Title: Wednesday, July 31, 2002 FOIP Act Review Committee

Date: 02/07/31

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning, everyone. It looks like we have a full house this morning, which is great. For the record, my name is Brent Rathgeber, and I'm the MLA for Edmonton-Calder and the chair of the all-party special select committee reviewing freedom of information and protection of privacy legislation in Alberta. If I could have the members of the committee, starting with Mr. Jacobs, introduce themselves for the *Hansard* record, please.

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

THE CHAIR: Mr. Thackeray, beginning with yourself, if we could have the members of the government support team introduce themselves for the record, please.

[Mr. Dalton, Mr. Ennis, Ms Lynas, Ms Lynn-George, Ms Poitras, Ms Richardson, Mr. Thackeray introduced themselves]

THE CHAIR: Mrs. Sawchuk from LAO, if you could introduce yourself.

MRS. SAWCHUK: Karen Sawchuk, committee clerk.

THE CHAIR: Thank you.

We have an agenda that has been revised. I take it everyone's had a chance to peruse the agenda, and if there are no questions or concerns, could I have somebody move approval of the agenda? Mr. Mason. Any commentary, debate?

MR. THACKERAY: Mr. Chairman, item 3(b), the motion by Mr. Jacobs relating to self-governing associations: might I suggest that that be moved down under item 4? It's basically a continuation of the discussion on the scope question from last Thursday. Following that, there was also the issue that we had to deal with on private schools and colleges as well as a couple of recommendations from the government submission.

THE CHAIR: So it would be the first item under 4(a)?

MR. THACKERAY: That's correct.

THE CHAIR: I don't have any problem with that. Do any of the members have any concerns with Mr. Thackeray's suggestion? The silence being deafening, we'll move that down to the first item under 4(a).

Any other comments or concerns with respect to the agenda? Mr. Mason, you'll still move the agenda with that amendment?

MR. MASON: Sure.

THE CHAIR: Anybody opposed? It's carried.

Now, the first item of business which is arising from the meetings of July 22 and July 25 was a motion that was left tabled by Mr. Mason on July 22 and was not revisited on July 25, so we would like to deal with that now. Mr. Mason.

MR. MASON: Thank you, Mr. Chairman. I'd like to apologize to you for my absence at the last meeting without advance notice. I had some unexpected personal business, and I appreciate very much the committee laying this item over for me.

THE CHAIR: The chair requires no need for an explanation for your absence, Mr. Mason.

As you will recall, the motion was put forward by yourself regarding the Chief Electoral Officer's request for a permanent registry. There was some initial debate on that, the debate was not concluded, and the motion was left on the table, so I think we should pick up where we left off. You've had some time now to contemplate that motion, so if you have anything to add or detract from what you said on July 22, the chair recognizes you, Mr. Mason.

MR. MASON: I appreciate that, Mr. Chairman. I have had an opportunity to clarify the misapprehension that I was under when I made the motion, and I understand that there is a distinction between the creation of a registry of electors and what I thought it meant, which was a provincial voters list. So I would then request leave of the committee to withdraw my motion.

THE CHAIR: Perhaps for the benefit of the committee you might be able to elucidate us with what your inquiries have discovered is the difference between those two concepts.

MR. MASON: Well, my understanding, Mr. Chairman, is that a provincial voters list would be a voters list that would be arrived at as a result of a regular enumeration, as is currently the case, but would be shared with other orders of government. My understanding is that a registry of electors may not involve necessarily a regular enumeration.

THE CHAIR: Mr. Thackeray, do you have any comment on that?

MR. THACKERAY: Following the meeting of last Monday I did talk to Mr. Fjeldheim, the Chief Electoral Officer, and raised two issues that were raised at the meeting last Monday. One was dealing with whether or not enumerations would continue, and the second one was whether or not the list could be or would be shared with municipalities.

Mr. Fjeldheim informed me that a decision has not yet been made as to whether enumerations would be required. It would depend on the quality of the list that is prepared pursuant to the Elections Act, and if it were found that the list was not satisfactory, then enumerations would continue prior to an election. It's my understanding from talking to Mr. Fjeldheim that the Election Act currently allows the Chief Electoral Officer to share this information with municipalities, so that would continue if the interest was there from a municipal government.

THE CHAIR: Do you have anything you want to add before we entertain your request to withdraw your motion?

MR. MASON: No. Just that that's more or less what I understand, that there's no necessity for an enumeration under what's contemplated here, and I have some difficulty with that. The registry being updated by other records rather than through an enumeration is problematic from my point of view, so I think the motion was inadvisable, at least from my perspective.

THE CHAIR: Very good.

Okay. There is a motion on the floor put forward by Mr. Mason on July 22 that the Chief Electoral Officer's request to create a permanent registry of voters be recommended by this committee. He's requested now that that motion be withdrawn. That will require

unanimous consent of this committee. Are there any questions on what the chair is asking? Okay. Does Mr. Mason have unanimous consent to withdraw his motion? All those in favour of unanimous consent? [interjection] He needs unanimous consent to withdraw his motion, so it's the same question.

Anybody opposed? You do not have unanimous consent. We will debate the motion. You of course are free to vote as you choose on your own motion.

MR. MASON: I vote against my own motions all the time.

THE CHAIR: Okay. So the motion is debatable. Mr. Jacobs and then Mrs. Jablonski.

MR. JACOBS: I just wanted to ask a question relative to the motion that we just decided, not to withdraw. Would this motion not, if it were to pass – and I ask this question to Mr. Thackeray – have the potential to reduce the cost of preparing an electoral list?

MR. THACKERAY: From my discussions with the Chief Electoral Officer I guess that is a possibility, but it's all going to be dependent on the quality of the information on the list that would be prepared. If it is found that the quality isn't sufficient to conduct an election, then the cost for enumeration would still be there.

9:15

THE CHAIR: Mrs. Jablonski, then Ms DeLong.

MRS. JABLONSKI: I think that in this day and age of electronic records and the keeping of information that we have, it's far more up to date and modern to have a registry of electors than a voters list. I find that enumerations are very time consuming and costly, and sometimes I find that they're not necessarily efficient either. So having a registry of electors and being able to have the enumeration when it is needed I feel is a much better way of conducting our business.

THE CHAIR: Ms DeLong.

MS DeLONG: My understanding is that if we make this change, the Election Act is still responsible for making sure that the electors list is accurate, that that doesn't make any changes to that, and that all we're doing is just enabling them to keep a permanent list. Is that correct?

THE CHAIR: I believe so, but I'm not certain.

Tom, do you have anything to add, or can you help Ms DeLong with her inquiry?

MR. THACKERAY: Can you put it to me again, please.

MS DeLONG: Okay. My understanding is that through the Election Act, I believe it's called, they are still responsible for making sure that the electors list is accurate. That's still their responsibility. All we're doing here is enabling them to keep a permanent list rather than having any comment at all about whether or not an enumeration takes place. Is that correct?

MR. THACKERAY: That's correct. The Election Act, part 2, under Election Lists, has two divisions. One is the register of electors, which is what we're talking about this morning, and the second, division 2, is the list of electors. So that's the difference. The request from the Chief Electoral Officer was to amend division 1 to require the creation of a registry of electors, which would then allow those that have the databases to disclose. It gives the authority to the Chief Electoral Officer to collect the information for the register of electors.

MS DeLONG: Very good. Thank you.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, Mr. Chair. Could someone refresh my memory about what sources they're going to be gathering this information from?

THE CHAIR: Tom, I can answer that partially, but I think I'll defer to you on this.

MR. THACKERAY: It's my recollection that in the presentation made by the Chief Electoral Officer, he was referring primarily to the motor vehicle database, which is the one that we've talked about for War Amps, et cetera.

THE CHAIR: Supplementary, Ms Carlson?

MS CARLSON: Thank you. In fact, then that's as incomplete as going door-to-door and missing people who aren't home, because there are a large number of people who won't have vehicles registered to them who are eligible to vote. I'm thinking of many seniors, many students, low-income people, children in the household, things of that nature, who may be of age to vote. How are those people going to be picked up on the list?

THE CHAIR: Tom, was it not more exhaustive than vehicle registry? I think that was just a part of it.

MR. THACKERAY: Yeah, that was just a part of it. That was one of the options. The other option that has been discussed, as I understand it, would be to get information from Alberta Health and Wellness for health insurance and that type of information, but I don't believe Mr. Fjeldheim made that comment in his presentation.

THE CHAIR: That's the chair's recollection, that he was requesting access to provincial government records in order to complete a permanent voters list, and I think the one that he mentioned was vehicle registry.

Supplemental, Ms Carlson?

MS CARLSON: Yes. On that list there now is an ability to have phone numbers attached to those addresses. Would that still be the case, and if so, how would they get access to that information?

THE CHAIR: I can't answer that. Does somebody from the technical team want to take a stab at it?

MR. THACKERAY: As I recall, when the door-to-door enumeration takes place by the office of the Chief Electoral Officer through the returning officers in each constituency, the provision for supplying a telephone number is optional. From discussions with Mr. Fjeldheim the collection of telephone numbers would still be optional, and if someone had indicated a desire not to provide that information, that information would not be on the register.

MS CARLSON: A supplemental, Mr. Chairman.

THE CHAIR: Yes, of course, Ms Carlson.

MS CARLSON: How are they going to have the opportunity to say yes or no to that now, though, if information is privately collected from their vehicle registration and privately collected from their health information?

MR. THACKERAY: To the best of my recollection, when you renew your vehicle registration or your driver's licence, you don't provide your telephone number, I think. I can't remember.

MS CARLSON: So then my question is: how do they get access to the telephone numbers? Are you saying that it's voluntary now if people phone in and say that they want their telephone number on the list? I mean, that's not going to happen.

MR. THACKERAY: I'm trying to recall the statistics that were provided, and rather than give some wrong information, maybe I can try to get some more information from the office of the Chief Electoral Officer and report back to the committee.

THE CHAIR: Mr. Mason, this is your motion. It's been tabled once. I'm sensing here that there may be some need or at least some value to tabling this once again until tomorrow. This is still your motion, so would that be agreeable to you?

MR. MASON: Sure. Well, I mean, I'd really rather withdraw it, but . . .

THE CHAIR: You may wish that it be tabled indefinitely.

MR. MASON: . . . tabling is the next best step.

THE CHAIR: Ms Carlson, perhaps you might wish to move that this matter be tabled until tomorrow.

MS CARLSON: Yes. Thank you, Mr. Chair. I do make that motion.

THE CHAIR: Is there anybody opposed to that?

Tom, if you could get some more information, we'll deal with this tomorrow. Thank you.

Now, the motion by Mr. Jacobs relating to self-governing associations will be dealt with later on today. That brings us to item 3(c) on the chair's agenda, which was a question arising from I believe last Monday regarding DNA and genetics. I understand, Mr. Thackeray, that we now have some further information with respect to this.

MR. THACKERAY: That's correct, Mr. Chairman. I believe that this morning members would have found on their desks in front of them briefing note 4, which talks about the issue: "Should the definition of 'personal information' in the FOIP Act specifically indicate DNA or genetic information?" We've put together some background information from research, looked at some considerations, and at the end of the briefing note have provided three options.

THE CHAIR: This is one of the few documents that wasn't available until this morning.

MR. THACKERAY: That's correct.

THE CHAIR: The chair is going to suggest with the concurrence of the membership that maybe this matter stand down to allow any members who are interested to have a thorough look at it, and perhaps we can revisit it later on in the day. Is there any support for that suggestion?

Ms DeLong, would you move that, please.

MS DeLONG: I move that we consider this later today or tomorrow.

THE CHAIR: Thank you.

The next item was an inquiry that I believe was brought forward by Mr. MacDonald, although I'm not exactly certain about that, requesting further information with respect to the issue of fee waivers.

Tom, did you want to address that? I understand that you have some further information to share with the group.

MR. THACKERAY: That's right, Mr. Chairman. All I've been able to find is information from the province of Ontario, and this is for the year 2001. Cases in which fees were estimated for 2001: collected in full, 4,540 for the provincial sector and 1,487 for the municipal sector; fees waived in part, 297 for the provincial and 87 for the municipal; waived in full, 159 for the provincial and 2,353 for the municipal. Total application fees collected: for the provincial, $52,785; for the municipal, $58,071. Total additional fees collected: $273,287 for the provincial; $120,427 for the municipal. Total fees waived: for the provincial sector, $14,659; for the municipal, $5,951. That information is from the annual report of the office of the Information and Privacy Commissioner for the province of Ontario. I can provide a copy of the information to the committee members if they wish.

9:25

THE CHAIR: Thank you, Mr. Thackeray.

MR. MacDONALD: I'd be delighted to receive that information. Thank you.

THE CHAIR: Any questions at this point?

MR. MacDONALD: No.

MR. LUKASZUK: There's a fee attached.

MR. MacDONALD: There's no fee attached to this, I certainly hope, even though Mr. Thackeray does work for Government Services and is the FOIP co-ordinator over there.

THE CHAIR: Thank you.

There was also a question, I think, put forward by Member MacDonald regarding whether the Auditor General – no; I'm sorry. I don't think it was Mr. MacDonald. Was it? [interjection] Thank you. There was a question from Mr. MacDonald last week requiring a response on whether the Auditors General in other provinces are subject to the provisions of their respective FOIP acts. Tom, have you or any of the members of your team been able to find a response to Mr. MacDonald's inquiry?

