support services to foster care parents, and in that case it might seem very reasonable to disclose a list of foster parents in a particular area. On the other hand, the applicant may be a noncustodial parent who is trying to obtain information about a child, perhaps in the case where there might be a restraining order or something.

The other point that's being raised has to do with e-mail addresses. Individuals representing businesses often put their e-mail addresses on their business cards, but they don't necessarily expect that information to be disclosed in the same way as perhaps a telephone number or a business address. They may not want to find their e-mail address, particularly if it's a sole proprietor and it's a home e-mail address, placed on a directory on a public body's web site. The public disclosure of an individual's e-mail address on a web site invariably results in an influx of unwanted SPAM, so perhaps there is a need for some special consideration of e-mail.

Under the protection of privacy in part 2, section 39 governs use and section 40 governs disclosure. If an individual provides either their actual business card or their business contact information to a public body official in a business context, the official may accept the card and pass along the information to others in the public body and even externally, but basically the rule would be that it can only be for purposes consistent with the reason that the information was provided. So there's a bit of a discussion here about the use and

disclosure of business contact information for a consistent purpose and what that might include.

A really significant issue that has been raised in government is the use and disclosure of business contact information for the purpose of electronic directory services. Within most large organizations, including the government of Alberta, information technology services are co-ordinated centrally, often with service dedicated to specific functions such as electronic mail and web applications. This arrangement allows for consistent technology standards across departments, which promote efficiency, but more importantly the arrangement allows for high levels of security against threats to the IT infrastructure. For example, the centralization of certain IT services allows an organization to deal rapidly with viruses, worms, and other threats to the e-mail system. For such a system to operate, there is a need for common directory services, and this means that e-mail addresses for a number of departments may reside on a single server. A common directory might include not only the e-mail addresses of employees but also of partners, stakeholders, and clients, and in most cases all of these people would interact with more than one department and have an expectation that transactions that are required for the purpose of electronic information systems, such as authentication or certification for a security system, will only be required once. A common directory facilitates this kind of economy of effort.

In order to facilitate the co-ordination of services, information such as e-mail addresses and names of clients or other individuals may need to be shared across public bodies. This has raised concerns with respect to the interpretation of what constitutes use and disclosure for a consistent purpose and whether this would extend to purposes relating to IT systems. It's been argued that the ability to routinely use and disclose business contact information for the purpose of co-ordinated IT services has become increasingly important to the operations of government, especially in an environment of electronic service delivery.

We have some policy options here, and they attempt to address the issues surrounding the use and disclosure of business contact information while taking into consideration the consequences of each option for some of the situations that are identified in this paper: sole proprietor, the FOIP applicant, et cetera.

The four options. First, maintaining the status quo. The advantage would simply be that it would retain the current level of privacy protection under part 1 and part 2. The disadvantages are that this option may lead to inconsistency or continued inconsistency perhaps in the way that public bodies deal with FOIP requests that contain business contact information and in how they deal with requests for disclosure of that information under part 2 of the act. It may also not respond to the operational and business needs of both the representatives of businesses and of public bodies that collect this kind of information. So that's option 1, maintaining the status quo.

The second option is to amend the definition of personal information to exclude business contact information. This has come up as an option particularly as a result of PIPEDA because that's what they've done, and it's been suggested that a consistent approach in the public- and private-sector legislation might be helpful. PIPEDA specifically excludes the name, title, or business address or telephone number of an employee of an organization. That exclusion doesn't extend to e-mail addresses. However, it should be recognized that there is a significant difference between public- and private-sector legislation. Under PIPEDA applicants can request only their own personal information; they can't request the personal information of third parties as they can under public-sector legislation. Anything to do with access to mailing lists and other databases would not be an issue under private-sector privacy legislation. Also, under PIPEDA organizations operating in the private sector have to maintain good business relationships with their customers and business associates, so they would be very strongly motivated to manage their business contact information prudently and appropriately.

The advantages of excluding business contact information from the definition of personal information would be that it might bring some additional clarity and consistency to the application of the act. That would also be the case under part 2 of the act, and it would be consistent with the general expectations of business representatives who provide this kind of information to public bodies. The disadvantages are that it would not protect the anonymity of the FOIP applicants or sole proprietors, so there would be no ability to exercise discretion once it was removed from the definition of personal information.

1:25

The third option is to amend section 17. That's the exception for the disclosure that could be harmful to a third party's personal privacy, and this is the option that was recommended in the government submission. Perhaps, Tom, would you like to speak to the government's submission at this point?

MR. THACKERAY: Finish.

MS LYNN-GEORGE: Finish. The main advantage of this option is that it would provide a little more certainty under part 1, and it would also permit a public body to routinely disclose some business information under part 2. The disadvantages are perhaps that public bodies would have a little less discretion with respect to the use and disclosure of this kind of information, and it would change the status quo in terms of the level of privacy protection granted to business contact and other related information.

I just would mention that we've given two examples of ways in which the act could be amended to achieve ways of implementing option 3. We haven't suggested one or other of these specifically. It's a case where if that's the option that the committee wants to choose, we need to get some advice from Legislative Counsel and perhaps liaise a bit with the Information and Privacy Commissioner's office on the most workable way of implementing that recommendation within the legislation itself.

THE CHAIR: Any questions for Ms Lynn-George before Mr. Thackeray speaks on the government's policy position?

Mr. Thackeray.

MR. THACKERAY: As was indicated by Jann, option 3, which is to amend section 17 of the Act to allow for the routine use and disclosure of an individual's name, business address, et cetera, is similar to recommendation 10 in the government's submission to this select special committee.

When we developed this option, it was in consultation with ministries across the provincial government. It was felt that in – these are my numbers – 90 to 95 percent of the cases disclosure of business contact information is not an issue, but in those other 5 to 10 percent of the cases it is. Therefore, we felt that there had to be something put into the legislation that could protect those sole proprietors, the foster parents, or those businesses that didn't necessarily want their information to be routinely disclosed. That's why we're suggesting section 17, and as Jann pointed out, the exact mechanism, whether it's 17(2), 17(5) – if the committee was to recommend that this option be pursued, that would be the basis of discussions between information management, access, and privacy, Leg. Counsel, and the office of the Information and Privacy Commissioner to determine the best balance.

THE CHAIR: Any questions for Mr. Thackeray? Ms Carlson.

MS CARLSON: Can we have the motion read once again, please.

THE CHAIR: Gary, do you remember your motion?

MR. MASYK: That the act be amended to allow for routine use and disclosure of an individual's name, business address, business telephone and fax numbers, business e-mail address, and other contact information.

THE CHAIR: Having heard the presentation from Ms Lynn-George and Mr. Thackeray, do you have anything to add or detract from your motion, Mr. Masyk?

MR. MASYK: No. It's fine.

THE CHAIR: Any discussion on the motion? Mr. Jacobs.

MR. JACOBS: I'm not quite clear yet on the amendment procedure here as outlined in your presentation under 17(2) and 17(5). Are you saying that if this motion passes, the amendment would be in the context of 17(2) and 17(5), or would it be a choice?

MS LYNN-GEORGE: It would be one or the other or possibly both.

MR. JACOBS: Will that be debated by this committee, or was that somebody else's decision?

MS LYNN-GEORGE: Well, it's just a case of working with a drafter on how you can implement a recommendation within the structure of the act and then allow for the exceptional cases. If it was simply the case that the committee recommended that 17(2) be used and it should not be an unreasonable invasion of a third party's personal privacy to disclose business contact information, that wouldn't give you any room for manouevre at all. So it needs something to provide some area of discretion, and whether you do it by adding a condition to 17(2) as we saw in 17(2)(j) – that was the amendment that was made last time, where it had, "not contrary to the public interest," not against the wishes of the individual, something to allow a public body to take into consideration some of these other factors. So 17(5) would do that quite clearly, but it may not provide sufficient guidance in terms of saying: normally, routinely, it would not be an unreasonable invasion of personal privacy to disclose business contact information.

So if the third option is the option you choose, it would just be a matter of finding a way to draft it that would provide guidance and still allow an area of discretion.

Would that be your reading of it, John?

MR. ENNIS: Mr. Chairman, if I might add to that. The commissioner has commented on this point in his submission with a clear preference for 17(5), which is the contextual test as to where the information falls, as opposed to placing it in 17(2), where it becomes an absolute counter-exception to the privacy protection exception. So if something were in 17(2), there would be no ability to refuse to disclose it.

I should point out, Mr. Chairman, that this is an important area in the act in that in the last three-year review, chaired by Mr. Friedel, the amendment that brought about the importance of section 17, sometimes called the Friedel amendment, brought some common sense to the application of the act in that it created a link between the protection of privacy rules in part 2 of the act and the access rules in part 1. Prior to that there was no linkage except common definitions.

If I can risk a short metaphor, if you imagine a building in which there is a restaurant and there is a private residence with a kitchen, Mr. Friedel's amendment and the amendment of the previous committee set up a passageway between the private kitchen and the restaurant in the sense that in part 1 of the act are the rules for how information is provided to outsiders, to customers under the act. In part 2 it's how public bodies themselves use the information. The predecessor committee to this committee set up a way that you could test whether something was reasonable to use within government and to disclose by public bodies by testing it out against part 1 of the act. So they set up this kind of passageway between the kitchen and the restaurant, if I can continue the analogy.

Over the lunch hour we were talking about: what kind of instructions do you give to teenagers if you really want them to get something done? How specific do you have to be? That's the same discussion that we're having here. I don't want to patronize public bodies by saying that they're like teenagers, but some of them are, and some of them occasionally want very direct guidance as to how to do something. The options that are facing the committee here are: tell them that in every case business contact information should be accessible to applicants under part 1 of the act and thereby usable by public bodies under part 2 of the act so that they could disclose it under part 2. It would not be an unreasonable invasion of somebody's privacy to disclose their business contact information. What the commissioner is saying is that there might be some things that are on the restaurant menu that you wouldn't necessarily automatically want to have used in the kitchen.

1:35

So the commissioner is saying that he would prefer to see the test in section 17(2) be a context test of some kind. Why was this information provided in the first place would likely be the key contextual question. How did the public body come upon this information? Was it during normal business activity, or was it during a fraud investigation? Was it during some kind of matter, potentially even a private matter, between, let's say, the president of a company and a government body but the president chose to use company letterhead to write the information on? That happens. We see people use company faxes to send very personal things on. So the commissioner is looking for some ability on the part of public bodies to assess the information, assess where it came from, how it got there before deciding that it's automatically or routinely available or should be protected.

THE CHAIR: Thank you, Mr. Ennis.

Ms Carlson.

MS CARLSON: Thank you. I've a comment and then a question to Mr. Ennis.

As I understand it, if we support Mr. Masyk's motion, which I'm quite happy to do, then we also have to make a suggestion as to which section gets amended. If that's wrong, I need someone to clarify that for me.

My question. Mr. Ennis, you said take the option to amend section 17(5), but on our paper there's also an option to amend both sections 17(2) and 17(5). Why would we not do that one?

THE CHAIR: Let me take the first shot at this. I think we can do this a number of ways, Ms Carlson. If we are inclined to support Mr. Masyk's motion to amend section 17, we can leave it at that. If we choose to allow what I think Ms Lynn-George was suggesting, that we leave it to further consultation between Government Services and the office of the Information and Privacy Commissioner and the folks at Leg. drafting to determine the appropriate way to fulfill that recommendation, that's one option. Alternatively we can

recommend that either section 17(2) be amended or that section 17(5) be amended if we feel strongly one way or the other. Or – you're quite right – we could recommend that both sections be amended if we believe that we have the technical expertise to give the guidance to those who will ultimately be drafting. All of that being said, it's obviously up to the government whether or not they're going to take our recommendation and put it into motion.

Mr. Ennis, did you have anything to add to that?

MR. ENNIS: No. I think that summarizes it quite well. Thank you.

MS LYNN-GEORGE: I just had one perhaps qualification to make with respect to John's comments. Just on 17(2) the point that we had wanted to make was that there could be some condition added so that it wouldn't be an unreasonable invasion to disclose that business contact information, and the analogy was with 17(2)(j). It could be done in a number of different ways, but we wouldn't be saying that that option would foreclose any ability to exercise discretion. That's not what is being proposed here.

THE CHAIR: Anything further on this point?

Okay. Well, then we're going to entertain Mr. Masyk's motion in several parts. Just as the chair suggested, we're going to deal with it on its merits, and if it is passed, then we will deliberate as to whether or not we want to give further guidance to the Legislature with respect to how that amendment might be accomplished.

The motion put forward by Mr. Masyk is that

> the FOIP Act be amended to allow for the routine use and disclosure of an individual's name, business address, business telephone and facsimile numbers, business e-mail address, and other business contact information.

Do I have that right, Mr. Masyk?

All those in favour of Mr. Masyk's motion, please raise your hand. All those opposed? It's carried.

Now, with the motion being carried, we can or do not have to deal with the options as to how the Legislature and the government might implement Mr. Masyk's passed motion. We can certainly entertain any ideas with respect to the three options: 17(2), 17(5), and the third option being both 17(2) and 17(5). So the floor is open for commentary on this matter.

MS CARLSON: I'm quite happy to leave it up to those with more expertise to make that decision.

THE CHAIR: I don't believe, then, that we need a motion. I think we'll just leave it at that.

I believe that answers question 11, Mr. Thackeray.

MR. THACKERAY: Yes, it does. Thank you.

THE CHAIR: We could go on, then, to question 12 on privacy. Notes and a policy option paper were distributed. Ms Lynn-George, will you be commenting on this?

MS LYNN-GEORGE: Yes.

THE CHAIR: You seemed somewhat startled.

MS LYNN-GEORGE: It was last week. I'd forgotten about it.

Okay. The question that was asked was:

> Are the rules in the Act that control the manner in which public bodies collect, use and disclose personal information sufficient to protect the privacy and security of sensitive personal information?

A minority of respondents, 10 per cent, remarked that the act does not protect the privacy or security of personal information in some way. The comments followed several themes. There are quite a lot of comments here, and I'll try to sort of deal with them fairly briefly and coherently.

The first relate to collection of personal information. That's sections 33 and 34. Section 33(c) permits a public body to collect personal information when "that information relates directly to and is necessary for an operating program or activity of the public body." Most often legislation will give authority for a particular program or activity without authorizing the collection of the specific personal information. Public bodies must then determine the exact elements of personal information which they need to administer a particular program and design collection instruments to obtain this information and no more than this information. Essentially the public body has to have a need to know.

Section 34(2) sets out rules that a public body must follow when it's required to collect personal information directly from an individual. So the public body must inform the individual of the purpose for which the information is collected, the specific legal authority for the collection, and provide some contact information about somebody in the public body who can answer questions. The requirement to provide this notice recognizes that an individual should have the right to know and understand the purpose of the collection of personal information and how the information will be used. It also allows the person to make an informed decision as to whether or not to give personal information where there's no statutory requirement to do so.

If there are no questions on the collection of personal information, I'll go on to accuracy and retention.

THE CHAIR: Any questions to Ms Lynn-George on the collection of personal information, her presentation thus far?

Okay. If you can continue, please.

MS LYNN-GEORGE: Now, section 35 of the act goes to accuracy and retention. Section 35(a) provides that if a public body uses an individual's personal information

> to make a decision that directly affects the individual, the public body must
>
> (a) make every reasonable effort to ensure that the information is accurate and complete.

The meaning is interpreted quite broadly. A public body makes every reasonable effort when it's thorough and comprehensive in identifying practicable means to ensure the personal information used to make a decision is accurate and complete. There are no fines if a public body makes an error in relying on inaccurate information.

Yes?

MR. JACOBS: A question.

1:45

THE CHAIR: Go ahead, Mr. Jacobs.

MR. JACOBS: Could you give me an example of section 35(a)? Could you give me a real example of how that would work and what would be involved?

MS LYNN-GEORGE: Well, if somebody were to put in an application for a benefit, for example, and the benefit was perhaps dependent on having some verification of financial status and the public body collected that information indirectly from another public body perhaps, then they would have to take steps to make sure that they were getting information that was current. So they weren't going to another public body and collecting information and it was out of date and in such a way that it might have a negative effect on the assessment of the application for the benefit. That would be a fairly typical example.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Thank you, Ms Lynn-George. If you could continue.

MS LYNN-GEORGE: Section 36 is about correction of personal information. Under section 36(1) an individual who believes his or her personal information contains an error or omission may request the public body to correct the individual's personal information. In practice there are very few formal requests for correction of personal information. They're mostly dealt with informally. Requests for correction may be generated as a result of an adverse administrative decision – for example, denial of a claim or benefit – but the public body making the decision merely has to correct the record. They don't have to revisit the decision as a result of the request, although they may choose to do so.

Section 36(3) provides that when a correction is refused or cannot be made, the public body must annotate or link the information with the part of the requested correction that's relevant and material to the record in question.

Section 36(4) obliges public bodies to inform other bodies that have received an applicant's personal information about the request for correction if the information has been shared within a year prior to the request for correction. That's just so that public bodies that are sharing information are all relying on accurate information. So if you've provided it to somebody else, then you just make the correction so that they're not also relying on inaccurate information.

Section 36(5) simply says that you don't have to get involved in the process of making corrections if it's not material and the individual is happy to have it simply corrected on their own record and not notify other public bodies.

THE CHAIR: Questions on that portion of the presentation?

Please continue.

MS LYNN-GEORGE: Now, the next two parts, sections 39 and 40, really take you into the heart of personal privacy protection because it's all to do with use and disclosure, and use and disclosure have a sort of reciprocal relationship. Generally, if you can disclose it, you can use it. So a lot of this is common to both use and disclosure.

Section 39 lists the circumstances under which a public body can use personal information. Basically, that's for the purpose for which the information was collected or compiled or for a use consistent with that purpose or if the individual has provided consent for a purpose for which the information may be disclosed. So that's that sort of circular thing: if the disclosure is authorized, then you can use it. Then there's a special provision that was added after the last review of the act for postsecondaries, and that has to do with alumni records. If the information is in alumni records, it can be used for postsecondary fund-raising. Use of personal information means employing it to accomplish the public body's purposes; for example, to administer a program or activity, to provide a service or determine eligibility for a benefit.

Section 40 is the other side of this use and disclosure part of part 2. We had a number of comments on disclosure, some general comments and some specific comments, and I'll just go to the commentary, where we've picked up on some of these specific comments.

First of all, the government submission includes a recommendation that section 17(2)(j)(ii) of the FOIP Act be deleted. Now, this has to do with a problem that's been identified where public bodies have been following somewhat different rules about the use and disclosure of information relating to the admission of an individual to a hospital or other health care facility as a patient or resident. Section 17(2)(j) says that a public body can disclose the basic information – that is, the name of a person admitted to a hospital or health care facility – provided the disclosure wouldn't reveal information about the nature of the treatment.

This was added during the last round of amendments to enable visitors to locate their relatives when they went to visit them in hospitals and to enable florists to get flowers to the right room and the right patient, fairly basic sort of commonsense uses of personal information in a health care context. But once the Health Information Act came into force, there was a sense that this was no longer needed because all of this kind of disclosure in the context of a hospital or health care facility would be within the hands of the health sector and they would make any decisions on disclosure of that information under the Health Information Act.

So the only reason why this might be needed would be if somebody outside the health care sector wanted to disclose that information. So it might be a case like a child being taken from school to a hospital, and they wanted to perhaps contact a parent or a relative or something. They might want to provide information about where the child was in the health care system. But the FOIP Act already allows for that under a provision of section 40 that covers disclosure to a relative, a family member, in the case of an accident. So it's not really needed there, and the government recommendation is that that should be deleted, and that we think would eliminate any problems of inconsistency on the disclosure of that kind of information.

Then we have some specific points being raised. One is about the disclosure of criminal history, and basically there are policies within government to allow detainees to get in touch with lawyers, so it's probably not really a problem that requires any amendment.

1:55

Then you heard from the Chief Electoral Officer, who was requesting an amendment to the Election Act. We're just observing here that if the Election Act were amended to require that a register of electors be created, then the FOIP Act would permit the disclosure of personal information under the existing provisions in the act. That is in fact the question that is asked at the end of this particular section: "Should the Committee support the Chief Electoral Officer of Alberta's proposal to amend the Election Act to require the creation of a Registry of Electors?"