MR. THACKERAY: Yes, I was able to do that. I contacted my colleagues from across the country and heard back from everyone except for New Brunswick and Nova Scotia. All of the provinces except Quebec have the Auditor General excluded in their freedom of information and protection of privacy legislation. In Quebec it's included, but there are severe restrictions on disclosure. For the country, for Canada, the Auditor General is not subject to the access act but is subject to the Privacy Act.

MR. MacDONALD: Again, Mr. Chairman, if Mr. Thackeray would

be gracious enough to share that information with this member in print, I would be delighted.

THE CHAIR: I'm sure Mr. Thackeray will provide that answer in print form. Thank you, Mr. Thackeray. Thank you, Mr. MacDonald.

The final matter of business arising from last week's deliberations was a question also put forward by Member MacDonald regarding the definition of a public body and whether or not that includes the Power Pool of Alberta. I don't remember if it was Mr. Ennis or Mr. Thackeray who was going to research this matter.

MR. THACKERAY: I seem to be on a roll this morning, Mr. Chairman.

THE CHAIR: The chair recognizes Mr. Thackeray.

MR. THACKERAY: With regard to the Power Pool and whether or not it should be listed in schedule 1 under the regulations for the Freedom of Information and Protection of Privacy Act, discussions have taken place between the Department of Energy and Alberta Government Services as the ministry responsible for the administration of the legislation. The reason that the Power Pool is not included in schedule 1 is that the only criteria that applies is that the majority of the members are appointed by government, but it is my information that the appointment of members to the Power Pool by government is a transitional position and that ultimately that will not be the case. So the position right now is that the Power Pool will not be listed under schedule 1.

THE CHAIR: Any questions, Mr. MacDonald?

MR. MacDONALD: Currently, as I understand it – and correct me if I'm wrong – the Power Pool Council is appointed by the Minister of Energy.

MR. THACKERAY: That's my understanding.

THE CHAIR: I think the answer to your question was clear.

MR. MacDONALD: Yeah.

THE CHAIR: It's not covered.

Anything arising?

MR. MacDONALD: Not at this time, but hopefully we'll have a chance, Mr. Chairman, to deal with this later.

THE CHAIR: Well, I can advise all members that we'll have time on tomorrow's agenda hopefully to deal with any matters of interest to the membership.

Any other questions from any other committee members regarding any of Mr. Thackeray's responses to any of Mr. MacDonald's questions? Ms Carlson.

MS CARLSON: Thank you. I have a question with regard to the new business and what happened to the old business that we haven't finished from last meeting's agenda.

THE CHAIR: I think we indicated that the registry of electors question will be dealt with tomorrow. The self-governing association question put forward by Mr. Jacobs will be dealt with next, as soon as we get down to item 4.

MS CARLSON: I'm talking about the balance of question 19 and question 2.

THE CHAIR: I'm sorry; you'll have to refresh my memory. What's question 19?

MS CARLSON: Those are from the last agenda. Did we finish scope?

THE CHAIR: Did we finish scope?

MR. THACKERAY: We did not finish scope, but we did finish local issues, I believe.

MS CARLSON: Wasn't part of local issues the self-governing organizations?

THE CHAIR: No. That's scope.

MS CARLSON: That's scope. Okay. Good. So when are we going to do scope?

THE CHAIR: As soon as you let me go to number 4.

MS CARLSON: Okay. I don't see it here.

THE CHAIR: It was 3(b), and we decided to move it down.

MS CARLSON: I'm with you now. Thank you.

THE CHAIR: Okay. Everything's good?

MS CARLSON: Yes. Thank you.

THE CHAIR: Okay. Any other questions?

The first item of New Business is a continuation on question 2: scope. The question was regarding self-governing organizations, and I believe there was a motion, that the chair recused itself from and will recuse itself once again, brought forward by Mr. Jacobs that self-governing organizations not be brought into FOIP. Was that the essence of your motion, Mr. Jacobs?

MR. JACOBS: It was.

THE CHAIR: I will turn the chair over to Mrs. Jablonski for a continuation of that debate and hopefully a resolution. Thank you.

[Mrs. Jablonski in the chair]

THE DEPUTY CHAIR: Good morning. Is there debate on this motion? Are we at a motion? I don't have the papers in front of me.

MR. JACOBS: Madam Chairman, I'm prepared to continue with the motion that I moved just before we adjourned last week. The motion is that the self-governing professional associations should not be made subject to the Freedom of Information and Protection of Privacy Act. As I understand it, this will all change in 2004, when all these associations will come under the private legislation. I would like to ask a member of our technical committee, perhaps Mr. Thackeray, to elaborate on this a little bit further, please.

THE DEPUTY CHAIR: Mr. Thackeray.

MR. THACKERAY: Thank you. What Mr. Jacobs is referring to is

the federal legislation called Personal Information Protection and Electronic Documents Act, commonly referred to as PIPEDA or PIPED Act, depending on which part of the country you live. That legislation was passed by the federal government in 2000. It came into effect for the federally regulated private sector on January 1, 2001. The health sector for transboundary transmission of personal information came under the legislation on January 1, 2002, and on January 1, 2004, the legislation will be in force in all provinces for the provincially regulated private sector unless a province decides to implement its own legislation, which has to be determined to be substantially similar by the federal cabinet.

It's my understanding that a lot of the self-governing professional associations may be caught by the net of a private-sector privacy statute, either one made in Alberta or the continuation of the federal act within our province. So by January 1, 2004, I believe that there will be in force in our province some privacy rules and the ability for individuals to access their own information from self-governing professions.

THE DEPUTY CHAIR: Thank you.
Ms Carlson.

MS CARLSON: Thank you. My position hasn't changed on this. I will be voting against this motion. In fact, my concern about this motion has only been reinforced since our last meeting given the stand that other countries are taking on self-governing professions and the kinds of raising of the bars we've seen of their having to report in terms of ethical behaviour and a watchdog role. With all of the scandals we've seen lately in professions, it's clear that you can't have the fox guarding the henhouse. There has to be some ability to have an independent review. The President of the United States has just recently signed a very aggressive bill stating that there is going to be a watchdog role over their companies.

9:35

Now, for us to say at this particular stage that these bodies may be caught by the legislation that comes forward in 2004 is not supportive of openness and accountability and responsibility. I believe that we will be very remiss if we don't support more independent reviews of decisions made by self-governing professional organizations. I think it's long overdue, and this province needs to stand up and be counted on this issue.

THE DEPUTY CHAIR: Thank you, Ms Carlson.
Any further discussion? Any discussion from the departments? Mr. Ennis.

MR. ENNIS: Thank you, Madam Chair. The concern I would like to raise – and it is perhaps an apprehension without basis – would be that the self-governing professions and occupations, each of which has its formal society, may not be completely caught by private-sector privacy legislation in that private-sector privacy legislation tends to focus on commercial transactions, commercial activities of organizations. The public concern with these organizations tends to be with their investigative and disciplinary side, which may not fall within the rubric of being a commercial transaction and therefore may actually be neither under the private-sector legislation nor under the FOIP Act if left to the current PIPEDA scheme.

THE DEPUTY CHAIR: Thank you, Mr. Ennis.
Mr. MacDonald.

MR. MacDONALD: Yes, Madam Chair. I believe that the last select special FOIP committee, that was chaired by the Member for Peace River, discussed this issue of self-governing professions, and I believe that organizations were encouraged to demonstrate a willingness to change or to incorporate fair information principles and access principles into their operations. If they did this, if they made these changes – now, this is four years out – there would be no need to make them subject to our freedom of information laws. I don't know what's been done on this, and I was wondering if possibly any of the technical team could update us on what exactly has gone on in regard to self-regulating professions since the last committee sat.

THE DEPUTY CHAIR: Anyone on the technical team?

MS LYNN-GEORGE: There has been some development here. The Health Professions Act is coming into force in phases, and that deals with the protection of privacy to some degree, and it also has a number of provisions for access, accountability, transparency of the professions in dealing with complaints from the public. Also, there's a provision for a right of review by the Ombudsman. That's the Health Professions Act, and it currently applies to a relatively small number of the colleges, but that's while the regulations are in development for each of the colleges. So that's the Health Professions Act.

The accounting professions are covered by their own new legislation, and that has both access and privacy provisions as well.

The other major development that is going on at the moment is a consultation process that is taking place in Human Resources and Employment, which is responsible for the legislation of about half of the self-governing professions. So they're anticipating that PIPEDA will come into force and that they will need to be prepared for it. They're looking at making some recommendations for amendments to some of the acts for which they're responsible. In other cases, as we heard from the Law Society, they're planning to do this in policy. So a fair range of approaches to both the access and the privacy sides of this issue.

THE DEPUTY CHAIR: Thank you.
Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Madam Chair. I see very little reason to be so reactive to any occurrences that may have happened in the United States and the President's knee-jerk reactive political statements. First of all, those reactions were not in relation to self-governing bodies in principle but to issues that could and will be solved by the PIPEDA legislation. As you know, that will be on the table for review in the foreseeable future.

It should also be noted that most of the self-governing professional bodies do have public members in the constitution of the board, which does provide Albertans a sufficient number of protections and exposure to the governance of that particular body.

Lastly, it should also be noted that at least some of the bodies deal with matters that have to do with privilege. There's a great deal of privileged information being considered by those bodies, and I'm not sure if that information should be readily available to interested Albertans. I'm not aware of any instances that would have happened in the recent past that would give rise to any concern with respect to the self-governance of those bodies and their ability to control access and/or privacy issues within their own domain.

MS DeLONG: I notice in our notes here that it says that when it comes to self-governing bodies, "the Ombudsman will already provide an independent review of decisions made by self-governing professional bodies." So to address Ms Carlson's concerns, can you comment on that? What bodies does this apply to?

MS LYNN-GEORGE: This is actually not all self-governing bodies. This is the legislation that has, like the Health Professions Act, a provision for review by the Ombudsman. But certainly in a case like the Law Society, where it's entirely in policy and there is no legislation, there would be no right of review by the Ombudsman. So it may be just a little bit misleading there to suggest that that applies to all of them. It's just those ones that have legislation already.

THE DEPUTY CHAIR: Thank you, Ms Lynn-George.
Ms Carlson.

MS CARLSON: Thanks. I guess that part of my concern here is about the private-sector privacy legislation itself. We haven't seen that. I need to know if it's been drafted or if there'll be a discussion paper or when we can expect that to be introduced.

THE DEPUTY CHAIR: I think we need the technical team to answer that one.

MR. THACKERAY: Right at the present time Alberta is working closely with the provinces of British Columbia and Ontario to see if there can be a harmonized piece of legislation developed that would reduce barriers for the private sector that deals in more than one province. As you are aware, Ontario has put out a discussion bill which dealt with both private-sector privacy as well as health information. How they are proceeding I'm not sure. It depends on the day of the week you talk to Ontario. British Columbia has done some consultation. They had a select committee of the Legislature back in I think it was 2000 do consultation on private-sector privacy legislation. Alberta has not yet made a decision, but if the decision is to proceed with made-in-Alberta legislation, consultation will take place prior to the introduction.

9:45

THE DEPUTY CHAIR: A supplementary, Ms Carlson.

MS CARLSON: Thank you. What form would you expect that discussion to take?

MR. THACKERAY: I can't speculate, but I can offer a number of options. Some of the options that are being considered would be a discussion paper similar to the one that was put out by this committee. Another option that is under consideration is to do some focus group testing. A third option would be to introduce a draft piece of legislation, let it sit, and receive comments during the time that it's sitting before passage.

MS CARLSON: One more quick one?

THE DEPUTY CHAIR: Certainly.

MS CARLSON: Time lines. What do the time lines look like for making decisions on this?

MR. THACKERAY: If Alberta is going to proceed with its own statute, it has to be in force January 1, 2004.

THE DEPUTY CHAIR: Is there any further discussion on this motion by Mr. Jacobs?

MR. MASON: Just a couple of very general comments, Madam Chair. It really seems to me that these professions are an extension of government, and while it makes more sense to let them govern themselves rather than have it done by an external bureaucracy, they are essentially performing a public function. I guess that's my first comment.

The second comment is that I think that it cuts both ways. It's not just making information within their purview accessible to people from the outside but providing protections for people whose information is gathered by those bodies. I certainly think that information used in disciplinary proceedings and so on needs to be carefully segregated so that things that should be private remain so, but I think that in general it makes sense to have these bodies come under the freedom of information legislation. So I will not be supporting the motion.

THE DEPUTY CHAIR: Thank you, Mr. Mason.
Mr. Lukaszuk.

MR. LUKASZUK: Thank you. Just in response to what I just heard from Mr. Mason, I think that one must argue to the contrary. Those self-governing bodies should not and cannot be seen as an extension of government. If one were to aim towards that, that would be a very dangerous precedent. Let's use the Law Society. The only reason that we have such a great deal of faith in our judiciary and the legal system is because we see it as an independent system and removed from governance and not politicized. If one were to extend political and government influence over the legal profession and/or the judiciary, I'm not sure if that would be a direction that the hon. member would be interested in heading.