THE CHAIR: I believe Mr. Jacobs has a question.

MR. JACOBS: Thank you, Mr. Chairman. Going back to use and disclosure of information by municipalities, it seems to me that municipalities should be really concerned here about the problems that FOIP causes for them as they try to balance the need between disclosing information and protecting privacy; you know, tax records for example, assessment notices, all those things. I don't think it's very hard to go and get that kind of information about someone from a municipal office. So in practical terms could you just sort of help me understand how this is affecting municipalities and how they're responding to this?

MS LYNAS: Well, we are planning on talking about this under local government issues, which is later down on the agenda. It'll probably be Thursday. So I can either give you a quick rundown or we can wait and discuss it at that point.

MR. JACOBS: Well, it is discussed under 39 and 40, under use and disclosure. So if you could quickly just give me a little bit of a practical understanding of this, it would be helpful.

MS LYNAS: Okay. What happens is that the MGA and the FOIP Act work together. The MGA sets out its own scheme for tax and assessment information. Under the Municipal Government Act the municipalities are required to create an assessment roll, and that assessment roll is open for inspection. Now, the assessment roll does contain personal information, so the commissioner has issued

one order where a FOIP request was made for personal information from the assessment roll. In that case, he found that when the request was for an electronic copy of an entire municipal assessment roll, the name and mailing address should not be provided. It should be protected as personal information and not allowed to be disclosed under section 40 of the FOIP Act. However, an individual can inspect the assessment roll, and an individual can request a tax certificate from a municipality that would show the taxes that have been assessed on a property and whether they're in arrears or not.

MR. JACOBS: Is that not a violation of protection of privacy?

MS LYNAS: Well, it's not a violation, because it's authorized by legislation. It is in the Municipal Government Act that this information can be disclosed, but one of the things for discussion is whether the balance is correct there.

MR. JACOBS: Thank you.

MR. ENNIS: Currently in the Municipal Government Act in I believe sections 299 to 301 there is a process for providing assessment information to assessed individuals. That process closes with a comment that the process itself stands notwithstanding the effect of the Freedom of Information and Protection of Privacy Act. So there's a form of paramountcy in that section. It's an odd paramountcy in that it provides immunity to local governments to provide information to the extent that they can without violating confidentiality. There's not a lot of definition given to that, but those are the general rules that are laid on local governments. So this is a case where the Municipal Government Act and the FOIP Act – I wouldn't say that they collide, but they don't align very well together.

THE CHAIR: Thank you, Mr. Ennis.

Did you have any further comments, or was that the end of your paper?

MS LYNN-GEORGE: No. I just raised the question about the Chief Electoral Officer.

THE CHAIR: Any questions about the Chief Electoral Officer and his request for a permanent electoral list?

Okay. If you can continue then, Ms Lynn-George.

MS LYNN-GEORGE: There are a number of suggestions for some new disclosure . . .

THE CHAIR: Sorry. Mr. MacDonald had a question on the electoral office question, I believe.

MR. MacDONALD: Yes. In regard to section 40(1)(f) and (z) what guarantees would we have that that information would not be – I don't know how to describe this other than say: would not be misused.

MR. ENNIS: If I could summarize, my understanding of the question is: if information is provided to the Chief Electoral Officer, what guarantee would there be that the Chief Electoral Officer would not use it for some other purpose?

MR. MacDONALD: Well, with the Chief Electoral Officer that would be public information; correct? What guarantees do people have who provided that information to another party, yet it winds up in the data bank of the Chief Electoral Officer? What protections do those citizens have?

MR. ENNIS: If the authorities for use of the information are found within the Election Act, it would be the disciplinary powers of the Chief Electoral Officer that would be the guarantee to the public that their information wouldn't be misused. So the solution would be within the Election Act.

MR. MacDONALD: But let's say that I sell one home and purchase another and move to another neighbourhood, and that transaction along with thousands of others is – let's, for instance, use the information at the real estate board. That information, according to this, could at some time be provided to the chief electoral office to notify that office of the transfer or the change in address of thousands of people. What protection do those homeowners have from any group of people who might want to provide them with a marketable service that they perhaps do not wish to be involved in?

MR. ENNIS: As I understood it, the Chief Electoral Officer's request to this committee was that a way be found that he would have access to motor vehicle information to build his registry. If he were to expand that to other forms of registry, I suppose the same rules could be brought into play. But he was coming to this committee for a solution. I think that quite clearly during his presentation the solution is in the Election Act, because the FOIP Act already provides for the ability to disclose to an officer of the Legislative Assembly. What seemed to be missing was the Chief Electoral Officer having the authority to compel or to collect the information from Registries, which would be something that would be situated in the Election Act.

THE CHAIR: Mr. Thackeray.

MR. THACKERAY: Yes. In Mr. Fjeldheim's presentation he made the comment:

> I should add at this point that the information contained within the register of electors is strictly controlled. Lists are given to political parties, candidates, and election officers, and register information is shared only with other electoral agencies . . . for use at municipal or federal elections [as allowed by the legislation]. There is a penalty of up to two years imprisonment and a $100,000 fine for misuse to protect the information Albertans have entrusted to us.

THE CHAIR: I take it that answers your question, Mr. MacDonald?

MR. MacDONALD: For the moment.

THE CHAIR: Okay.

Ms Lynn-George.

MS LYNN-GEORGE: So did you want to make a decision on this?

THE CHAIR: Carry on with your paper, and then we'll deal with all the matters.

MS LYNN-GEORGE: Okay. There were a few cases where new disclosure provisions were recommended. The universities in particular made some recommendations. You haven't asked a specific question relating to those recommendations, but we could certainly answer any questions about them.

2:05

A recommendation that was made by both the Alberta School Boards Association and the universities had to do with shared clients. The universities raised a concern about being able to share information when a student is registered in one university but taking courses at another and where there are grounds for exchanging information to assist the student. The Alberta School Boards Association said that the demand for shared information is increasing as public bodies and outside agencies move to work

together to meet student needs through an integrated service delivery model. This was a question that has also been raised by certain government departments in the human services area, and we'll be discussing the question of common or integrated programs in more detail in a policy option paper.

Sections 42 and 43 deal with disclosure for research or statistical information and disclosure from archives, and the government submission has some recommendations on archives in particular. These sections provide for the disclosure of information without a FOIP request, either by a public body or an archive, and they're intended to support research by allowing access to records in archival holdings for research subject to a limited number of restrictions. The archives provisions were amended significantly in 1999, and we can perhaps consider that separately, as it is discussed in detail in the government recommendations. Do you want to do that now, Tom, or afterwards? Okay.

Then there were some general comments on privacy, and I don't think there were any particular questions raised there.

That's a very brief overview of the comments, but there weren't a lot of really live issues coming out of this other than those that I think we've identified.

THE CHAIR: Any questions to Ms Lynn-George on the last portion of her presentation? Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. For clarification purposes, going back a little ways and trying to bring everything together, earlier I asked a question about municipal government. We talked about the challenge of protecting privacy and releasing information. A few minutes ago you referred to common and integrated services. Could you define for me exactly what a common or integrated service is? Would an assessment roll be a common or integrated service, or would that be an RCMP function?

MS LYNN-GEORGE: I think that when you're talking about common or integrated programs or services, you're talking about cases where a number of public bodies offer one particular part of the service. So the student health initiative or the children's initiative, where you might have health care bodies, schools, the Department of Learning, the Department of Health and Wellness, and possibly the RCMP all co-ordinating to provide one integrated service, and they offer different components of that service. It's not really a case where you have one public body using information for a number of different purposes, although there are cases where we've talked about a common or integrated service being offered within one public body for a number of public bodies. That might be in shared services arrangements where services in a particular area, such as IT or human resources or financial services, are offered to a number of public bodies by one unit.

MR. JACOBS: Supplementary, Mr. Chairman. So do I understand then that we're going to deal with the municipal issue relative to disclosure and protection? Is that going to come under the municipal part of this act? Even though it was alluded to in section 39, we are really going to cover it later on?

THE CHAIR: I believe municipal issues will be dealt with in question 19.

MR. JACOBS: Thank you.

THE CHAIR: Any other questions for Ms Lynn-George?

Mr. Thackeray, the government has put together a couple of papers regarding some issues that deal with some of the questions on question 12, I believe, one on common or integrated programs and services and one on disclosure of personal information and decisions of administration tribunals. Am I correct that those papers deal with the questions that are currently under deliberation?

MR. THACKERAY: That is correct, Mr. Chairman.

THE CHAIR: I've read those papers, and I'm assuming the members have. Will somebody be summarizing them or going over the highlights?

MR. THACKERAY: Yes, somebody will be going over them at a high level, because we know that all members of the committee have read them.

THE CHAIR: Thank you. Would that be you?

MR. THACKERAY: No, sir.

THE CHAIR: Well, whoever is, I think now would be the appropriate time.

MS RICHARDSON: Mr. Chairman, if I may, I'll start with the paper on disclosure of personal information and decisions of administrative tribunals.

THE CHAIR: Very good.

MS RICHARDSON: As you're no doubt aware, Alberta government ministries are responsible for a diverse array of administrative tribunals that decide matters ranging in many areas: individual benefit levels, labour disputes, compensation for access to privately owned land for drilling, and so on. When they make decisions that affect individuals or others, they are often called adjudicative tribunals. In some cases the decisions have significant value as precedents. In other cases the decisions apply pretty narrowly to the facts of the specific case and would have little precedential value. Some tribunals routinely file their decisions with the court and make them publicly available. Some of them have web sites to make those decisions available. Other tribunals don't make their decisions publicly available because they feel that they're dealing with a lot of personal information and it would be considered an unreasonable invasion of the individual's privacy to disclose those decisions.

Under the FOIP Act the Information and Privacy Commissioner carries out adjudicative functions, functions of an administrative tribunal. The FOIP Act specifically states that the commissioner must not disclose personal information in the course of an investigation or an inquiry if the head of a public body would be required or authorized to refuse that disclosure. However, personal information may be disclosed in the course of a prosecution under section 92, the offence provision, or in an application for judicial review. The commissioner publishes his reasons for decisions in orders and his findings and recommendations in investigation reports. However, it has been the practice of his office to remove the names of individuals. They are often referred to as applicants, complainants, third parties, and so on. Most other statutes that establish adjudicative tribunals in Alberta are silent on the subject of disclosure of personal information and their reasons for a decision, and there is no provision in the FOIP Act that specifically deals with this issue of disclosure of personal information in reasons for decision.

The disclosure of adjudicative tribunal decisions is emerging as an issue because there's an increasing demand for electronic publication of all records relating to judicial and quasi-judicial proceedings. There has been a debate in the U.S. and also in Canada regarding publication of court records. So the question that's raised in the

paper is whether there should be restrictions on the disclosure of personal information in the decisions of adjudicative tribunals.

2:15

The first point made is that adjudicative tribunals are different from courts. They set their own procedures for the most part. They in some cases follow certain procedures that may be set in statutes. Some of them follow the procedures under the Administrative Procedures Act, but that act doesn't deal with the publication of their decisions. One of the principles of natural justice is that of openness in a hearing process and providing public access to decisions and rules, but quite often in the practice of the tribunal it's providing those decisions and rules to the participants themselves.

In the Alberta Law Reform Institute report in December '99 it discussed this issue, among many other issues, dealing with sort of making the personal information in decisions of administrative tribunals available. One of the provisions talked about having hearings held openly or being open to the public except where certain factors outweighed the desirability of holding the hearing in public – and those factors are outlined in the paper – and then indicating that the hearing shall be held in private where that's required by statute. The other provision that came out of the Law Reform Institute's report was that the decision of a tribunal shall be available to the public on request. Where the conditions for privacy under provision 23(1) have been met, the relevant private information shall be deleted from the reasons. Things such as matters involving public security, possibility of danger to life, liberty, or security, and intimate financial or personal matters would be disclosed and so on. But the report points out that there are some tribunals for which that rule in a proposed model code should not be selected because of the private nature of their proceedings; for example, tribunals under the Child Welfare Act or the Dependent Adults Act. I should note that there are currently no plans by Alberta Justice to adopt those recommendations so far. That's not to say that they might not in the future, but currently there are no plans.

Some of the issues raised are, first of all, the fact that there isn't much direction in the statutes that establish administrative tribunals about the publication of their decisions. Not all administrative tribunals use the Administrative Procedures Act, and of course not all of them issue decisions that contain personal information. But with some of them, such as was indicated before, like under the Child Welfare Act, the Dependent Adults Act, or the Social Development Act and so on, their proceedings and the decisions and the content of them may contain information that is of a very private nature.

Recently the Alberta Court of Queen's Bench has changed its practice of publishing certain types of judgments on the court's web site, and this has affected decisions in actions under the Child Welfare Act, Dependent Adults Act, Divorce Act, Domestic Relations Act, Matrimonial Property Act, and so on, so you can see the kind of consistent nature of information that is being dealt with there. The change in the court's publication practice followed a similar decision in British Columbia, where the Chief Justice there advised the Law Society that such decisions shouldn't be published on the web site because there had been a number of complaints about having those available on the web site. For example, there were complaints about children searching for details of court actions involving families of classmates.

Currently there is no provision in the FOIP Act that expressly authorizes the disclosure of personal information in decisions of adjudicated tribunals except with the individual's consent under section 40(1)(d), which would be if it's provided for under another statute, or under 40(1)(b), "if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17." Under section 17 there is a presumption that disclosure of a third-party's personal information in a tribunal's decision, particularly if it dealt with employment, financial, medical, educational, or other sensitive information, would be an unreasonable invasion of personal privacy. However, under 17(5) that presumption may be rebutted by some of the following circumstances, such as: "the disclosure is desirable for subjecting the activities of the Government of Alberta or a public body to public scrutiny," or it's "likely to promote public health and safety or protection of the environment," and so on. So very little direction at this point from the statutes governing the administrative tribunals in terms of the publication of their reasons for a decision.

There is a comparison in the paper to other jurisdictions. We looked at Alberta, British Columbia, Ontario, and Saskatchewan, just trying to find provinces where there were similar types of administrative tribunals and similar FOIP legislation, and in conclusion we found that there was very little uniformity in the governing legislation or the publication practices of those types of tribunals. However, commonly tribunals that deal with complaints against the police and human rights complaints do publish their decisions, often on web sites, and this is despite the fact that the governing legislation for those tribunals doesn't necessarily deal with this issue of making their decisions public. So they've obviously just decided that it's important to get those decisions out onto a web site.

The second issue is dealing with transparency in the proceedings of adjudicative tribunals. Facilitating transparency in the justice system is the reason why we have public access to court records. There's a discussion about how PIPEDA may affect public access to judicial and quasi-judicial records, and that's because of one of the regulations under PIPEDA which deals with information that is publicly available. What the regulation under PIPEDA means is that organizations that are subject to PIPEDA may only collect, use, and disclose personal information in quasi-judicial decisions where the tribunal has allowed the decisions to be made publicly available and only where the organization is collecting, using, and disclosing the personal information for a purpose that relates directly to the purpose for which the tribunal published the decisions. So it would be important for tribunals to come to that conclusion in many ways based on having the authority perhaps in their governing legislation to publish that decision.

Then the paper talks about some of the privacy risks to central compilation since a lot of decisions of the tribunals that are publishing them now seem to find their way onto web sites or in various kinds of registries. As one article put it: when personal information is scattered throughout public registers maintained by many separate government institutions, privacy protection is sometimes described as practical obscurity. So it's there, but it's hard to find. The protection that results from the difficulty of collecting the pieces in one place can be eroded if it becomes easier or less expensive to build a single profile using all available data.

So central compilation and electronic filing make it possible for a jurisdiction that maintains many public registers to take information from all of the registers and link the data together. It also makes many types of personal information accessible to anyone with a web browser, and some of the submissions here have talked about searching, sorting, and data-mining technology to make it very easy for someone to find information that he or she wants in many different registers, and that would include adjudicative tribunal records as well. So the paper proposes some policy options in this area, and I guess I'd have to say that this certainly is an emerging area. When we did the comparative search across Canada, there weren't a lot of jurisdictions that were dealing with this issue. So it is an emerging issue.

2:25

The policy options in the paper. First of all, to produce a summary of the decision that deletes the personal information, and

that's being done in some cases. The advantage of that would be that it would ensure privacy protection, but if the decisions are the types that are based on factual information, if that's relevant to the outcome and you take a lot of that factual information out, then it leaves very little precedential value. It may not be practical for certain tribunals. The commissioner's office publishes about 40 orders and investigation reports per year, but tribunals under the Child Welfare Act and Social Development Act, for example, would have to look at perhaps deleting personal information in 800 decisions per year. So practically that may not work very well.

The second option is the consent option, disclosing personal information in the decision with the consent of the individuals involved. That would be consistent with fair information practices, but again it may not be a practical solution since it is unlikely that all parties in all cases would consent to the disclosure of their personal information, and it might result in an inconsistent approach to public accessibility to decisions.

The third option is adding a specific provision to section 40 of the FOIP Act, which would enable but not require disclosure of personal information in administrative tribunal decisions. This would be helpful to public bodies because they generally look to section 40 to find whether or not there are permitted disclosures of that type of personal information. So it would be the logical place for public bodies to look for an enabling provision. However, if a provision was put into section 40, it would leave the publication decision to the policy of that tribunal, so there might or might not be any additional transparency there. It may result in an inconsistent approach to the publication of decisions, and the information may include quite sensitive personal information, which in most cases would be considered an unreasonable invasion of privacy.

The next option would be to exclude the decisions of adjudicative tribunals under section 4(1) of the FOIP Act. So adjudicative tribunals would be made a class of records that were excluded from the application of the act. However, it might be difficult to draft a blanket exclusion, because there are so many different types of tribunals and each tribunal would have to make its own decision regarding publication. The disadvantage is that it wouldn't protect privacy. We talked about the difficulty of drafting, and again it could result in an inconsistent approach to the publication of decisions.

The final option is to put the authority to disclose personal information in the tribunal's governing legislation or in an omnibus amendment act, and that's following to some extent the Alberta Law Reform Institute's recommendation. The advantage of that would be that privacy protection would be considered by the tribunal and ministry and debated in the Legislature. The disadvantage is that ministry legislation would be amended at different times, leading to perhaps again a continuation of inconsistent publication practices while waiting for the amendments to be passed. However, that could be avoided by using an omnibus amendment bill.

Mr. Chair, those are the issues and policy options for personal disclosure, personal decisions, in administrative tribunals.

THE CHAIR: Thank you, Ms Richardson, for that very thorough and comprehensive overview. Are there questions for Ms Richardson on the paper or on her oral presentation?

Tom, how long is the presentation going to be on common or integrated programs and services? Is it going to be more than five minutes?

MR. THACKERAY: Yes.

THE CHAIR: I'd proposed that we take a 10- to 15-minute break. Is that satisfactory? We're adjourned until 2:45.

[The committee adjourned from 2:30 p.m. to 2:47 p.m.]

THE CHAIR: I understand, Ms Richardson, you're going to be taking us through the paper on common or integrated programs and services. No? I'm not correct. Ms Lynn-George, you're going to be doing that?

MS LYNN-GEORGE: Yes.

THE CHAIR: If you could commence that process then.

MS LYNN-GEORGE: The early models for the public-sector privacy legislation date back two decades, before major changes in public administration significantly altered the ways in which governments at all levels design and deliver programs and services. The emergence of a more integrated, client-centred approach to service delivery has been a significant development along with the more collaborative approach on the part of the public sector, which is increasingly operating in partnership with the private sector. Public-sector privacy legislation in Canada is based on the organization of the public sector within clearly defined public bodies – departments, agencies, boards, commissions – all operating independently.

Generally speaking, the rules governing the collection, use, and disclosure of personal information relate to the management of information within and outside a public body. Apart from certain express provisions privacy legislation doesn't generally contemplate the sharing of personal information within organizations or public bodies without the consent of the individual concerned.