THE DEPUTY CHAIR: Thank you, Mr. Lukaszuk.

MR. MASON: Well, I just want to respond to that, because I think that Mr. Lukaszuk has misinterpreted what I tried to say. Certainly I don't think that the self-governing professions should be made an arm of government. I indicated that I think it's preferable that they remain self-governing. Their function, however, is a public function. It's not a private function. It's not a function of a private company looking after their own interests. It has to reflect the public interest as well as the interests of the profession. That's really the point that I was trying to make.

Secondly, I certainly think there's no comparison between the legal profession and its public responsibilities to regulate itself and the independence of the judiciary. I think that that's a comparison that I certainly didn't attempt to make, and there is no comparison between the two. Obviously, if you suggest that the legal profession has some public obligation and that there should be some transparency there, it's not the same thing as suggesting that you should be subjecting judges to political control. So that's not a fair statement at all.

THE DEPUTY CHAIR: Thank you, Mr. Mason.
Any further discussion on this motion? From the Justice department?

MR. DALTON: I have nothing to add, Madam Chair.

THE DEPUTY CHAIR: Thank you.
From the Privacy Commissioner's office?

MR. ENNIS: Nothing further, Madam Chair.

THE DEPUTY CHAIR: Thank you, Mr. Ennis.
I'll read the motion again. Moved by Mr. Jacobs that

> self-governing professional associations not be subject to the Freedom of Information and Protection of Privacy Act.

All in favour of this motion? Opposed? It's carried.

MS CARLSON: Madam Chair, I would like my dissent to be officially recorded.

THE DEPUTY CHAIR: So it shall be, Ms Carlson.

MS CARLSON: Thank you.

[Mr. Rathgeber in the chair]

THE CHAIR: I understand that Mr. Jacobs' motion has passed.
The next item for deliberation is question 1, principles of FOIP.

MR. THACKERAY: Mr. Chairman, under Scope we didn't deal with issue 4 that was raised in the policy option paper, which was that of private schools and colleges.

THE CHAIR: My apologies. That is correct. Do you have a presentation? I think that was covered in one of your policy option papers.

MR. THACKERAY: That was covered in the presentation that was made last week, sir.

THE CHAIR: Now, does anybody have any questions, or is the policy option paper still fresh in everybody's mind? Is there any deliberation, or is anybody prepared to make a motion?

MS DeLONG: I'd like to make a motion that
private schools and colleges should not be made subject to the FOIP Act.

THE CHAIR: Thank you, Ms DeLong.
There's a motion on the floor. Any questions to Ms DeLong on her motion?

MR. MacDONALD: Ms DeLong, with the significant increase in public funds that are going into private schools and private colleges, do you not think it's necessary in the interest of protecting taxpayers that they be included under freedom of information?

MS DeLONG: If they are dealing with a private school, then it seems to me that they are dealing with a private institution and similar to any sort of consumer protection that's available out in private enterprise. So I guess that if there's a school that is not providing information, then it's sort of a thing where they're liable to lose their customers because of that. It's sort of their decision as to what information they provide, and parents generally want to see the information on their children. It's, you know, very strange that an institution that is a private institution, that is trying to essentially grow their business and have the most students, would provide that information as a private institute.

MR. MacDONALD: But these private schools with their students, not customers, are receiving public funds. Why should they be excluded from public scrutiny? The taxpayers have a right to know how that money is being spent. It shouldn't be entirely up to the parents or to the individuals who may be patronizing that school.

THE CHAIR: Mr. MacDonald, as you recall from last week, the process that we've been following, which seemed to work fairly well, is that we have questions to the mover on the specifics of their motion and then we open it up to general debate, which, I think, is sort of what you're doing.

MR. MacDONALD: I think so.

THE CHAIR: Okay. Are there any other questions to Ms DeLong on her motion?
Okay. Mr. MacDonald, the chair recognizes you with respect to general discussion on Ms DeLong's motion.

9:55

MR. MacDONALD: Thank you very much, Mr. Chairman. It is my view that private schools and colleges should never have been excluded from FOIP in the first place. I think this was a political decision, unfortunately, by a government that is beholden to private school interests. I simply cannot support this motion, and I would urge all members of this committee to defeat this motion if for nothing else but to ensure that the taxpayers have another route from which to ensure that there is accountability in these schools.
Thank you.

THE CHAIR: Thank you, Mr. MacDonald.

MR. MASON: Can somebody explain to me in practical terms how, if a private school were subject to FOIP, it would be affected both in the collection of information and in terms of requests for information to it? Can someone just give me a thumbnail sketch of how a private school might be affected?

THE CHAIR: Ms Lynas, do you want to take a stab at that?

MS LYNAS: Okay. Currently, as far as I know, parents still have access to the student record, so the student record is handled the same whether the student is in a private school or a public school. I guess the difference would be that parents or anyone would be able to make an access request to the private school for any of their records. Currently individuals can make a request, but there's no obligation, as there is under a FOIP request, to respond. Individuals can make a request to the Department of Learning for any records that the private schools are required to report on to the Minister of Learning.

MR. MASON: What would be an example of information someone could request currently of a public school – and I include the separate board of course in that – that they would have to give you and an example of something that they couldn't give you?

MS LYNAS: In a public school?

MR. MASON: Yeah. A school that's currently covered.

MS LYNAS: Well, I suppose an individual can ask for administrative records, and those would likely be general records and could be released. [interjection] Well, it could be records to do with a budget or a decision to do some planning to build a new school or something within the school board. Records which they could request but may not get access to would be records containing the personal information of other people where it would be an unreasonable invasion of privacy to release it.

MR. MASON: So records about a student's grades or discipline or any personal information would be protected, but financial and planning information for the school and questions about curriculum would be all in the public domain. Is that right?

MS LYNAS: Most likely, yes.

MR. ENNIS: In addition to the information that would be available would be information about the employees of the school. Employees of public bodies, if the schools were made public bodies, have somewhat of a diminished privacy right when it comes to information about their work at the school. Duties and responsibilities, salary range, things of that nature become accessible under the FOIP Act with regard to employees of public bodies, so that would bring their employees into a new light. Possibly that could wander into the area of qualifications as well.

MR. MASON: So those kinds of things would be accessible to the public, some limited information about teachers and their qualifications and so on.

MR. ENNIS: In some limited ways, yes, they would be, and they are not now.

THE CHAIR: Supplemental information?

MR. MASON: No. That's good.

THE CHAIR: Anybody else want to speak to this matter? Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. It seems to me that private schools definitely are vastly different from public schools inasmuch as the parents and those involved with students who attend the schools have much more responsibility financially and get much more involved in the process than would normally be considered in a public school domain. So I would like to reinforce the point made by Ms DeLong that actually it is in the best interest of private schools to make sure that the people who attend their schools, the children, and the parents are informed and kept up to date. I don't think we need to bring private schools under FOIP because I don't think there's a need. I think that even though there may be some public money going there, most of the responsibility is on the individuals to get involved in their children's education and to be responsible not only for funding curriculum but also for funding building of schools, et cetera.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, Mr. Chair. No one has yet answered Mr. MacDonald's question about who protects the public interest in this. If there are public dollars going into private schools, then the public, the people outside of those who are directly paying the top-up fees and sending their children to the school, have a right to know administratively how those organizations are run. If my tax dollars are going there, I have a right to access that information. No one has answered the question about who protects that right if these schools are excluded from FOIP.

THE CHAIR: Is anybody able to help Ms Carlson with her inquiry? Mr. Thackeray, you look like you want to take a stab at it.

MR. THACKERAY: Thank you, Mr. Chairman. When Hilary responded earlier to the question from Mr. Mason, she made reference to individuals being able to access information from Alberta Learning pertaining to the requirements that private schools have in providing certain information to the Minister of Learning as per the agreement. I would believe, although I can't be certain because I've never tried it, that the information provided by the private schools to the Minister of Learning would have some direct reference to the public dollars that were going to that private institution. So the information could be accessed through the Department of Learning, which is covered by the Freedom of Information and Protection of Privacy Act.

MS CARLSON: Then are you saying that information with regard to administration, curriculum, and future planning is accessible through the Department of Learning for these schools?

MR. THACKERAY: I don't know.

MS CARLSON: I think it's not, and I think we have a right to know.

THE CHAIR: I just want to make sure that the members understand the question. The question is: should private schools and colleges be made subject to the FOIP Act? Now, if I understood Mr. MacDonald's concern regarding Ms DeLong's motion, he was concerned about public tax dollars. Certainly that information would be available through the Department of Learning estimates or elsewhere. As I understand the question – and I don't pretend to understand it fully – it's whether or not the decisions of the private school or college ought to be subject to FOIP regulation. Is that right, Mr. Thackeray?

MR. THACKERAY: That was my understanding, Mr. Chairman. I believe that Ms Richardson may have some information that she could provide.

THE CHAIR: Ms Richardson, can you help out?

MS RICHARDSON: Well, I guess with respect to one matter, and that would be Ms Carlson's question in terms of curriculum. Certainly if private schools are following Alberta Learning's curriculum, then that information would be available through Alberta Learning. If their students are writing diploma exams and that sort of thing, they have to follow the curriculum requirements. I suspect, though, that in terms of particular decisions, planning decisions and those sorts of things, the kinds of decisions their board of trustees would make, that kind of information wouldn't necessarily be something that Alberta Learning would have. If they're making decisions about building facilities and that sort of thing, unless Alberta Learning is providing them with capital dollars, which I suspect they're not, that's not a decision that Alberta Learning would have records about.

THE CHAIR: Mr. Lukaszuk.

10:05

MR. LUKASZUK: Thank you, Mr. Chairman. I gather from the information that was given to us by the technical team that there are really two clear components to private schools that are very easily identifiable, one being the process of educating and learning, which is subject to disclosure to the Minister of Learning and then subject to FOIP regulations. So the minister is aware of whether or not the curriculum is being followed, and students have to meet certain targets that are set out by the Department of Learning, and that process is transparent.

Now, there is another component to a private school, as I view it, and that's the actual business of running the school itself from a financial point of view, the business of doing business. Even though there is a small component of taxpayers' dollars – because as we all know, the public contribution to private school tuition is not proportionately large – there are also other sources of revenue that private schools have, that being private donations, donations from religious groups, and the component that the parent or student actually pays himself. I would find it very difficult to justify why a member of the general public should be privy to information on

where the private school garnishes the remainder of its revenue from aside from what's being given to them by taxpayers, and we know exactly how much is being given to them per student from the taxpayers' budget.

MS CARLSON: I would challenge the member's comment about the proportion of fees subsidized by the government being small in terms of the cost of covering the curriculum that's provided as a requirement by Alberta Learning. As a matter of principle I think that if the government is subsidizing something, they have a right to access the information to see how it's run.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. Well, I guess I would take a slightly different tack and sort of pose the question in terms of the qualifications of teachers and ensuring that the parent gets full and complete disclosure of who's teaching, what their records might be, if there have been any difficulties, for example. I would pose the question of whether or not the market mechanism is going to accomplish that function. I would assume that if we're looking for the market to provide those sorts of protections to parents and children, it would mean that something negative would have to occur, and then people would stay away from the school and so on. I'm not sure that it's the appropriate way to deal with it. I think it would be preferable if the parents had some transparency before they placed their child in a school, and unless I'm mistaken, placing it under the FOIP Act would accomplish that or at least permit that to occur for a diligent parent.

THE CHAIR: Mr. Thackeray, refresh my and the other committee members' memory. Were there submissions from any parents or parent groups from private schools calling for this type of amendment?

MS LYNN-GEORGE: There were one or two comments that I know of. The Alberta School Boards Association – or was it the Alberta Teachers' Association? – suggested that schools should be covered by the act. This was an issue on which there were a lot of submissions during the last review and really hardly any at all this time. It was really just put into t his policy option paper for completeness, because it was another aspect of the question that really didn't arise out of the public submissions to any great extent.

THE CHAIR: Okay. Any questions to Ms Lynn-George on her answer to the chair's question? Any further deliberation or debate before we call for a vote?

Ms Delong to close. Anything?

MS DeLONG: No. No comment.

THE CHAIR: The motion put forward by Member DeLong is the status quo motion that

> private schools and colleges should not be made subject to the FOIP Act.

All those in favour of Ms Delong's motion, please raise your hands. Opposed? It's carried.

Now, Mr. Thackeray, before we leave question 2, I recall from the government's submission that there may have been some housekeeping items that need to be addressed.

MR. THACKERAY: That's correct, Mr. Chairman, a couple of recommendations in the government's submission as well as one recommendation in the Information and Privacy Commissioner's submission. The first deals with recommendation 7, and that is that an expert who provides an opinion under section 18(2) of the Freedom of Information and Protection of Privacy Act not be required to enter into an agreement relating to the information disclosed for the purpose of the opinion if the person is a custodian under the Health Information Act. We believe that the requirements of the Health Information Act are sufficient that this section could be changed.

THE CHAIR: Any questions of Mr. Thackeray on his brief presentation? Is anybody prepared to make a motion one way or the other? Mr. Jacobs.

MR. JACOBS: Sure. I'm prepared to make a motion reflecting the recommendation as advocated by the technical team, which would be that

> an expert who provides an opinion under section 18(2) of the FOIP Act not be required to enter into an agreement relating to the information disclosed for the purpose of the opinion if the person is a custodian under the Health Information Act.