When the FOIP Act was reviewed in '98-99, it was suggested that the act needed some more flexibility to allow for newer approaches to program delivery, and this was the origin of the concept of common or integrated programs and services. Now, after three years' experience with the provision that allowed for greater use and disclosure for common or integrated programs and services, some public bodies have suggested that the provision needs to go further to allow for broader participation by private-sector organizations without the current administrative complexities that come into play when private-sector partners are involved and also to ensure that private-sector partners are bound by similar privacy rules as the public sector. So it's been suggested that there's a need for an amendment to the disclosure provisions of section 40 to provide for a little more flexibility in terms of disclosure.

At the same time, there is an issue about how far you should go in breaking down these barriers. Boundaries within the system have a certain value in defining the limits and authority and ultimately the accountability of any part of government. Boundaries also provide for authority that enables decision-making. The challenge, therefore, is balancing interdependence and separateness, and information sharing is at the heart of this challenge. On the one hand, new partnership practices require a flow of information that's current, of high quality, easily accessible, and effectively communicated. On the other hand, where there's sharing of personal information, there's evidence that citizens want to be assured that adequate privacy rules are in place. In the research literature and in the debate that's been going on around this subject, the consensus seems to be that the most important privacy values are informed consent and transparency, and this is what seems to be coming from the public.

Now, just to give you a little background on the legislative framework that we're currently operating in, the federal government and virtually all provincial governments within Canada are subject to privacy legislation. In most cases municipal governments are also subject to privacy legislation. There are some significant differences from province to province in terms of the scope of the different statutes, but in Alberta the FOIP Act applies to provincial government departments, agencies, boards, commissions; to local governments and their agencies, boards, commissions; to public

schools; public postsecondary institutions; and health care bodies. Some provinces have separate health information legislation, and that's the case in Alberta. The Health Information Act, which came into force in April 2001, applies to health information in the custody of or under the control of custodians. So you get a distinction between whether particular information is health information or personal information, whether it's held by a public body or a custodian, and to this mix we now have a new element – and that's PIPEDA – for private-sector privacy. So if you're working within the province, there are possibly three acts involved. If you're outside the province, you might have some other legislation as well, and it's not really consistent from province to province.

So when you talk about collaboration within a complex legislative framework, there are a number of administrative complexities. When a program or service initiative involves partners that are subject to different statutory requirements, there's complexity in the planning, management, delivery, and reporting on the program or service. When the legislation in question is considered secondary to the primary purpose of the initiative, which is always the case with privacy legislation – it's something added to the mandate of the organization – then the legislation can appear to present obstacles to achieving the primary objectives of the organization.

An example of an initiative would be the student health initiative. The student health initiative is a government-sponsored initiative to develop services collaboratively in a way that will reduce some of the barriers, primarily in the area of health, that have an impact on a child's ability to achieve the objectives outlined in their educational plans. This initiative involves collaboration between the departments of Health and Wellness, Learning, and Children's Services, regional health authorities, mental health boards, school boards, charter schools and private schools, child and family services authorities, and numerous nonprofit agencies and private-sector organizations. So there's a need for a lot of information sharing. The FOIP Act allows for some sharing, but that is among the public bodies. The Health Information Act sets some limits on what health information can be disclosed to public bodies that are not also custodians under HIA, and then information can be shared under HIA with certain private-sector organizations if they fall into the class of affiliates under HIA, and the same is true of employees under the FOIP Act. Basically that's it. There's a contractual relationship. You can have some information sharing.

2:55

There's also an ability for a minister to enter into an agreement under an act to disclose personal information to anyone including a private-sector organization. Any other disclosure of personal information or health information would normally require the consent of the person concerned. If an individual provided consent to the disclosure of personal information or health information to a private-sector organization, that individual will have no statutory privacy rights with respect to that information after the disclosure.

So in practice any initiative along the lines of the student health initiative would probably require some careful consideration of a planned flow of information to determine what information the partners were authorized to collect, use, and disclose and whether certain uses and disclosures required notice or consent. This would probably mean there was a need for a privacy impact assessment, and there might also be a need for some sort of formal agreement.

The public bodies that are raising this issue – and I mentioned ASBA and the universities, also some of the departments that I listed, Children's Services in particular – have a concern with this administrative complexity, and the question is whether some sort of amendment to the FOIP Act could resolve their concerns in a way that would not be harmful to the privacy protection.

Just looking at the policy option paper, there's a summary of the issues at page 8, and perhaps I'll just run through those fairly quickly and then on to the options. It's been suggested by public bodies directly involved in the delivery of common or integrated programs or services that the current provision just doesn't go far enough and that they'd like to be able to disclose information to organizations that are not public bodies under the act.

The public bodies who'd like this are suggesting that this would not be something that reduces privacy protection. Rather, what they're saying they would like to see is all partners involved in the delivery of common programs brought under the FOIP umbrella so that there's a more uniform standard of privacy protection, because at present if information is disclosed to a nonprofit agency, for example, that's it. It's outside the act, and there's no control over any secondary disclosure.

It's also been suggested that to the extent that the current provision in the act permits disclosure, it's administratively complex. It often involves the professional staff in legal analysis and the development of various legal instruments to ensure compliance with the act. A corollary of this is that the public body employees and the employees of partner organizations that are involved in the delivery of common programs often simply don't understand the rules governing the collection, use, and disclosure of personal information, and that's really a problem of complexity that is not necessarily going to be resolved by an amendment to the act. It is complex, and what the public bodies have reported is that in practice it tends not to lead to more disclosure and hence breaches of privacy. It tends to work in reverse. You have a program that's set up; it's established to provide a service. It requires some exchange of information, and it's not happening. So it's sort of impeding the ability to run the program.

The result of real and perceived restrictions on information sharing is that the program's clients may not be getting the kind of seamless service that's been envisaged when public bodies entered into these arrangements for common or integrated programs, and they might find themselves signing multiple consent forms for the same program.

There is inevitably going to be some uncertainty about the impact of federal private-sector privacy legislation, and it may take some time for this to be resolved. So it's been suggested that any amendment to the FOIP Act that would be designed to regulate private-sector organizations may simply add further complexity and may even discourage collaborative efforts.

The other factor in any consideration of common or integrated programs is that the Information and Privacy Commissioner had some serious concerns regarding fair information practices at the time of the last review of the act, and he suggested that participation in common programs should be based on informed consent. Consent can only be informed if there's a transparent set of rules governing the collection, use, and disclosure of personal information for the purpose of the program. It may mean more consent forms simply for the purpose of transparency. So there's a sort of trade-off between the seamless service and informed consent.

That's a bit of a summary of some of the issues. It's considered quite a major public policy issue. It's one on which other jurisdictions have looked to Alberta somewhat for direction. B.C. has just modeled an amendment to its act on the Alberta act, and we've had a number of inquiries from other jurisdictions about how well the amendment that was made in '99 is working. This is something that seems to be in the minds of many legislators as a way of advancing agendas that involve more collaboration between different public bodies and the private sector.

So the first policy option – and we've got three here – is simply to maintain the status quo, and that would mean that the provision that we already have which allows disclosure by one public body to another for a common or integrated program would be retained and

would not be extended to organizations that are not public bodies for the purposes of the FOIP Act. The advantages would be a continued high level of privacy protection by requiring consent for disclosure to organizations other than public bodies, and it would also allow some time for consideration of the implications of private-sector privacy legislation.

The disadvantages: the inability to provide the kind of seamless service that some public bodies would like to be providing and the continued need to deal with administrative complexities of ensuring compliance with the FOIP Act and in some cases other privacy legislation. What this might mean is some lack of opportunity for efficiencies in service delivery. The other disadvantages: clients who do provide consent for disclosure to an organization that is not a public body will continue to have no statutory privacy protection with respect to their personal information after the disclosure. We would not be able to anticipate any change in that until private-sector privacy legislation comes in in 2004.

The second option would be to extend the current provision for disclosure for the purpose of a common or integrated program or service to organizations that are subject to other privacy legislation, so to give some sort of parity to other legislation. HIA and PIPEDA would be the main ones or the federal Privacy Act. The federal Privacy Act is significant, because that would facilitate disclosure to the RCMP. There are quite a few programs that are going on in Alberta at present, particularly involving young people, where there is some sort of involvement by the RCMP, and it can be quite complex because the RCMP is operating under the federal Privacy Act.

3:05

The advantages of this option would be that disclosure of personal information would be permitted but only to organizations that have some legislated privacy protection. There would be some additional flexibility to collaborate with organizations such as federal government institutions, including the RCMP. It would allow public bodies to plan for more flexible collaboration with private-sector organizations as of 2004.

The disadvantages. Again, you would still not get all the advantages of seamless service because it wouldn't fully resolve the problems of multiple consent, and it wouldn't obviate the problem of administrative complexity. The complexity is there simply in the legislative framework. As with option 1 there would be no change in the situation with respect to organizations that don't provide any statutory privacy protection until 2004.

The third option takes option 2 a stage further, and it would extend the current provision for disclosure for the purpose of a common or integrated program to organizations other than public bodies. This would be quite a leap, and it's suggested that under this option, if that were the option chosen, it would probably be necessary to develop some sort of definition of common or integrated program or service, just to put some fences around the kind of information sharing that could be carried out under this provision. The advantages, again, would be considerable additional flexibility. The definition as proposed would put some limits on the use of this particular provision, and there would be some legislative privacy rights for programs that are being provided within the private sector where there's currently no statutory privacy protection.

The disadvantages. First and perhaps most importantly, this option would provide broad powers of disclosure without the individual's consent to private-sector organizations that may have no statutory obligations with respect to privacy. So it would all be really controlled by agreements to the extent that there was any exercise of control over this form of disclosure. The second disadvantage is that it's uncertain how this would operate when private-sector privacy applies, because if the private-sector organization came within the scope of the private-sector privacy legislation, there may be a conflict.

So those are the three options we considered.

THE CHAIR: Thank you, Ms Lynn-George.

Any questions for Ms Lynn-George on the paper or on her oral presentation? Mr. Jacobs.

MR. JACOBS: Yes. Option 2, 7.2. You know, I like the advantages of that one. I don't quite understand the first bullet under Disadvantages: "Clients of common or integrated programs or services may not have all the advantages of 'seamless service' because this option would not fully resolve the problem of multiple consents."

MS LYNN-GEORGE: Okay. Well, you've got public bodies under the FOIP Act, you've got custodians under HIA, you've got federal government institutions under the federal Privacy Act, and all of these could disclose to each other without consent. So that part of it would be reasonably seamless to the client of the service. But with the private-sector portion of it, any kind of nonprofit agency that was involved in delivery of services, you would have to have consent for disclosure to that organization, so that's the part that wouldn't be seamless to the client. They would have to provide consent for that part of the service. HIA requires consent to disclose to the public body. The public body could disclose to a custodian without consent, but HIA would require consent to disclose back. It's administratively very complex. This would reduce, from the client perspective, a little bit of the apparent bureaucracy involved in the services that are offered in a collaborative way by a number of different public- and private-sector organizations.

MR. JACOBS: So if this option were actually put forth, how would we deal with that then?

MS LYNN-GEORGE: In every case it's something that public bodies really have to think through, and they have to work out what kind of information they're collecting, how much information they need to disclose to a partner in service delivery so that they can perform their part of the service, what information needs to come back, what level of security you need for the information depending on the sensitivity of the information. There is a methodology, and that is the privacy impact assessment. That's the way that public bodies can work through all the issues surrounding these kinds of programs.

If there were an amendment to this provision of the act, it would be anticipated that these kinds of programs and services are programs or services that public bodies are really serious about, ones where they have had some discussion with prospective partners, where they have a defined objective and there's some sort of mandate for providing the service or program. So it's not a one-off kind of disclosure arrangement where somebody makes a request for some information. It is something that is established to provide a service to a client. Doing the privacy impact assessment during the development of the program would establish what the rules governing privacy protection would be. That's where the commissioner becomes involved, because under HIA custodians are required to submit privacy impact assessments to the commissioner. Under the FOIP Act it's recommended in many instances that public bodies submit a privacy impact assessment for consideration and comment by the commissioner.

Does that address your question?

MR. JACOBS: Thank you.

THE CHAIR: It appears that it does.

Any other questions for Ms Lynn-George on the paper or her oral presentation? Does anybody have any general comments, or can we open up the floor to motions?

Mr. Thackeray, do you have anything to add?

MR. THACKERAY: No, sir.

MR. MASON: Mr. Chairman, maybe we could get the commissioner's office to make a comment.

THE CHAIR: Do you have anything to add, Mr. Ennis?

MR. ENNIS: Well, I think that it's important for the committee to know that we're dealing here with an abstract and somewhat speculative concept in the common or integrated program or service. We haven't really seen these take off yet. Three years ago when the committee met, the issue at the time was the breakup of the child and family services authorities program into so many various authorities across the province, 14, I believe, or however many were generated. The difficulty then was that there was concern that the child welfare program would not be manageable if those individual public bodies weren't able to move files around the province. The genesis of the common programs provision in this act was the ability to move files and information between public bodies to make sure that there was a comprehensive child welfare program in the province.

Since then, the imaginations of people that work in public administration have looked at the ability to try to use this kind of thinking to work in new program structures that are not bound by the silos of government departments and public body boundaries, but in fact we haven't really seen much take-up on this particular provision of the act. The place where we are seeing it actively being explored is in the area of services to children and youth, so we have various consortia, I guess, of public bodies looking at ways that they might be able to exchange information to prevent problems for young people or to solve problems that are being perceived. Always of a concern in that mix is the role of law enforcement in those programs and to what extent law enforcement can be an unbridled partner, in that law enforcement agencies have to continue to do their work as law enforcement agencies and can't give up that role when they enter into these partnerships. So the provision of information about citizens and about families of citizens to law enforcement is a concern when we're looking at privacy impact assessments in this area.

3:15

Also, the definition of program is something that really has not been explored. We understand "common" and "integrated" and seem to understand "service," but "program" hasn't really been explored, and it may be that at some point the commissioner will come out with some kind of working definition of what really holds together as a program. The tendency has been to define programs around the clients that they serve, that this is a children's program or this is a program for youth or whatever, but that really doesn't give us a good definition of what the program is about. It just tells us who is the beneficiary of the program.

So this is an area that hasn't sprouted the way it was anticipated three years ago, and it's a bit of a struggle to see just what kind of program initiatives will fit within this area.

THE CHAIR: Thank you, Mr. Ennis. Any questions for Mr. Ennis on his comments?

MR. JACOBS: I'm curious about the privacy impact statement. Who does that? What does it include? Just tell me a little bit more about it, please.

MR. ENNIS: Well, the privacy impact statement is done by the public body or public bodies that are anticipating launching a new initiative. The act gives the commissioner a role in commenting on new information management schemes – and that's the word used in the act – so the policy of the government has been to ask public bodies to provide privacy impact assessments to the commissioner. The commissioner reviews those, comments on them, and ultimately, if they are successful – that is, if the process is completed – the commissioner accepts those and makes them available to the public. So the public can see what the inner workings of a government operation are like.

Generally, privacy impact assessments are done at sort of an early stage in the whole process, and they're a best guess as to how things are going to work. Often with privacy impact assessments you'll later on see addenda added that say: well, we had to change something along the way. It's a bit like an engineering project where you're starting with a basic blueprint, but it does change.

To this point we have perhaps two dozen privacy impact assessments that have been done in the province of Alberta on the FOIP side, and on the Health Information Act side privacy impact assessments are a mandatory requirement before information can be put into health information systems. So the privacy impact assessment has gained perhaps more profile on the health information side because it is a legal requirement. On the FOIP side it's a policy requirement and is done in a slightly different way. Privacy impact assessments are a big chunk of the current operations of the commissioner's office.

MR. JACOBS: Thank you.

THE CHAIR: Any other questions for Mr. Ennis? Any discussion generally?

Okay. We have a couple of issues that we have to deal with. I wonder if anybody is prepared to entertain a motion with respect to common or integrated programs and services. The government submission seems to outline three options. We're not bound by those three options. We can certainly, if we feel creative, come up with any number of options. Has anybody put any thought into this?

MR. JACOBS: Mr. Chairman, I'm prepared to move I think it's option 2, that section 40 be amended to allow personal information to be disclosed for the purpose of a common or integrated program or service to organizations that are subject to other privacy legislation.

THE CHAIR: Thank you, Mr. Jacobs.

Any questions or comments to Mr. Jacobs on his motion? Mr. Mason.

MR. MASON: Generally I'm supportive. I guess the question I have is more for the department or to the commissioner's office, and that is: is there any other legislation that this motion refers to that is significantly weaker that our own?

THE CHAIR: Can you help out, Mr. Ennis?

MR. ENNIS: The federal PIPEDA, the Personal Information and Protection of Electronic Documents Act, or whatever variation we have on that, has a right of access to an individual's file but doesn't have a way that that individual can find out very much more about the organization that's holding its information. So if you're asking "are any of those other pieces of information substandard to the FOIP Act?" the answer is that all of them are, in my view. PIPEDA follows a code developed by the Canadian Standards Association, which is not as rigorous as the FOIP Act. The federal Privacy Act

does not contain a right of review that is on the same par as the FOIP Act. So all of them are to some measure less than the current FOIP Act. Are all of them adequate to protect individual privacy? Each of them does that in some significant way, but none of them is to the same standard as the FOIP Act.

MR. MASON: So if we adopted this, we would then be collecting information at a certain standard with certain guarantees as long as it was used within the areas outlined by our act, but we would be sharing it or making it available to any organization that might have some minimal level of protection, so it then becomes a big leak, a big hole in our act. Well, at least that's the way I would interpret it, so I would have a concern then, Mr. Chairman.

THE CHAIR: Could you comment on that, John or Tom? Tom.

MR. THACKERAY: Well, I guess I don't necessarily share the same view as John that other privacy statutes, be it the federal Privacy Act or be it PIPEDA, are necessarily substandard to the FOIP Act. Protection of privacy is based on principles, and the Alberta statute was based on the OECD, the Organization for Economic Co-operation and Development, on the principles that came out of that organization. As John mentions, the federal Personal Information and Protection of Electronic Documents Act is based on the CSA code, which was agreed to by the federal government in consultation with the private sector across the country. I'm not sure how many organizations that would be involved in common or integrated programs currently are subject to the federal private-sector privacy legislation. As of January 1, 2004, provinces have to enact their own private-sector privacy legislation which is substantially similar to the federal act, or the federal act applies. The option that is before the committee, option 2, in my view is an improvement over the current situation because it does allow for disclosures to other organizations that are subject to some sort of privacy rules. It doesn't go as far as allowing disclosure to any organization but only to those that are subject to privacy protection. So I think that's an improvement over what we have today if it is the intent of the government to proceed more vigorously with establishing common and integrated program service delivery. Then, as I said, as of January 1, 2004, there is going to be legislation, either the federal act or a made-in-Alberta statute, that will deal with privacy protection in the private sector.

3:25

THE CHAIR: Thank you, Mr. Thackeray.

Are there any questions to Mr. Thackeray on his response to Mr. Mason's concern? Anything further or anything arising?

You indicated that you had concerns, Mr. Mason. Have you thought about making an amendment, or are you satisfied with the motion the way it's been put forth?

MR. MASON: Well, neither one. I guess my concern is – well, let me ask another question just to clarify it in my own mind. What sort of organization could receive information that's in the possession of a government department? You know, a private organization, a private company covered by federal legislation that could receive personal information that they wouldn't otherwise be able to get now. [interjection] Okay. And they couldn't get it now?

MR. THACKERAY: They couldn't get it now without seeking the consent of the individual the information is about. The intent here, as I understand it, is to reduce the number of consents that an individual has to provide in order to provide the services that the individual may require.

MR. MASON: So somebody has to give consent, and it's only at their own request? I'm not following.

MR. ENNIS: Just to finish a thought on that. Tom mentioned that it is services that a person may require, or it may be the services that public bodies feel that a citizen deserves.

MR. MASON: Well, what about your example of a bank?

MR. ENNIS: In that case the exchange of information with a bank as part of a program?

MR. MASON: Yes. This is at the request of the individual that the information is about.

MR. ENNIS: It may be at the request of the public body, one public body in the partnership, to initiate action.

MR. MASON: What about the bank? [interjection] So the bank could obtain at its request information that's in the possession of a government department about an individual simply because the bank is covered by some sort of federal/private-sector . . .