THE CHAIR: I take it that's in accordance with recommendation 7 in the government's policy paper.

MR. JACOBS: It is in accordance with recommendation 7, Mr. Chairman.

THE CHAIR: Any questions to Mr. Jacobs on his motion? Any debate or deliberation?

MR. MASON: A question to Mr. Ennis, please, on whether or not you feel this would weaken the act in any way or whether or not the other act is sufficient protection.

MR. ENNIS: Our view is that the dawn of the Health Information Act has covered this situation well, so the current situation is really one in which people are being asked to bind themselves to something they're really already bound to.

THE CHAIR: Does Alberta Justice have any comments or concerns with respect to Mr. Jacobs' motion?

MR. DALTON: No comment, Mr. Chair.

THE CHAIR: Thank you. Anything further?

Okay. The motion as put forward by Mr. Jacobs is that government recommendation 7 in their policy paper be recommended by this committee, and that is that an expert who provides an opinion under section 18 of the Freedom of Information and Protection of Privacy Act not be required to enter into an agreement relating to the information disclosed for the purposes of the opinion if the person is a custodian under the Health Information Act. All those in favour of Mr. Jacobs' motion, please raise your hand. It's carried unanimously. Thank you.

Any other technical or housekeeping issues, Mr. Thackeray?

MR. THACKERAY: If you move to recommendation 8 in the government's submission, it is "that the language of section 30 be amended to make it clear that third party notice is not required if section 29(1) applies to the information." The issue, Mr. Chairman, is that the language of this provision is unclear. The intent is that third-party notice provision should not apply to information that is to be made publicly available. If the information is not made publicly available within the 60-day time limit and the request is reconsidered, then the notice provisions may be applicable.

THE CHAIR: Any questions of Mr. Thackeray with respect to his brief presentation? Is anybody prepared to make a motion? Mrs. Jablonski.

MRS. JABLONSKI: Thank you. I move that the language of section 30 be amended to make it clear that third-party notice is not required if section 29(1) applies to the information.

THE CHAIR: Thank you. Any questions to Mrs. Jablonski regarding the wording of her motion? Any debate? If we could put to a vote government recommendation 8, as outlined in the policy paper, that

> the language of section 30 be amended to make it clear that third-party notice is not required if section 29(1) applies to the information.

All those in favour of that motion? It's carried unanimously. Thank you.

Any other housekeeping or technical matters, Tom?

10:15

MR. THACKERAY: The last one, Mr. Chairman, is the recommendation in the office of the Information and Privacy Commissioner's submission, which was recommendation 2. The recommendation was that the committee consider whether it is appropriate to include the Royal Canadian Mounted Police as a public body under section 1 of the Freedom of Information and Protection of Privacy Act and, if so, the extent to which the RCMP should be subject to the act. Members received briefing 3, which dealt with the issue about this submission.

THE CHAIR: Mr. Ennis, as this is a recommendation from the office of the Privacy Commissioner, do you have anything to add?

MR. ENNIS: Thank you, Mr. Chairman. The recommendation is included in the submission from the office of the Information and Privacy Commissioner as an alert to the members that this is a jurisdictional dilemma with the FOIP Act, one that should the committee choose not to resolve, the commissioner someday may have to resolve, leading to possibly a large constitutional entanglement. Currently the RCMP operates subject to the RCMP Act, and that act makes compliance with provincial legislation in this area a difficult proposition for the RCMP.

THE CHAIR: Are they not subject to their own privacy legislation?

MR. ENNIS: They are subject to the Privacy Act and to the Access to Information Act federally. In fact, the RCMP are amongst the busiest of all organizations in responding to ATIP requests, the federal equivalent of our FOIP access requests. They have a busy operation there. The difficulty is that Albertans interested in accessing their information relating to what are essentially provincial policing matters have to go through a federal act to a federal institution to do so.

THE CHAIR: Where is the impetus coming from to put the RCMP under provincial FOIP legislation?

MR. ENNIS: I suppose the impetus comes from a number of near brushes that we've had with this issue where people are anticipating that they can access police information through the provincial access laws and are finding that they're being turned away. The argument that we hear is: if it is the Minister of Justice who is responsible for policing in the province, should not this information be accessible under the laws that govern the Minister of Justice? I think that the Minister of Justice is in a quandary here because Justice does not appear to have the capability of aligning the RCMP under the FOIP Act.

THE CHAIR: Mr. Dalton, on behalf of Alberta Justice can you comment specifically with respect to Mr. Ennis's last comment?

MR. DALTON: With respect to the last comment, it isn't actually the Minister of Justice. It's the Solicitor General that has responsibility in respect of policing in this province. It's an overall, overarching responsibility, and that's where it ends. It then is delegated down into the various cities and towns and hamlets, et cetera, throughout the province.

MS DeLONG: If you could please clarify for me. I can see how it would be helpful to have the RCMP essentially covered the same way as other provincial organizations. But if we were to say that the RCMP is covered under FOIP, does that mean that they're no longer covered under the federal regulations? Otherwise, I don't know that we're accomplishing anything.

THE CHAIR: I believe that that would have to be answered in the negative.

Any other questions or concerns?

MR. MASON: Well, Mr. Chairman, it's a difficult question, because it's a federal police force enacted under federal legislation, yet in eight of 10 provinces it's contracted to provide provincial policing services. So they work for us on a contractual basis to provide police services, but there's all of this other legislation surrounding the police. I guess that if we were to have a provincial police force in Alberta, we would have to wrestle with the question of how freedom of information would apply to the police. It's complicated here, and I'm not sure that it's something that is within the competence of our committee. It really seems to me that it would have to be some sort of negotiated arrangement between the provincial governments and the federal government as to how it would be handled, and maybe we should consider a recommendation along those lines rather than saying, you know, that the RCMP should be put under FOIP, which I think is problematic. I just see it as opening a number of jurisdictional issues that we can't resolve.

THE CHAIR: Any other general questions?

Can Alberta Justice help me with this query? If the committee were to recommend that the RCMP be included under provincial legislation and if the government were to act upon that and in the Legislature pass it, what would happen if there were inconsistent provisions within the two pieces of legislation? How would those be resolved?

MR. DALTON: Well, you'd have to ensure that the provincial legislation had the competence to do this in the first place. Assuming that it did, then presumably you wouldn't have to worry about a conflict because one would override the other. In other words, in relation to the contractual relationships here in this province and what they are doing for us, the provincial legislation would apply. The critical question, as noted by Mr. Mason, is that it's quite complicated as to whether that's the case or not, and how that would play out, as noted by Mr. Ennis, is a difficult one. Assuming that there is constitutional capability of doing that, then simply our act would apply, and that would be the end of the story.

THE CHAIR: Okay. Mr. Ennis, anything final from the perspective of the office of the Information and Privacy Commissioner?

MR. ENNIS: Thank you, Mr. Chairman. I would like to reiterate that the reason the commissioner has placed this in the form of a

recommendation is perhaps to reflect the commissioner's view that Alberta legislation is more effective, more complete than the current federal legislation, and having the right of access under the FOIP Act is a stronger right than having a right of access under the current Access to Information Act federally.

THE CHAIR: Do you know, Mr. Ennis, whether the commissioner or the commissioner's office has had any discussions with Alberta Justice, specifically constitutional law, with respect to the potential can of worms that this is opening up?

MR. ENNIS: Not detailed discussions, Mr. Chairman.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: You've pre-empted my question very well. I was wondering even further whether the commissioner has had any discussions with the federal Solicitor General to find out what that department's position would be on this. Or is the commissioner wishing that our contractual agreement with the federal government now be amended and that perhaps somehow the provisions of FOIP be written into the contract, binding the RCMP to similar requests?

MR. ENNIS: The commissioner has not had discussions with the federal Solicitor General on proposals in this area. The idea of some kind of contractual binding of the RCMP to some form of access procedure is an interesting one, and that has been raised from a number of directions, but I can't say more about it than that in terms of my knowledge of the situation.

THE CHAIR: Mr. Thackeray, anything final from Government Services?

MR. THACKERAY: No, Mr. Chairman.

THE CHAIR: Ms DeLong, do you have something you want to add?

MS DeLONG: Just one more question. What is our situation in terms of supposing we do nothing, essentially, and this bill is not going to be looked at again for several years, for, we hope, many several years? Maybe that's something that we could move towards, but it has to be moved towards really carefully in terms of not complicating the situation worse than it is right now.

THE CHAIR: Okay. Anything arising from that?

MR. MASON: Unless there's a response first.

10:25

THE CHAIR: Anything arising from the chair's questions or Mr. Ennis's comments? Mr. Ennis, do you have something you want to add?

MR. ENNIS: Yes, Mr. Chairman. Just to respond to that, I think the concern that Ms DeLong raises is with regard to consistency of approach. To allow the status quo would be to perpetuate different levels of service or different levels of rights depending on where a person is making an access request. An access request made in the city of Edmonton would have a different outcome than a request made in the city of St. Albert. I believe Justice might have comments to make on the comments I've just made, but I think that is among the concerns, that there's a different path that has to be followed depending on where a person makes a request.

THE CHAIR: Mr. Dalton, then Mr. Lukaszuk. Oh, sorry.

MR. DALTON: Sorry. Mr. Mason was ahead of me.

THE CHAIR: Just one moment.

Did you want to make a motion, or do you want to enter into the debate?

MR. MASON: This is still pertinent to Ms DeLong's question, so let him go, but then I do have a question.

THE CHAIR: Okay. It's Mr. Dalton, then Mr. Mason, then Mr. Lukaszuk.

MR. DALTON: I think I will have to take umbrage, if I may, with Mr. Ennis's answer. I think that's rather a broad-brushed approach to it, that it's going to be different. Yes, the two acts are different, but I don't think the approach is that there is going to be a significant difference in relation to any access requests of the RCM Police. With respect I have been unable in my years of looking at this to find any situation where the matter has come before any other provincial jurisdiction, in particular British Columbia, where there's a good deal of RCM Police activity in the towns and cities. So that tells me that it's working, and as long as there's a situation that appears in Canada where people have an access right to somebody through some legislation, then the proof is in the pudding that it's not something we need to worry about particularly. They are different with respect, but I don't see that anybody has raised any complaint that because the provincial legislation is different than the federal legislation, that leads us to moving toward the provincial legislation.

THE CHAIR: Before I recognize Mr. Mason again, I understand that this recommendation came from the OIPC. Were there any public submissions regarding the need to do this?

MR. THACKERAY: Not that I recall, Mr. Chairman.

MR. MASON: Well, you know, this last answer we had sounded more like a political argument to me than an actual piece of technical advice. I'd like to know specifically what the differences are in terms of what rights people would have. If people would have additional rights if they wanted some information or additional protection for their personal information in Edmonton as opposed to St. Albert, then I'd like to know what it is. The fact that people may or may not have complained about it is immaterial.

THE CHAIR: Mr. Ennis, on this point.

MR. ENNIS: Thank you, Mr. Chairman. On this precise point I think the key distinction would be access to the oversight tribunal functions of a commissioner. There are federal commissioners. They do not have order-making power. The provincial commissioner does.

We saw a recent problem develop in British Columbia in this area, where the RCMP were providing surveillance to the streets of Kelowna, and the provincial commissioner found himself in a situation where he had to complain to the federal commissioner for the federal commissioner to take action to address the situation that had arisen in Kelowna. The result is that we have essentially a very local problem in Kelowna being managed from Ottawa by the federal Privacy Commissioner and being managed in a way where the federal Privacy Commissioner does not have order-making power to address his own recommendations to the RCMP. The result has been a fairly serious rift between the Privacy Commissioner of Canada and the chief superintendent of the RCMP,

with the RCMP continuing an activity that the Privacy Commissioner of Canada believes is a violation of the law.

THE CHAIR: Thanks.

A supplemental, Mr. Mason?

MR. MASON: Yes. Given that, then I guess my preference for dealing with this is the suggestion made by Mr. Lukaszuk, which is not that we recommend that Alberta unilaterally try to extend the FOIP Act over the RCMP operating in the provincial jurisdiction but that we attempt to negotiate that with the federal government in terms of a contract renewal for RCMP services.

You know, I'd like some comments from staff as to whether or not it would be off base if we recommended that the Alberta government undertake to extend FOIP jurisdiction to areas under provincial jurisdiction that are administered by the RCMP under contract through a negotiation process around the contract. Did that make sense? That's a question to Mr. Thackeray, Mr. Ennis, and Mr. Dalton: whether or not that would be a practical approach to this issue.

THE CHAIR: Three potential answerers. Who wants to go first?

MR. MASON: They all nodded.

MR. ENNIS: That captures the spirit of what the commissioner is pointing to here. It may lead at some point to some kind of a legal problem down the road, but most of the service under the FOIP Act is done without recourse to legal activity, so this does capture the spirit of what the commissioner is recommending. It may be that there is no constitutional answer to the problem.

MR. DALTON: I think that's a nice approach, with respect.

MR. THACKERAY: I agree.

THE CHAIR: Mr. Lukaszuk, you've been quite patient.

MR. LUKASZUK: Thank you. If we were to adjourn the meeting right now, the accomplishment up to now is monumental. Mr. Mason agreed with something I have said, and all the bureaucrats support us.

However, having said that, correct me if I'm wrong, but I'm starting to notice a bit of a territorial posturing between perhaps the two commissioners, the federal and the provincial. That very well may be, and if there's a way to avoid that, it should always be looked at.

However, my primary concern is that if a citizen, an Albertan, was to request information from a municipal police force and/or from the RCMP, aside from the fact that both would use different channels, dealing with municipal as opposed to dealing with federal, would both of them ultimately receive the same result? Would they be provided with the information that has been requested? I think that's the ultimate goal of the FOIP legislation, not resolving any territorial disputes between the two commissioners. If the answer is yes, if the outcome is similar and both of those citizens would be similarly or equally satisfied, then I don't think we have a difficulty on our hands. If indeed it has not been voiced by other questioners and there are no examples to come up with, I hope this is not a work-creation project for ourselves over here.

THE CHAIR: I anticipate that you're going to get different answers to that question from Mr. Dalton and from Mr. Ennis.

MR. ENNIS: I think the records returned on a personal information access request would be quite similar. The severing done under the federal access act and the severing done under the FOIP Act are quite parallel. The distinction would be in the basket of rights that comes with that, the right to request a review. The right to request a review of the decision of the police service would be different in those two cases. That would be the distinction.

10:35

MR. DALTON: Mr. Chairman, I think that's what I was trying to say. I turned the corner on policy there, and I apologize to members of the committee. That's what I was trying to say, that essentially the answers would be the same at the end of the day.

Under the federal legislation there also is the ability to go to the Federal Court and actually get an order, but that of course means another step.

THE CHAIR: Anything further?

Did you have a motion to make, or did you have anything further?

MR. MASON: I'll try one, yeah.

THE CHAIR: Well, it's 10:35. I was wondering if perhaps the members might see some benefit to discussing this matter informally over coffee.

MR. MASON: Sure.

THE CHAIR: We'll break for 10 minutes.

[The committee adjourned from 10:36 a.m. to 10:51 a.m.]

THE CHAIR: If we could reconvene, please. Before the break I think Mr. Mason was about to make an attempt at some sort of motion. Is that correct, Mr. Mason?

MR. MASON: Well, I think it was going to be better than you make it sound. Actually, Mr. Chairman, what I'd like to propose – I guess I'd like the office of the commissioner to have a chance to make their case. I don't know if Mr. Ennis wants to take a stab at it here or come back at another meeting. I think that if they can make the case that this is a significant enough issue and that there's a potential for people in different communities to be discriminated against, then I'd be prepared to make the motion. I don't know if Mr. Ennis has a comment on that.

THE CHAIR: The chair has one comment. We've been tabling a lot of matters, and we're running out of days. I mention that as a caution as opposed to a ruling.

MR. ENNIS: Mr. Chairman, I would like to consult with our legal counsel that were involved in putting these recommendations together to see that I've captured all sides of this problem in my presentation this morning to the committee. So if I could ask the committee for some time on that, I could do that tomorrow and come back with a comment on this issue.

THE CHAIR: Do you believe that you could have that answer by tomorrow?

MR. ENNIS: Yes, I do.

THE CHAIR: Mr. Mason, do you want to make that motion?

MR. MASON: Sure. I'll move that

> the matter be referred to the office of the commissioner to come back to the committee tomorrow.

THE CHAIR: Thank you. Anybody opposed to that? It's carried. Thank you. I believe that that deals with question 2.

So we can move on to New Business, and that would be Question 1, Principles. I've read the notes. I'm assuming that there's a presentation.

MR. THACKERAY: That's correct, Mr. Chairman. We assumed that the committee was probably getting sick and tired of hearing from the same people all the time.

MR. LUKASZUK: Agreed.

MR. THACKERAY: So we've asked Mr. Lukaszuk to make the presentation.

Seriously, the presentation this morning will be made by Lana Poitras. Lana is a summer student in our office. She will be going into third-year law in September and has been intimately involved in providing us with some of the background information so that we can respond intelligently to some of your questions. So Lana will be making the presentation, Mr. Chairman.

THE CHAIR: Congratulations, Ms Poitras, on your fine choice of a future profession, and welcome to the committee. We look forward to your comments on the issue of principles. The floor is yours.

MS POITRAS: Thank you. Thanks, Tom, for that great introduction, and I'd like to thank the committee for allowing me to speak today. It's a great honour. I'll continue with the presentation, so we can keep moving.

The principles of the FOIP Act as outlined in section 2 foster openness and accountability in government. This is achieved by providing to the public a right of access subject to limited and specific exceptions to disclosure and by controlling the way public bodies collect, use, and disclose personal information.

These principles are set out in the five purposes of the act: firstly, to allow an individual a right of access to records held by a public body subject to limited and specific exceptions, which should be interpreted with a view to giving as much access as possible; secondly, to control the way a public body collects, uses, and discloses personal information by requiring public bodies to observe fair information practices; thirdly, to allow individuals a right of access to their own personal information held by a public body subject to limited and specific exceptions, which should also be interpreted with a view to giving as much access as possible; fourthly, to allow individuals a right to request corrections of their personal information held by a public body; and lastly, to provide independent reviews of a public body's decision under the act and to resolve complaints under the act. These principles are important because they guide the Information and Privacy Commissioner's interpretation of other sections of the act.

Question 1 of the discussion guide asked whether these fundamental principles are appropriate. The answers received regarding question 1 were mixed, with 50 percent saying that the principles were appropriate and 3 percent saying that they were inappropriate in some way. The remaining 47 percent either had no comment or had a different comment. The majority of respondents endorsed the principles of the act, stating that they met the objectives of public bodies and fostered accountability through access to information. However, a few of these respondents identified that application of the principles is the main issue because complex processes and administration of the act could lead to results that are inconsistent with the underlying principles. For example, NOVA Chemicals claimed that confidential business information has been released under the act.

Of the approximately 3 percent of respondents, which was three out of 125, who said that the principles of the act were inappropriate, one stated that the principles of the act are diluted by qualifications placed on access and a lack of adequate enforcement, an example being the commissioner's lack of authority to levy fines. Another respondent stated that the principles needed to be modified to ensure that nonliving legal entities are included and given privacy protection. The third respondent suggested that the phrase "limited and specific exceptions" be clarified to refer to the mandatory and discretionary provisions in the act.

Generally the principles were supported by boards, societies, associations, local governments, and postsecondary institutions. However, some respondents suggested that they should more resemble the CSA model code for the protection of personal information that is used in PIPEDA. Even though the CSA principles are similar to those in the FOIP Act – both were modeled on the OECD guidelines – the CSA principles are designed for the private sector, are heavily consent based, and focus on privacy without reference to general access.

In conclusion, the principles of the Alberta FOIP Act are substantively similar to those followed in other provincial jurisdictions because they are based on these OECD guidelines on the protection of privacy and transborder flows of personal data.

Thank you. Are there any questions?

THE CHAIR: Are there any questions for Ms Poitras on her very fine presentation? Mr. Mason.

MR. MASON: Is there any trend of thought relative to the basic principles that would indicate that some sort of change could be contemplated? I guess what I'm saying is that obviously there are only a very few specific presentations that had any real criticism of the principles. But on a global level, in other jurisdictions is there a trend of thought that these principles should be amended in some way?

MS POITRAS: No, there is no trend of thought toward amending them. Since they are based on the OECD guidelines, which the CSA model was also based on, which has been further ratified in recent years, I think the trend is rather that these principles are acceptable and working very well.

THE CHAIR: Thank you.

Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I just would like to further comment. I think you said that municipalities thought that the principles of the act were appropriate. That surprised me a little bit. Were there a lot of municipalities that responded and said that, or were there just a couple? Could you just elaborate a little bit on that, please?

MS POITRAS: Well, of the municipalities that responded particularly to that question, although we don't have them set aside within the question 1 principles paper, my feeling is that there was probably an equal amount that were happy with them and some that were dissatisfied, but I think that there were not a lot of comments to do with the principles of the act as regarding their appropriateness.

11:00

MR. JACOBS: So it wasn't that they didn't think the act was appropriate. If they had concerns, it was with the application of the act or other concerns with the act.

MS POITRAS: Correct.

MR. JACOBS: Thank you.

THE CHAIR: Anything arising from that discussion or any further questions to Ms Poitras on principles?

There was a question in our discussion paper that requires an answer, and that was 1(a): "Are the fundamental principles of the legislation appropriate?" Is anybody prepared to make a motion if there is no further general discussion? Mr. Jacobs.

MR. JACOBS: Sure. I'll move, according to that recommendation, that the fundamental principles of the FOIP Act are appropriate.

THE CHAIR: Thank you, Mr. Jacobs.

Any question to Mr. Jacobs on the wording or on his motion? The chair opens it up for debate. Anybody disagree that the fundamental principles of FOIP are currently appropriate? Perhaps we could put it to a vote.

The issue before the committee is a motion put forward by the member Mr. Jacobs that

> the fundamental principles of the FOIP Act are appropriate.

All those in favour of that motion, please raise your hand. Opposed? It's carried.

Mr. Thackeray, I believe we stood down number 3(c), Report on the DNA Issue. Was there a particular time when you felt we should deal with that?

MR. THACKERAY: I believe it was to give the opportunity for members to have a look at the briefing paper that was put together at that time.

THE CHAIR: That was the chair's suggestion then.

MS CARLSON: You're having a blond moment.

THE CHAIR: Yes, I am. Thank you.

Okay; then if we could deal with question 18, which deals with the administration of the act. There were notes attached. I've had an opportunity to peruse them. I'm assuming all members have. Is somebody going to highlight the notes? Hilary.

MS LYNAS: We've organized the comments on administration into several themes. There were a number of public bodies that talked about training and resource materials that are provided from Government Services and the office of the Information and Privacy Commissioner. Two local public bodies suggested that there should be more training for smaller rural communities. Other public bodies suggested that there should be some new training materials such as self-study types materials that public bodies could assign to their employees, and they could do some training within their own workplace.

A college said that it's important that the government of Alberta continue to encourage training and awareness so that public body staff can be familiar with the requirements of the act, particularly as they relate to privacy, and a business also said that continued training and support of public bodies is appropriate. One school board mentioned that the FOIP networks and support of Alberta Government Services staff is very important and appreciated and also mentioned that they refer questions to the FOIP help desk. A health authority commented on the Guidelines and Practices manual being a valuable tool, and another indicated that they'd had good support from Government Services. One association said that while the act has been in place for a while and training complacency has set in, refresher training or monitoring of activities would be a useful thing.

Government Services offers training to public bodies, and we offer currently three one-day courses that build upon each other. Not all public bodies have the experience to offer training in-house, so there's always an ongoing need for training due to staff changes in public bodies. It's essential not only for FOIP co-ordinators but also for other staff so that they understand their obligations to protect the privacy of personal information and also so that they prepare documents in such a way that they can be provided to the public for an access request.

Last year our branch conducted a training-needs assessment. We contacted public bodies and asked them for their views on what kind of training is needed now that we're past the implementation stage for FOIP, and the report indicates that there is a need to offer more advanced training and to develop new resources such as a new training video and self-study training materials. So we will be working on revising our training program as allowed by budgetary limitations. Those were all the comments on training.

The next issue has to do with funding and resources. A number of organizations made similar comments around the costs of administering FOIP. A municipality said that since the FOIP Act is provincial legislation, the provinces should bear the full cost, and they noted that the fee scale does not cover costs. A health authority said that the public body shares the vast majority of costs and should but not at the expense of service delivery; there should be adequate funding to administer this and other pieces of provincial legislation. Another said that any initiatives by the government to streamline administration and reduce costs associated with the administration are encouraged. Another organization said that administrative costs of delivering FOIP undermine their ability to fund core operations. So there were several public bodies that were making the same kinds of comments related to funding.

Now, public bodies weren't given additional funding to prepare for the implementation of the FOIP Act or to administer the act on an ongoing basis. They do receive support in the form of ongoing resource materials and by having access to the help desk, FOIP network meetings, and publications available at the web site. They can access materials at the web site, and there's no charge, but if they're purchasing the Guidelines and Practices manual from the Queen's Printer, of course there's a fee there. Training course fees are kept as low as possible.

Now, this same concern was recently addressed in the report of the federal Access to Information Review Task Force. This group also heard concerns that the public bodies felt they had to steal from their program delivery funds to absorb the costs of FOIP. The task force noted that such legislation is here to stay and should be budgeted for in the same way as program delivery expenses. I listed the task force's recommendation 7-7, which is

> that government institutions manage their Access to Information responsibilities in the same way that they manage other programs, and establish resource planning mechanisms, including resource forecasting, performance measurement and systems analysis, as part of their operations.

Just to note, the FOIP Act isn't the only piece of provincial legislation that public bodies administer without additional funding. For example, everyone must comply with the Occupational Health and Safety Act, employment standards, and so on.

The other area that people raised was commenting around public awareness or assistance for the public in understanding the act. For

example, a library said that more public awareness is needed, and another said that the general public don't understand their rights. One body pointed out that there's very little information available on the act in any language besides English and noted that the government has done very little public education. One individual suggested that there should be a 1-800 information line, and another said that the FOIP help desk line should be better publicized to serve organizations affected by the FOIP Act as well as the general public. This same public body commented that greater public awareness could be achieved through the provision of information to constituents via MLAs. A health authority said that there should be more attention paid to more user-friendly, accessible information and more periodic information or education campaigns aimed at the public and noted that even their own staff have a very low awareness of the FOIP Act and the rights it provides to them.