MS LYNN-GEORGE: You would have to have established a common or integrated program. There would have to be a public body that had as part of its mandate to provide some service or program, and there would have to be a role for the private-sector agency, such as a bank, in delivery of that program. Then the government or the public body would either provide information to the bank or collect information from the bank for the purposes of the program, just the information that was needed. If the government had a loan program and they wanted to establish that this person had fulfilled all the requirements for being eligible for some kind of loan, then the government could pass on that information to the bank, and the bank could then complete all the paperwork and provide the service.

MR. MASON: Well, let's turn it around. Suppose banks were still involved with the federal student loan program, a student was in default on their loan, a government department had information relative to that, the bank wanted to attach some of the student's property, and they needed to get information from a provincial government department relative to doing that. Then could the bank, because it has this federal privacy legislation that it operates under, therefore access the records of the student with respect to his or her solvency or ownership of an automobile or of a home or something like that?

MR. ENNIS: That's where the definition of "program" would be so important, and that's where the privacy impact assessment that would be done in that circumstance would have to lay out just what are the information flows. It seems that in proposals around the area of common programs and integrated services there are a number of one-way flows between partners. A good example is when we have cases where the child welfare officials are involved. They're often looking to acquire information, but their ability to disclose information is very limited even to the partners within a program. So within a privacy impact assessment you'll often have what are essentially one-way transistors or one-way valves of movement of information, and the privacy impact assessment has to address what happens if there's a backflow. What happens if somebody wants to suck instead of blow on information?

MR. MASON: Well, you know, in terms of examples used and so on, I think it's fine to use examples of the government trying to do

good, but I think what I'm concerned about is trying to find examples of where the government is not trying to do good.

MRS. JABLONSKI: There aren't any.

MR. MASON: Well, I don't want to slip into Conservative philosophy here, but it may be that banks, using bad guys I'm happier with, might be trying to do something that's not in the interests of the personal individual who's provided their information for other reasons, and that's really the concern that I have.

MS LYNN-GEORGE: Well, in that flow of information you'd be talking about indirect collection of information by that private-sector entity from the government, so disclosure by government. First they would need some ability to collect under PIPEDA, which they probably would if there was some kind of breach of contract, and then there would have to be the ability to disclose, which would be this provision that we're talking about, and then it would have to be for the purposes of the program.

Now, if the agreement or the program was set up – and the policy option paper actually gave quite a few examples of how you define a common or integrated program, so it would have to fall within the definition. It's on page 7. This is not something that we just did for the purpose of this policy option paper. We produced a bulletin on information management, access, and privacy after consultation with a number of public bodies and the office of the Information and Privacy Commissioner and the Department of Justice. It was thought that there should be certain attributes before you could say that it was a common or integrated program, not necessarily all of these attributes but some of them. The first was legislative authority, so there'd be legislative authority for the bodies to work together. There'd be a business plan or formal description of the program or service articulating common goals, a formal agreement or terms of reference document explaining the roles of the public bodies and how the components of the program or service fit together, some joint planning, collaboration or co-ordination of efforts to achieve common goals or objectives, and a clear delineation from other programs and services provided by the respective public bodies. So it was a lot more than simply having shared clients, and once you have these kinds of components, where you're really defining what the service or program is, that does really limit the ability of organizations involved in these programs to start looking for information for secondary purposes.

Remember as well that this ability to disclose is still discretionary. Well, perhaps we shouldn't say "discretionary" so much as "enabling." Section 40 is an enabling provision in the act. It says that "a public body may disclose." It doesn't say "must" disclose. So there's no requirement for the public body to disclose, and if a public body set up a program with a number of different partners and one of the partners was looking for information that the public body felt was not really in the interests of the program or service, then they would not be disclosing that information, regardless of whether the partner had the ability under its own privacy legislation to collect it.

THE CHAIR: Anything further, Mr. Mason?

3:35

MR. MASON: Well, Mr. Chairman, all of that comes from an administrative perspective. I didn't hear anything in there about the individual being consulted about his or her information. So I'm not comfortable with it.

THE CHAIR: I understand your concerns.

Mr. MacDonald, you had your hand up some time ago.

MR. MacDONALD: Yes, Mr. Chairman. I have a question for Mr. Jacobs in regards to the proposed motion. Do you think that the provision to increase disclosure, as I understand it, is going to enhance Alberta Health's ability to deal with private-sector health care providers?

MR. JACOBS: I defer that question, Mr. Chairman, to one of the experts.

THE CHAIR: Well, I'm not sure that I understand the relevance of it. Does anybody have a quick answer to that?

MS RICHARDSON: Maybe I can try. I guess coming back to what Jann was saying, if Alberta Health or a health care body that was a custodian had an ability under the Health Information Act to collect certain health information, they would still be bound by the Health Information Act in terms of who they could disclose it to, if we're talking about health information. This wouldn't deal with their own disclosure unless the other body that you're talking about was somehow part of this partnership or collaboration in the common or integrated program or service. I guess it would depend on how that program was set up.

As John indicated, under the Health Information Act certainly a privacy impact assessment would be required. Under the FOIP Act it's certainly a due diligence kind of policy requirement, not a legislated requirement. So it may be that in that privacy impact assessment process that issue of whether or not the disclosure to the other body was or was not, you know, appropriate from a privacy perspective would be part of that deliberation, part of that discussion.

MS LYNN-GEORGE: You did say they were under contract; you were saying private-sector contractors?

MR. MacDONALD: Well, that's what I call them, private hospitals, or you pick a name and use it. I have concerns about this.

MS LYNN-GEORGE: So, in fact, if you were talking about disclosure to a private-sector contractor, that organization would be an affiliate under the Health Information Act. So it really wouldn't be the same kind of operation as what we're talking about here.

Here what we're talking about are arrangements that are not really contractual arrangements. Each individual participant in these common or integrated programs – this is the vision – is acting on its own behalf. It's not providing a service under contract for one public body. So a nonprofit agency would be pursuing its own mandate and providing services at its own expense because that's what it does. The point would be a kind of referral, I guess, but something more than a referral. Perhaps a sort of common or integrated program would have a more formal basis than that. But it's not the same as a contract. They would have no reporting relationship back to the public body.

MR. MacDONALD: Can you please tell me if private clinics or private hospitals that are contracted to the Workers' Compensation Board are covered under the Health Information Act at the moment?

MS LYNN-GEORGE: The Workers' Compensation Board is not under the Health Information Act, and if they contract with anybody, they have to apply the FOIP Act to the contract. Now, that doesn't mean that the contractor is not separately covered by the Health Information Act, because if there's some sort of contract with a physician, then the physician is individually a custodian. Have you got all that? It gets rather complicated.

MR. MacDONALD: I got the part where that contract would be

covered under the FOIP Act, not under the Health Information Act.

MS LYNN-GEORGE: Well, the relationship between the Workers' Compensation Board and the physician would be under the FOIP Act, so the WCB would disclose to the physician under the FOIP Act, but the physician would be limited by the fact that the physician is a custodian under the Health Information Act. The physician would be sort of operating under both acts, I guess.

MR. MacDONALD: May I ask one more question, Mr. Chairman? If I support Mr. Jacobs' motion, there will be no statutory privacy rights until after the year 2004; correct?

MS LYNN-GEORGE: Well, when you're talking about disclosure under contract, you do get the privacy protection because the public body that contracts with the private sector sort of passes on its responsibilities under the act by virtue of the contract.

MR. ENNIS: But remains accountable.

MS LYNN-GEORGE: Yes, it remains accountable. So a public body is accountable for the privacy protection by the organizations that they contract with. It would be the case of a private-sector or nonprofit agency that was acting in a kind of partnership, so where the public body was disclosing – and the only way it could do this would be with consent. A client of the public body agrees that they will accept a service from a private-sector or a nonprofit agency, and they consent, understanding – we hope they understand – that at the point when their information is provided to that agency, their statutory privacy protection ends, and they have to sort of place their confidence in the code of conduct of that particular agency that is providing services to them. That doesn't really change. The option to provide makes no difference. That's what they're doing now; that's what they would continue to do.

THE CHAIR: Anything further on this point, Mr. MacDonald? Any further questions regarding Mr. Jacobs' motion? That being the case, the motion, as I understand it, is that

> the act be amended to allow personal information to be disclosed for the purpose of a common or integrated program or service to organizations that are subject to other privacy legislation.

Is that correct, Mr. Jacobs?

MR. JACOBS: That's correct.

THE CHAIR: All in favour? Opposed? It's carried.

The next item that the chair wishes to address is regarding disclosure of personal information as contained in decisions of administrative tribunals. The technical team in the policy papers I think outline five possible policy options. Again, this committee is not restricted to those five. If anybody has thought of a combination or something completely different, we're certainly able to entertain all policy options. So we can open it up to motions regarding what to do about personal information contained in decisions of administrative tribunals. Anybody put any thought into this? Mr. Thackeray, you're not entitled to make a motion, but you can certainly have the floor.

3:45

MR. THACKERAY: Thank you. Somebody called me a politician earlier today.

MR. MASON: Don't take it personally.

MR. THACKERAY: I thought it was a compliment.

I just wanted to point out, Mr. Chairman, that in the government submission recommendation 11 is consistent with policy option 5 that was in the paper. That's dealing with leaving the authority for disclosure of personal information with the tribunal or the department responsible, and they would be responsible for any amendments to their legislation.

THE CHAIR: Does option 5 not also talk about an omnibus amendment act?

MR. THACKERAY: That's an option. If there are a number of ministries that want to proceed at the same time, then we would suggest that maybe the vehicle would be an omnibus bill dealing with the five or six statutes at one time.

THE CHAIR: Any questions to Mr. Thackeray on the Department of Government Services' position on this question? Once again I'm asking for a motion.

MR. JACOBS: I'm prepared to make that motion, Mr. Chairman, inasmuch as it has been pointed out to us that it's consistent with the previous motion and is the motion that's been recommended by the government submission paper. So I will make that motion, and it would read that authority for disclosure of personal information and decisions of administrative tribunals be established in the tribunal's governing legislation and that consideration be given to facilitating the amendment of affected acts through the use of an omnibus bill in which legislation could be included at the request of individual ministries.