11:10

Now, the office of the Information and Privacy Commissioner has the mandate to inform the public of the act. At Government Services we target our initiatives mainly to public bodies. Regardless of that, more than 25 percent of the calls to the FOIP help desk are received from the general public.

There were some other comments that didn't fit into the previous categories. One is that the AAMD and C said that in spring 2001 it had called on the province to establish a committee to review the application of the FOIP Act to local governments, with the committee membership being comprised of legal counsel and representatives of the association, the AUMA, and the Society of Local Government Managers. The association is disappointed that local government stakeholders have not been invited to participate in the current review process at the committee level.

A couple of organizations mentioned delegation, saying that the act should be more specific on who can be a FOIP co-ordinator. The FOIP co-ordinator role isn't in the FOIP Act. There's a FOIP head defined in the FOIP Act, but the co-ordinator role is kind of created as a convenience and isn't a requirement of the act. A student advocacy group said that it feels that the current act allows access to records that the Ministry of Learning holds that are of interest to them on various postsecondary institutions. A business organization and a municipality commented that the FOIP Act is working fairly well and that generally FOIP administration is fine. A municipality says that it's necessary to reduce inconsistency in how each organization interprets FOIP and noted that there isn't a directory of records that includes local public bodies. One individual said that there should be some legal direction to those who use FOIP concerning how the information or records they receive through a FOIP request may be used.

In terms of commentary, the review of the FOIP Act is set out in section 97 of the FOIP Act, and it establishes that the act must be reviewed by a special committee of the Legislative Assembly. In terms of decisions on delegations of authority under the FOIP Act, that rests entirely with the head of a public body, so it can be changed at any time if organizations find that their own delegation within their organization doesn't work.

So those were all the comments on administration. We have posed one question in the paper: should IMAP continue to provide a training program and related support services to promote an understanding of the FOIP Act?

THE CHAIR: Thank you, Ms Lynas.

Mrs. Jablonski, I believe you had a question.

MRS. JABLONSKI: Yes. I actually just wanted to make a comment and then make a motion.

THE CHAIR: We'll have to entertain discussion before we entertain motions. Did you have a question?

MRS. JABLONSKI: No questions.

MS CARLSON: I have a comment and a question. The comment is that the annual report that's filed by the information and privacy division of Government Services is very skimpy in its detail. It's hard for us to determine there who's hoarding information and who isn't. If it could be as informative as the annual report that we get from the commissioner, that would be much more helpful. My question is: is there any chance of that happening?

MR. THACKERAY: I will certainly take the comment under advisement when the next annual report is prepared, for the period ended March 31, 2002.

MS CARLSON: Thank you.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. A couple of questions relating to the comments that you received. I'm going back to page 1, under training and resource materials. Two local bodies said that there should be more training for smaller rural communities, and a county said that the guidelines for interpretation need to be clearer. I understand that you're offering training now, so are they saying that the training they now get is not adequate, that it's not detailed enough, that it doesn't help them enough? What are they really saying?

My other question relates to the cost. A municipality said that costs should be borne by the provincial government. Do they mean the cost of administering the act? Do they mean the cost of training? Do we charge them for training? How does that work?

Could you elaborate on those two questions, please?

MS LYNAS: I don't believe the two public bodies that said that there should be more training really elaborated on what they mean there. I think there is a barrier for small organizations in that if you're a village and you only have a few part-time staff, to send people to Edmonton or Calgary to take a day's worth of training is expensive. Plus, you may not have any coverage left at your own office. So I think that any changes we can make so that people may be able to study back in their own offices or may not have to travel quite as far would be a benefit for smaller rural public bodies.

In terms of training, there is a fee. Is it $150 a day?

MS RICHARDSON: It's $150 and $75.

MS LYNAS: Okay. For the training with the three days it's $150 for the first day of training, and if people are staying for additional days or come back for additional days, it's $75 for the subsequent days. So it would work out to $300 if somebody took all three days of training.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Did you have something on this point, Mr. Ennis?

MR. ENNIS: Yes, Mr. Chairman. Just to supplement some of the comments that Hilary has made, it's also important to note that the office of the Information and Privacy Commissioner and the information management, access, and privacy division have jointly sponsored, along with a couple of other sponsors, a program out of

the University of Alberta for correspondence learning on the FOIP Act. The program is the only one of its kind in the country. It's gained a fair bit of national attention. One of the benefits of that program is to be able to give people in-depth training in a correspondence/open university kind of format. For citizens who live in places like Milo or Arrowwood, where these comments have come from, this gives them an ability to access quite sophisticated training on a progressive basis.

THE CHAIR: Anything arising from that? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I just want to comment on page 5, where the public body said that the FOIP help line wasn't publicized enough. Further on in the paragraph it says that the MLA office should be used in a greater capacity to bring forward the awareness of FOIP information and how to access it. In what way would that office help: with information cards or by putting out newsletters? What was the idea behind that?

THE CHAIR: Mr. Thackeray, did you want to take a shot at that?

MR. THACKERAY: I think the submission, which was by the Social Care Facilities Review Committee or by an individual, was just a commentary that maybe we're being a little shy and that we should be a little more proactive in getting our information out. We do put out a little hints card, which is about three inches by three inches – I'm old fashioned; I'm not metric – which we could certainly make available to Members of the Legislative Assembly to have in their constituency offices to provide that information to anyone who is interested in more information on the access and privacy legislation.

THE CHAIR: Is that all, Mr. Masyk? A supplemental?

MR. MASYK: Yeah. Thanks, Mr. Chairman. I think it was from SAIT – I'm not sure where I read it here – regarding it consuming a lot of their time and manpower to find this. If a body was looking for information and they came to the constituency office and said, "Can I get information regarding this topic," if I advertise it in my MLA office, would there be an onus on our office to go and do research or get hold of the Privacy Commissioner to go and find out about this particular issue for that particular person? Would you just send them on their way and say, "This is who you phone," or would we do the phoning and do the investigating?

11:20

MR. THACKERAY: So the issue is that someone is trying to find some information from government. They come to your office and say: can you help me? I think we'll be discussing that a bit during the next discussion, when we talk about the directory. As was mentioned, we do have a fairly prominent web site, which is fairly heavily used. The commissioner's office as well has a web site, which provides a lot of information about how you would access information. Our web site also lists all the ministries, all the public bodies, and who the contact persons are for gathering more information.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. I notice and I certainly agree with this unidentified health authority when they state that the Guidelines and Practices manual of FOIP is an excellent tool for the consistent application of the FOIP Act. Now, do you rely on your web site for the broad distribution of that manual, or do you send it out to various agencies or interested parties across the province?

MS LYNAS: It's available through the Queen's Printer. We have an e-mail newsletter or we can e-mail almost all public bodies, so when it's changed, we let them know there's a new version. They can either use it from the web site, or they can purchase a copy from Queen's Printer.

MR. MacDONALD: How much does it cost to purchase this document at Queen's Printer?

MS LYNAS: I think it's $29.

MR. MacDONALD: Oh, $29. Yet we say in this presentation that it is available at no charge. That's just the on-line version; right?

MS LYNAS: Right.

MR. MASON: Yeah. How can you charge for an on-line version?

MR. MacDONALD: Well, give them time.

Now, I would encourage that this practices manual be placed in every public library in the province. Has that been done?

MS LYNN-GEORGE: It's in all the depository libraries. We did distribute it more broadly at a time when we had more money, but when the budget cuts arrived, that was one of the things that was taken off our list. Since it's available on the web sites and in many ways is more convenient to use on the web site because there's a search engine – and public bodies have told us that they are comfortable with using it that way. They can also download it and reformat it, and a lot of public bodies edit it. They will take the basic document that we provide and then add some additional material that is relevant to their own institution. So it makes it a little bit more flexible when they can use an electronic version.

THE CHAIR: A supplemental, Mr. MacDonald?

MR. MacDONALD: Yes. Ms Lynn-George, could you clarify for me, please, the difference between a public library and a depository library?

MS LYNN-GEORGE: A number of libraries are nominated or designated as depository libraries, and that means that they receive a copy of every government publication. There are many, many more public libraries than there are depository libraries. I think there are about half a dozen depository libraries in Alberta, like the city of Edmonton, the University of Alberta, and probably the equivalent in Calgary. There are about half a dozen, but I'm not exactly sure which ones they are.

MR. MacDONALD: But it would be safe for me to assume – and I'll just pick Camrose as an example – that Camrose would not have a copy of our Guidelines and Practices manual in relation to the application of FOIP.

MS LYNN-GEORGE: The FOIP co-ordinator would have received a notice advising that person individually that they could download it from our web site, and they would have received an order form advising them that they could get a copy from the Queen's Printer.

MR. MacDONALD: So if they can afford a wee bit of paper, they can put that on the shelf.

MS LYNN-GEORGE: Yes.

MR. MacDONALD: Thank you.

THE CHAIR: Anything arising out of that exchange? Any further questions for any members of the technical team?

Okay. We have a question, 18(a), that needs to be answered: "Should IMAP, information management, access, and privacy continue to provide a training program and related services to promote an understanding of the FOIP Act?" Mrs. Jablonski, are you prepared to make a motion?

MRS. JABLONSKI: Yes, I am.

THE CHAIR: Go ahead.

MRS. JABLONSKI: Mr. Chair, I find the FOIP Act to be very complicated, and I highly applaud the . . .

MR. LUKASZUK: That's a good motion.

MRS. JABLONSKI: A comment and then the motion. I highly applaud the training that is provided to public bodies. I believe that it's essential to meet the principles of the FOIP Act, and I would therefore like to make a motion. I move that

> IMAP should continue to provide a training program and related support services to promote an understanding of the FOIP Act.

THE CHAIR: Thank you, Mrs. Jablonski.

Any questions to Mrs. Jablonski on her motion? Any discussion or debate on that motion? Are we ready for the vote? All those in favour of Mrs. Jablonski's motion that IMAP continue to provide a training program and related support services to promote an understanding of the FOIP Act, please raise your hand. It's carried unanimously. Thank you.

MR. MASON: I'd like to try a motion along the lines of Mr. MacDonald's excellent suggestion that a copy of the manual be placed in every public library in the province.

THE CHAIR: Okay. Any questions to Mr. Mason on the wording of his motion? Any discussion or debate?

MRS. JABLONSKI: I would ask Mr. Mason why he would think that was necessary since you can get the information on-line.

MR. MASON: Well, because not everybody has computers or knows how to use them.

MRS. JABLONSKI: Every library has a computer.

MR. MASON: Yes, I know, but not everybody is comfortable using a computer even if it's available at the public library. I don't think it's an expensive item. Well, maybe we should get that answered.

MRS. JABLONSKI: I'd like to have that one answered.

MR. MASON: I see all the rolling of the eyes across the way. I could be completely out to lunch.

THE CHAIR: Mr. Thackeray, you're the executive director of IMAP. Do you have any comments or concerns on Mr. Mason's motion?

MR. THACKERAY: We decided not to provide copies as we did in the past I guess for two reasons. One is that it is available on-line, and to the best of my knowledge every public library now has Internet access. So if individuals were interested, they could search the information through that mechanism. Another issue was the updates for the Guidelines and Practices. We try to update the document every two years, and if we continue to do it electronically, we can update it more frequently and insert the updates in the electronic copy, and then people have an up-to-date copy immediately. I guess the third thing that we were thinking about when we decided not to continue with the distribution was the way other provinces are going, and most other provinces don't produce a hard copy. They rely almost entirely on the electronic version. However, we will look into what the cost would be to provide this to all the public libraries and report back.

THE CHAIR: Thank you, Mr. Thackeray.

Supplemental question, Mr. Mason?

MR. MASON: It is printed every year; is it? Or how often is it printed?

MR. THACKERAY: I believe we put one out this year, and the one before that was 2000. So it's usually about every two years. If there was an amendment to the legislation in 2003, then we would try to update the Guidelines and Practices later that year to reflect any changes to the legislation.

MR. MASON: That's fine. I won't make a motion, then.

THE CHAIR: You already have.

MRS. JABLONSKI: So withdraw it.

MR. MASON: I'm not even going to try and withdraw it.

11:30

THE CHAIR: Any other questions or debate regarding Mr. Mason's motion? Do you wish to attempt to withdraw your motion, Mr. Mason?

MR. MASON: I don't want to withdraw it. I think it's a reasonable motion, but I didn't hear a cost figure, which is what I asked, so maybe we can just get that information before we vote on it.

THE CHAIR: Do you want another motion tabled?

MR. MASON: I guess I did make the motion; didn't I?

THE CHAIR: There's a motion on the floor, that does not appear to be wanting to be withdrawn, that

> the government of Alberta's Freedom of Information and Protection of Privacy Guidelines and Practices manual be distributed to every library in the province of Alberta.

Is that the motion?

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

I suspect there may be some technical matters to be dealt with, but are there any other general motions regarding training manuals, et cetera?

Mr. Thackeray, I seem to recall in the government's policy paper that there were some technical housekeeping things that the government would like cleaned up. Is that correct?

MR. THACKERAY: That's correct, Mr. Chairman. There are two

recommendations from the government submission that are fairly technical and then one that deals with a future review of this legislation. The first is recommendation 6, and it deals with business information relating to a non arm's-length transaction between a public body and another party. The recommendation is that "section 16(3)(c) be amended to refer to a 'public body' rather than to the 'Government of Alberta.'" The reason for this suggested change is that the government of Alberta in our view is too restrictive and there may be some local public bodies who have non arm's-length transactions between themselves and another party. When the act was first passed back in 1994, the local public bodies were not subject to the legislation, and we believe that the change from "Government of Alberta" to "public body" is more reflective of the times today.

THE CHAIR: Thank you.

Any questions for Mr. Thackeray on that brief presentation? Any general discussion? Is anybody prepared to make a motion?

MR. MacDONALD: I have a question for Mr. Thackeray, and it would be this: if we were to change that definition, how would that affect delegated administrative organizations, DAOs?

MR. THACKERAY: My understanding is that if the delegated administrative organizations were made subject to the Freedom of Information and Protection of Privacy Act, then they would be defined as a public body.

MR. MacDONALD: That's your opinion?

MR. THACKERAY: Yes.

THE CHAIR: Anything supplemental, Mr. MacDonald?

MR. MacDONALD: Yes. I would have to ask the question now – and you'll have to excuse me, Mr. Thackeray. The last of your remarks I'm not clear on. Why again do you feel that it is necessary to change this to "public body" from "Government of Alberta" when the act is, like, six years old? What's the rationale behind that now again, please? I may have been distracted when you were giving your initial comment, and I apologize. If you could clarify that again.

MR. THACKERAY: Currently section 16(3)(c) does not refer to other public bodies. It refers to the government of Alberta. Since the rationale for this section of the act is that there should be transparency in such transactions, it should apply to non arm's-length transactions between local public bodies and other parties, not just the government of Alberta and other parties.

MR. MacDONALD: Now, my next question would be: if we were to support this amendment, would that in a way exclude the Alberta Treasury Branches from FOIP, even in a limited way?

MS LYNN-GEORGE: This proposal makes no difference to any government public body. All this does is it sort of expands the scope of the act in a way. At the moment if for example a municipality has an arm's-length transaction with another party, then there's no ability to say that section 16, the protection for business interests of a third party, doesn't apply. So what this does is it says that what's good for the goose is good for the gander. If the government has to disclose information relating to non arm's-length transactions, other public bodies should also be obliged to do so. They can't use the protection of the exception for business information when they're looking at a non arm's-length transaction either in government or in local public bodies.

THE CHAIR: Anything arising, Mr. MacDonald?

MR. MacDONALD: Not at this time, Mr. Chairman, no.

THE CHAIR: Anything arising from that discussion for the other members? Is anybody prepared to make a motion?

MR. JACOBS: That makes sense to me, so I'm prepared to make a motion under recommendation 6, as has been explained to us, that

> section 16(3)(c) be amended to refer to a "public body" rather than to the "Government of Alberta."

THE CHAIR: Thank you, Mr. Jacobs.

Any questions to Mr. Jacobs? Any discussion or debate? All those in favour of Mr. Jacob's motion that section 16(3)(c) of FOIP be amended to refer to a "public body" rather than to the "Government of Alberta," please raise your hands. Opposed? Mr. Mason, did you vote?

MR. MASON: No.

THE CHAIR: You must.

MR. MASON: Well, then, I'm in favour.

THE CHAIR: It's carried.

Further housekeeping matters, Mr. Thackeray?

MR. THACKERAY: The second one is recommendation 26 in the government submission, which deals with access to manuals. Section 89 of the legislation requires public bodies to provide facilities "where the public may inspect any manual, handbook or other guideline used in decision-making processes that affect the public." This provision was drafted as a transitional provision, applying within two years after this section comes into force. The intention was to allow a reasonable amount of time for implementation. The act has now been enforced for all sectors for more than two years, so there is no longer any need for the two-year grace period. If the act were to be expanded to any other sector, time for implementation could be allowed for through the proclamation process. So the suggestion is that "section 89(1) be amended to delete the phrase 'within 2 years after this section comes into force.'"

THE CHAIR: Any questions to Mr. Thackeray on that presentation? Mrs. Jablonski.

MRS. JABLONSKI: No. I was jumping the gun again. I was prepared to make a motion.

THE CHAIR: Any questions? Mr. MacDonald.

MR. MacDONALD: Yes. Mr. Chairman, I have a question, and certainly I hope that you or the *Hansard* people can enlighten me on this. It strikes me as quite ironic that we're sitting here talking about information and the distribution of it throughout the province and I see these little black pick-up – they look like pick-up microphones in the ceiling. If that's what they are, why is the one on above my chair and that of Mr. Lukaszuk? It's apparent to me that it isn't on anywhere else. Are these audio pick-up microphones, or what are they up there?

MR. MASON: They go directly to the RCMP headquarters.

MR. MacDONALD: Yeah. I would prefer that to the Public Affairs Bureau.

THE CHAIR: I'm not sure what that has to do with government recommendation 26, and I don't know the answer.

MR. MacDONALD: Well, my conversations with Mr. Lukaszuk are not to be, I don't believe, public knowledge, not that anyone would be interested in what we have to say to each other.

THE CHAIR: If it's okay with you, Mr. MacDonald, Mrs. Sawchuk is going to talk to the maintenance people in the building and provide you with an answer to that question.

MR. MacDONALD: Okay. I would appreciate that, because I'm just curious, quite curious, about this.

11:40

THE CHAIR: It's a fair question.

Okay. Mrs. Jablonski.

MRS. JABLONSKI: Well, I think the suggestion is merely a housekeeping item and that it's just a logical step to take, so I would move that section 89(1) be amended to delete the phrase "within 2 years after this section comes into force."

THE CHAIR: Any questions to Mrs. Jablonski on her motion? Deliberations or debate? If we could have a vote on Mrs. Jablonski's motion that

> section 89(1) be amended to delete the phrase "within 2 years after this section comes into force."

All those in favour, please raise your hand. It's carried unanimously.

Any further housekeeping matters, Mr. Thackeray?

MR. THACKERAY: Yeah. The third one may not be just a housekeeping recommendation. It's recommendation 25 in the government submission. This is the second Select Special Freedom of Information and Protection of Privacy Act Review Committee that has been established since the act was proclaimed in force in '94-95. What we are recommending is that section 97 of the act be amended to allow for a review of the act to begin within six years of the submission of the report of the present select special committee rather than having another committee review in three years.

THE CHAIR: Bearing in mind that all the members may have to sit on this committee next time it's reconvened, are there any questions and comments for Mr. Thackeray?

MR. LUKASZUK: Well, a comment. You know, when this act came into force, it stood to reason that it would have to be reviewed within a short period of time, because some of the intricacies that may develop and that could not, perhaps, be predicted or foreseen by the legislators of that time needed to be addressed in an expedient manner. Without having the privilege of reading the *Hansard*s of those meetings, I imagine that would be the underlying reasoning why such a short period of time was chosen for an initial review and a subsequent one. However, now this act has established itself within the province, and as we find from the feedback that we have received from the public, not a significant number of concerns have been really identified, relatively speaking. So a six-year margin for the next review is appropriate, and the very fact that Mr. MacDonald finds this review so interesting that he started counting microphones on the ceiling of this chamber would further re-entrench in me the belief that perhaps six years is more appropriate than two years.

THE CHAIR: Thank you, Mr. Lukaszuk.

Mr. Thackeray, is it also not true that the reason this review was done three years after the last one was because following 1997 there was the inclusion of municipalities, universities, schools, and hospitals into the act?

MR. THACKERAY: That's correct, Mr. Chairman. The reasoning behind the second review within three years was to give the local public bodies that were being phased into being subject to the act the opportunity to gain some experience and then provide their comments back to a select special committee within a reasonable period of time.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Well, yes, Mr. Chairman. This is in spite of the comments from the hon. Member for Edmonton-Castle Downs. My understanding of FOIP legislation not only in this province but across the country is that it is still under development, and in light of some of the proposals that are going to occur here in 2004 and across the country, I think it would be advisable for an all-party committee to have a look at this legislation again, sooner rather than later. We only have to look at the brief that was presented to us this morning regarding DNA or genetic information and the fact that no other Canadian jurisdiction has considered that question. For us to not review this act with an all-party committee for six years I think would be far too long in light of how privacy legislation is developing not only in government but in the private sector across the country.

Thank you.

THE CHAIR: Anything arising?

Mr. Thackeray, Mr. MacDonald doesn't seem to agree with government recommendation 25. Did you have any response to his concerns?

MR. THACKERAY: The recommendation contained in the government submission is that it allow for a review to begin within six years. It doesn't say: until six years have passed. So if there was a new issue, something that had to be reviewed, there's nothing stopping the Legislative Assembly from appointing a select special committee prior to six years if that was the case.

THE CHAIR: Anything arising from that exchange? Any other general discussion?

Is anybody prepared to make a motion? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. In light of what we've heard, I move that section 97 be amended to allow for a review of the act to begin within six years of the submission of the report of the present select special committee.

THE CHAIR: Thank you, Mr. Masyk. Any questions to Mr. Masyk on his motion? Any deliberation or debate? We'll have a vote. The motion put forward by Member Masyk is that

> section 97 be amended to allow for a review of the act to begin within six years of the submission of the report of the present select special committee.

All those in favour, please raise your hand. Opposed? It's carried.

Does that deal with question 18?

MR. THACKERAY: Yes it does, Mr. Chairman.

THE CHAIR: I'm not hopeful that the next question can be dealt with in 12 minutes. Can it?

MS LYNN-GEORGE: Nearly.

THE CHAIR: Nearly? Okay. Well, let's push ahead. It's question 6, with respect to the directory. Ms Lynn-George, will you be doing the presentation?

MS LYNN-GEORGE: Yes.

THE CHAIR: Thank you.

MS LYNN-GEORGE: The question that was asked was: "Do you think that an applicant can locate the public body most able to respond to his or her request?" A very small minority of respondents, 4 percent, indicated that applicants were not adequately served by the current sources.

Just to give you a brief overview of the provision of the act that is applicable here, it's section 87. Section 87 establishes the duty on the part of the minister responsible for the act to "publish a directory to assist in identifying and locating records." The directory has two parts. The part that concerns general information requires five items: a description of the mandate and function of each public body, a description of the records held by the public body, a general listing of the records in the custody or under the control of each public body, a subject index, and contact information.

The other part is the personal information banks. The directory is to include the title and location of the personal information bank, descriptions of the kind of personal information and the categories of individuals whose personal information is included, the authority for collecting personal information, the purposes for which the personal information is collected and the purposes for which it would be used or disclosed, the categories of persons who use the personal information or to whom it is disclosed. There are a number of other provisions, but they're the key ones.

The federal government, Ontario, British Columbia, Nova Scotia, and Quebec all have provisions for the publication and distribution of information relating to personal information banks at least every two years. The federal government and Ontario both require annual publication of information about personal information banks, including the types of information included and the uses to which it is put. Manitoba requires that every reasonable effort be made to ensure that the guide is up to date.

We had a number of comments on the sources available to assist applicants, and the first, very small group that felt that improvements were required had two basic approaches to this question. The first concern was that the ability to access information held by public bodies was unreasonably dependent upon the abilities of the applicant, and they were concerned about the fact that an individual might need to be very computer literate to access information and that it might require a high level of ability to read and understand English. The other line of thinking was that it was a little bit dependent on who the applicant dealt with. The suggestion was that it might be a little bit uneven from one public body to another.

11:50

Generally, however, the respondents felt that there was an adequate ability for applicants to locate information that they needed from public bodies. The comments dealt in large part with the ways that employees in public bodies felt that applicants did locate the information they wanted. They said that they found information through staff referral, by making phone inquiries. They used the services of public libraries. They used web sites. They found that the government operators, information through the RITE directory, were very helpful. They used the FOIP help desk, which Hilary was talking about before, and the blue pages in the telephone directory and found that generally these resources were perfectly adequate.

The other kinds of comments that came out of the responses were of a more general nature. There were a number of people who said that the directory should be eliminated since it's very costly to develop and maintain and has limited utility. This is a copy of the directory. It was last produced in 1995. It hasn't been produced since, partly because there have been other priorities but also because we'd planned to produce it twice, and just when we were in the process of working on the publication, there's been some reorganization in government, which meant that we had to go back and look at it again. It is a general trend that governments have become more dynamic, the structures less monolithic, so this is something that we can perhaps anticipate will be the case in the future.

Some other general comments. One business said that the government is not a public library and that its purpose is not to assist parties conducting research on government activities. That was a private corporation. One other business respondent suggested that information request forms should be available in more convenient and accessible locations, and they felt that registry offices might be a good point of access for the public.

Other suggestions for improvements in the way that government deals with information. There were a couple of suggestions that the requirements for personal information banks should be raised. One particular respondent suggested that the term "personal information bank" should be more closely defined in the regulation, including criteria that would assist public bodies in deciding that certain collections of personal information do in fact represent a personal information bank. The same respondent suggested that there was no practical reason why local public bodies should maintain a lesser set of information than provincial public bodies with respect to personal information banks. Another respondent suggested that there should be stronger policies directed towards records management standards and ensuring that records are actually created and kept in an identifiable and retrievable order. They were the main comments really.