THE CHAIR: Thank you, Mr. Jacobs. Any questions for Mr. Jacobs on his motion, or any discussion regarding the merits of that motion? The chair recognizes Mr. Mason.

MR. MASON: Broyce, the last part of the motion about the omnibus bill says that anything "could be included at the request of." I'm assuming that that means anything could be included that's consistent with the direction in the first part of the motion.

MR. JACOBS: I will ask Mr. Thackeray for comments, but I would just say that only consideration is being given to that option. It wouldn't necessarily have to follow that it would be an omnibus bill. But I would ask Mr. Thackeray or one of the others to supplement my answer.

THE CHAIR: That is exactly the chair's interpretation of the motion. Mr. Thackeray, do you have anything to add?

MR. THACKERAY: I've nothing to add, just that we included the option of an omnibus bill at the request of one of the public bodies that has an administrative tribunal, and they felt that that may be a more expedient way of dealing with the issue if there were a number of ministries that wanted to proceed at the same time. Rather than have six individual statutes introduced as amendment, have an omnibus bill dealing with the same issue for the six statutes.

MR. MASON: Any concern from the commissioner's office?

MR. ENNIS: I was just consulting with my colleague from Justice as to whether this would meet Legislative Counsel's requirements for an omnibus bill. Mr. Pagano has certain requirements that he shares with public bodies as to what he will include in an omnibus bill for drafting consistency.

It may be that some of the tribunals affected would have their legislation open at the time that this is being considered, so they may want to run it into their own home legislation, if I can call it that, and it may be that the provisions would be dramatic changes, not the

kind of thing that normally goes into an omnibus bill since not only publication but perhaps the manner of meeting and the manner of giving notice and so on might be affected by a change in whether or not you name the parties. So it's possible that some of the tribunals would want to do this independent of an omnibus bill, do it in other ministerial legislation.

MR. MASON: Do you think the motion is restrictive enough in terms of what should be considered in an omnibus bill?

MR. ENNIS: I'm sorry. I can't comment on that. Perhaps Justice would like to.

THE CHAIR: Sarah, do you have any comment on the question?

MS DAFOE: Well, let me make sure I understand what your question is first. Do I think that the motion on the floor is restrictive enough?

MR. MASON: Does it just open it up to . . .

MS DAFOE: To dealing with more than just administrative tribunals and what we do with them?

MR. MASON: Yes.

MS DAFOE: I think it's restrictive enough. I'm not actually looking at the government submission's wording, just at my written notes of what the motion was. Being read with the earlier words that say something along the lines of putting it in the tribunal's own legislation as to how they want to deal with their administrative tribunal decisions or putting it all in an omnibus bill dealing with whichever tribunals they want, I think that would be fine.

THE CHAIR: Anything else on this point?

MR. MacDONALD: The first thing I would request, Mr. Chairman – and I could listen carefully again – is if Mr. Jacobs could please read his motion again.

THE CHAIR: The motion as the chair heard it was that

> authority for disclosure of personal information in decisions of administrative tribunals be established in the tribunal's governing legislation and that consideration be given to facilitating the amendment of affected acts through the use of an omnibus bill in which legislation could be included at the request of individual ministries.

I took that from the government's position paper. Did I get that verbatim, Mr. Jacobs?

MR. JACOBS: That's correct.

THE CHAIR: Does that help, Mr. MacDonald?

MR. MacDONALD: Yes, Mr. Chair. My question would be directed to you. What happens if an administrative tribunal is established as a result of a regulation?

THE CHAIR: It couldn't be. I don't think you can establish an administrative tribunal by regulation.

MR. MacDONALD: It cannot be done? You can assure me of that?

THE CHAIR: I can't assure you of that.

MR. MacDONALD: Would not an order in council be considered a regulation?

THE CHAIR: I know where your question is going, Mr. MacDonald, and to answer your question, I don't think that the motion would be invalid. I mean, we're making a recommendation that an omnibus bill be allowed to give effect to a recommendation regarding the allowance of personal information in administrative decisions. If something happened to be established by Lieutenant Governor in Council, that would not for the purposes of this committee invalidate the motion.

MR. MacDONALD: Okay. So in light of what I heard from the chair when the meeting convened this morning at 10 o'clock, I can rest assured, then, that if for some reason or another there was to be a tribunal established, it would be fine. Correct?

THE CHAIR: That's correct, sir.

MR. MacDONALD: Thank you.

THE CHAIR: Anything on that or anything on the motion generally? If we could have a vote then. All those in favour of Mr. Jacob's motion, please raise your hand. Opposed? It's carried.

Now, the last item that we have to deal with is with respect to the Chief Electoral Officer of Alberta's request to amend the Election Act to require the creation of the registry of electors.

MR. MASON: Were you going to go to administration first?

THE CHAIR: I was.

Now, the chair has ruled this morning that we can make recommendations with regard to other pieces of statute, if there is a clear nexus and link, to give effect to our recommendations under the FOIP Act. So it's the position of the chair that we can entertain motions in this regard.

Mr. Thackeray, do you have a comment on this question?

MR. THACKERAY: I believe that earlier this afternoon I referred to the presentation that Mr. Fjeldheim gave to the committee in one of the earlier meetings. By establishing or by recommending that the Election Act be amended to allow for the creation of a registry of electors, then disclosure could be allowed under section 40(1)(e). So I think, Mr. Chairman, that would be the tie-in back to the Freedom of Information and Protection of Privacy Act.

3:55

THE CHAIR: I agree with that, so procedurally we're out of the gates.

What about the merits of the Chief Electoral Officer's request? Does the government have a position? Does the office of the Information and Privacy Commissioner have a position? Don't everyone speak at once.

MR. THACKERAY: The government did not address this issue directly in their submission, so we do not have a position.

MR. ENNIS: The office of the Information and Privacy Commissioner does not have a position on it. I can anticipate that the office would want to see any kind of a resolution of this be one that doesn't pit one legislative officer against another in terms of order-making power.

THE CHAIR: Thank you.

MR. MASON: I do have a position on it, Mr. Chairman. I know that

municipal governments in the province have been urging the government to adopt a registry of electors for some time, and I think it would be a very desirable thing to have, both for the provincial political process and also for municipal elections. So I would be prepared to move that

> the committee recommend that the Election Act be amended in accordance with the recommendation of the Chief Electoral Officer of Alberta's proposal to require the creation of a registry of electors.

THE CHAIR: Thank you. The chair accepts that motion. Any questions to Mr. Mason on his motion?

MR. JACOBS: How would that differ from what we do now? I mean, we can get a list of electors, voters now to be used. How would this differ?

THE CHAIR: The electoral list that we get now is not necessarily up to date. If I understand Mr. Fjeldheim's submission, they will update it using information from other sources: registries and other government documents. Is that not correct, Mr. Thackeray?

MR. THACKERAY: That's my understanding, Mr. Chairman.

THE CHAIR: Therefore, when a writ is dropped, people who are entitled to the list – candidates, parties, et cetera, et cetera – will be given an up-to-date list of electors as opposed to the list that was comprised at the last election.

MR. JACOBS: If I may ask further: how will that be compiled?

THE CHAIR: It will be updated by cross-referencing with information from other government departments, specifically government registries, as I understand it. Is that correct, Mr. Mason? Is that your understanding?

MR. MASON: Well, I'm not clear on the details, Mr. Chairman, but I know that it would be sort of a standing list of electors, and it could be made use of by municipal governments for their elections. Instead of everybody having to conduct a municipal census, there would be a provincial voters list that would be standardized for municipal and provincial use.

MR. MacDONALD: My question for Mr. Mason at this time is: how often would that list be updated? Does he not think that this data collection system will reduce voter participation in elections, whether they're municipal, provincial, or federal?

MR. MASON: Why would it?

MR. MacDONALD: Because fewer people will be on the list. There's a chance that there will be now, whether it's a confirmation or an enumeration, less chance of an enumeration occurring before an election. If people's names are not on the voters list, they're not contacted, and if we're relying on one government body or another to provide an update, then perhaps democracy is not being well served. That's my concern. Do you have any thoughts on that?

MR. MASON: Maybe I'd just like to think about it some more then. I mean, I think there's some legitimacy to what you're saying, but the devil is in the details. It depends how it's done.

THE CHAIR: I think that if I recall the written submission of the Chief Electoral Officer, it was his position that it would be just the opposite, because the voters list – and this is all subject to some sort of technical imperfection of course – would be continually updated and therefore would be as up to date as possible at any given time and therefore would increase the franchiseability of citizens as opposed to decrease it.

MR. THACKERAY: Mr. Chairman, as I recall Mr. Fjeldheim's presentation, he made reference to the recent amendment to the Election Act and the requirement that two years after a general election he has to produce a new list of electors. So this would be done two years after an election and then two years after that, unless there is an election.

THE CHAIR: Any other questions for Mr. Mason on his motion or to Mr. MacDonald on his concerns?

MR. JACOBS: Well, Mr. Thackeray, then the enumeration that we now do would still be done, but it would be done periodically. The registry would be completed every two years. Would the Chief Electoral Officer still do the enumeration?

THE CHAIR: While Tom is looking for that, I'm going to take a shot at this. I don't think that an enumeration will be done every two years. I think that the Chief Electoral Officer will use information from government registries of addresses to keep the voters list up to date on people who have left or moved into those residences. I was just really buying time while Mr. Thackeray looks for the real answer.

MR. JACOBS: Mr. Chairman, given the hour, would it be appropriate to table this one until we meet again on Thursday?

THE CHAIR: If we can't resolve it momentarily, I think that's a fine idea.

MR. MASON: I would appreciate it. It's just occurred to me, Mr. Chairman, that there may in fact be a difference between a registry of electors, which the provincial Chief Electoral Officer wants, and a provincial voters list, which is what the municipal governments have asked for. Maybe if we did lay it over, it would give me a chance to clarify that.

THE CHAIR: Mr. Mason, it's your motion, and if it would be your

preference that it be dealt with at 9 o'clock on Thursday morning, the chair is going to grant you that liberty.

Therefore, if there's no other business, could I have a motion that we adjourn until 9 o'clock on Thursday, July 25, in this room? It's moved by Mrs. Jablonski. Anybody opposed? It's carried. Thank you very much.

[The committee adjourned at 4:04 p.m.]