The question of personal information banks is an interesting one, and I could perhaps just comment very briefly on that. There are two common issues with defining what is and isn't a personal information bank, and this is something that we touched on in the definition of personal information. One is that a number or symbol may not be individually identifying, but it may be potentially individually identifying. The example that has been coming to our attention is IP addresses. That's the address of your computer, which doesn't identify an individual but comes perhaps rather close. Another is that information in databases has become a lot more easily retrievable, which may expand the scope of what we think of as a personal information bank to include information that's not generally considered to fall into the category of information that's clearly a personal information bank, and that would be things like individual case files.

So the lines are getting more blurred as a result of technology. In the older, structured databases to retrieve information you often had to have it in a specific indexed field, and the newer search engines can search unstructured data to retrieve personal information where the data has not been organized specifically for that purpose. This is the whole field of data mining, and some of these developments that are going on in information technology have changed the idea of the way you organize and retrieve personal information. So that is perhaps an emerging issue.

The two questions that this paper poses include: should section 87 of the act be amended to reduce the requirements with respect to the

directory? This is something that is considered in recommendation 23 of the government submission in a little more detail. The second question was: should the provisions for personal information banks be amended with respect to both government ministries and local public bodies? There's a recommendation in the government submission to that effect as well.

THE CHAIR: Thank you, Ms Lynn-George.

Questions on the presentation?

MS DeLONG: Can you give me a little more information as to how these directories are used, because my impression of the reason that a constituent would want to access FOIP is that they've already gone somewhere and asked for some information and been turned down. Is that what the directories are generally for? If that is the case, then maybe the responsibility for knowing which FOIP public body it is that they should be referring to should be the responsibility of the person who has turned them down. Or am I misunderstanding how these directories are used?

MS LYNN-GEORGE: Well, the directory is the kind of tool that any library loves to have because it's a reference work. Most individuals would perhaps not go to the directory; that's a sort of two-step process. They're more inclined perhaps to pick up the telephone and call someone or look up a web site, and probably the approach would depend largely on the age of the individual. Perhaps the older group would be more inclined to telephone. We do have a help desk if somebody was not able to locate the public body that had the particular information. The responses that we've received suggested that there wasn't much difficulty in finding them, but certainly the public bodies have a duty to assist applicants. That's actually in the act, and I don't think any public body would suggest that it's the applicant's responsibility to go to great lengths to find information. I think people would take that responsibility upon themselves to a fairly extensive degree – would you agree with that? – to make sure that somebody was able to get the right referral.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you. Would this directory – and I imagine it's rather detailed, judging by the size of it. Would it be true to assume that the moment you actually print that directory, a good portion of it is already outdated and not accurate?

MS LYNN-GEORGE: Before it even gets to the printer, it's out of date.

12:00

MR. LUKASZUK: In my mind, I compare that to a telephone book, and telephone books tend to be significantly outdated within a year. Therefore, would it not stand to reason that the government only print a listing of public bodies which fall under the FOIP Act and then compel the public bodies to print their own directories of who their staff are, what their phone numbers are, and where they can be accessed so that each public body can maintain an updated listing of individuals?

MS LYNN-GEORGE: One of the things IMAP perhaps does particularly well is maintain a directory of FOIP co-ordinators. It looks like this on our web site. It gives you contact information for every FOIP co-ordinator in about 1,500 public bodies, and this is something that can provide the first point of contact and an expert source to members of the public who are looking for information. This is on our web site, and it's used very extensively by public bodies and by individuals looking for information.

In fact, one of the criticisms of the directory, despite the size of it, is that it's a little bit too general, that perhaps a web site would enable public bodies to provide a little more detail about the kinds of records they have and to keep it current, and if it were the responsibility of the individual public body, that might be more appropriate than having them submit all that information in a very rigid format and have it all processed and then published in print form by a co-ordinating agency. So under this arrangement you would get a link to the public body, and then they would be responsible for maintaining their own directory of general information.

As far as the personal information goes, in the government submission the recommendation is that that continue to be legislated, the requirements of the personal information bank, but that it be the responsibility of each public body to maintain that information.

THE CHAIR: A supplemental?

MR. LUKASZUK: By way of a comment, Mr. Chairman, perhaps following our adjournment for lunch, I would like to make a motion that would be dual, (a) absolving the government of the responsibility of printing those books and keeping them current and (b) to transfer the onus of keeping those updated records by each public body.

THE CHAIR: Okay. Ms DeLong.

MS DeLONG: Just a quick question before, I hope, we go to lunch. Can you tell me where in the act it specifies that whichever department it is who has essentially turned down the request for information does have to refer the constituent to FOIP?

MS LYNN-GEORGE: The most relevant provision, which is not exactly what you said, is the duty to assist applicants in section 10: "The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely." That is actually after an application is received, so a request for information under the FOIP Act. But as a matter of policy public bodies would regard this as an obligation that comes into play as soon as they're unable to provide information through some form of routine process of disclosure.

MS DeLONG: That's not in the act at this point?

MS LYNN-GEORGE: There's no requirement for a public body to refer an individual to the FOIP Act if they don't routinely disclose information.

MR. ENNIS: Mr. Chairman, just to supplement that, this is somewhat of a self-governing situation in that FOIP co-ordinators operate like the rest of us, I suppose, and don't want to do work they don't have to do. One of the ways to make sure that you don't do the work is to pass the person along to the right person to do it. We do find that public bodies go well out of their way to refer people to the proper source for information, because if they don't, they'll end up having to process the request themselves. So there is kind of a self-governing dynamic here to make sure that the citizen is properly served in the whole equation.

THE CHAIR: Thank you.

Any other questions for Ms Lynn-George or for Mr. Ennis?

Before we break for lunch, the chair has a suggestion. We seem to have encountered two major roadblocks here. One of them is with respect to the Chief Electoral Officer. We've debated this motion

twice, and it hasn't been resolved. I was wondering if there was any interest among the committee members in inviting the Chief Electoral Officer, if he is available either this afternoon or tomorrow, to come here and once again make his case as to why he wants a permanent list, and if not, if he might be able to send a delegate or some further information in writing.

The second is with respect to Mr. Mason's comments, which actually caused me to think about Mr. Fjeldheim with respect to Mr. Work. Mr. Mason indicated that maybe the commissioner should be able to make his case as to why the RCMP ought to be included under FOIP. I was wondering if there was any interest among the committee members to see if the commissioner was available either this afternoon or tomorrow to answer that specific question.

MR. MASON: On both of them, Mr. Chairman, I would be quite comfortable leaving the nature and scope of the response up to the commissioner's office. If the commissioner wanted to come down himself, that would be great, but I don't think we should necessarily mandate it.

THE CHAIR: We're not going to compel them to come. We're going to invite them to come.

MR. MASON: Similarly, I'd be just as comfortable getting Mr. Thackeray's people to talk to the Chief Electoral Officer and bring back a report, so I guess my response to the suggestion is that I don't think either is really necessary.

THE CHAIR: Okay. Any other comment?

MR. JACOBS: Well, I'm going to take a different viewpoint. I think it would be interesting to invite these people to come, if they could, and to answer questions and make their cases again. I would be interested in that.

THE CHAIR: Why don't we put it to a quick vote? Can you make that motion?

MR. JACOBS: Sure. I would make the motion that

> we put an invitation to the two mentioned offices to come here and make their case and answer questions.

THE CHAIR: The Chief Electoral Officer and the office of the Information and Privacy Commissioner or a delegate if they are unavailable. All those in favour? Opposed? It's carried.

Tom, can you talk to the Chief Electoral Officer? John, can you talk to your boss?

MR. ENNIS: Yes. I can say that the commissioner is taking a rare vacation day today, but I'll see if he's available tomorrow.

THE CHAIR: Thank you.

We'll break for lunch until 1:15. Thereafter we will entertain motions with respect to the directory, and then we will go to the genetics/DNA issue, so I invite all members to read that policy paper over the lunch hour. We're adjourned until 1:15.

[The committee adjourned from 12:09 p.m. to 1:15 p.m.]

THE CHAIR: Okay. If we can reconvene, please.

Mr. MacDonald, in response to your query:

> The following information was compiled in response to Mr. MacDonald's question about the ceiling microphones in the Committee rooms. I have paraphrased the responses from Val Rutherford, Manager of Planning and Development for Information Systems Services and Carol Holowach, Production Supervisor for Alberta *Hansard*.
>
> The ceiling microphones are ambient microphones. The red lights are on all the time, whether the Committee is in camera or not – they indicate that the power source is operational. The ambient microphones are not turned on when the Committee is in camera, but are turned on at all other times that *Hansard* is recording meetings. The ambient microphones have two purposes:
>
> 1. To record the person who has the floor, if their microphone is not turned on in a timely [manner];
> 2. To pick up interjections that might not otherwise be heard because the person speaking did not have the floor at the time the interjection was made, that is, the microphone in front of that person was not turned on. *Hansard*'s editorial policy is to include the interjection in the transcript only when the person who has the floor responds to the interjection. Otherwise, interjections and comments picked up on the ambient microphones are not included in the transcript.

MR. MacDONALD: Thank you. I appreciate that, Mr. Chairman.

THE CHAIR: It was a very timely response.

MR. MacDONALD: Yes.

THE CHAIR: Okay. Before the lunch adjournment we had been discussing the directory, question 6.

MS DeLONG: Do we have a motion on the floor?

THE CHAIR: There's no motion on the floor.

There was no question in our discussion paper, but I believe that the government has a position on this, if I recall the government submission, which was not dissimilar to the suggested motion put forward by Mr. Lukaszuk before the break. Do you have anything to add, Mr. Thackeray?

MR. THACKERAY: No, I don't, Mr. Chairman. The comments made by Mr. Lukaszuk in the form of almost a motion were fairly consistent with recommendations 23 and 24 in the government submission.

THE CHAIR: You have nothing to add or detract?

MR. THACKERAY: No, sir.

THE CHAIR: Anything arising from that? Is anybody prepared to make a motion?

MS DeLONG: I make a motion that the contents of the directory include only the name of the public body and contact information for the FOIP co-ordinator and that this directory be published only in electronic form on the freedom of information and protection of privacy web site.

THE CHAIR: Thank you. The chair accepts that motion.

Any questions to Ms DeLong on the wording of her motion? Any deliberations or debate? Ms Carlson, did you hear the motion? If there are no deliberations or debate, then it could be put to a vote. The motion, as I understand it, is essentially government recommendation 23, that

> the contents of the FOIP directory include only the name of the public body and contact information for the FOIP co-ordinator and that this directory be published only in electronic form on the freedom of information and protection of privacy web site.

Did I capture that correctly? All those in favour of that motion as

put forward by Ms DeLong, please raise your hands. Opposed? It's carried.

Anything further with respect to the directory?

MS DeLONG: A second motion, please: that each public body be responsible for maintaining and publishing a directory of its personal information banks in electronic or other form and that the directory for each public body include the title and location of the personal information bank, a description of the kind of personal information and the categories of individuals whose personal information is included, the authority for collecting the personal information, and the purposes for which personal information is collected, used, or disclosed.

THE CHAIR: Thank you. The chair accepts that motion. That would be essentially government recommendation 24, Mr. Thackeray?

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

THE CHAIR: Any questions to Ms DeLong on her motion? Deliberations or debate? Then if we can go to Ms DeLong's motion that this committee recommend government recommendation 24 as it relates to directories.

Mr. Mason, there's a motion on the floor put forward by Member DeLong that this committee recommend essentially recommendation 24 in Government Services' submissions. We're calling for a vote unless you have anything that you want to say on this matter.

MR. MASON: Did we hear from the administration as to the workability of the proposal?

THE CHAIR: I believe we did before lunch; did we not? That was I believe included in Ms Lynn-George's presentation; was it not?

MR. THACKERAY: Yeah, I believe it was, Mr. Chairman.

I can just add that each public body has to provide this information at the present time to include in the directory. So it's no more onerous on public bodies than it is today, but this would enable public bodies to make rapid changes.

THE CHAIR: Anything arising, Mr. Mason?

MR. MASON: What role, then, does the department play in co-ordinating this and making sure that it's done and making sure that it's all to the same standard and equally accessible?

MR. THACKERAY: The responsibility of our organization would be to develop a template and provide it to all public bodies so that the information would be displayed in a consistent manner.

MR. MASON: Well, just because you supply it to them doesn't mean that they're all going to do it and do it right.

MR. THACKERAY: Then we'll look at it and ensure that it is done to standard.

THE CHAIR: Does your department monitor that, Tom?

MR. THACKERAY: We're responsible for the administration of the act. So, yes, we would monitor it.

THE CHAIR: Mr. Ennis, did you want to add something?

MR. ENNIS: Mr. Chairman, just to add to Mr. Thackeray's answer. Where any substantive changes are being made to the kind of information being kept in personal information banks, the minister requires that there be a PIA, a privacy impact assessment, developed by a public body. That PIA would come to the commissioner. So changes that would happen to the way that information is managed or kept in personal information banks would likely be reflected at some point in a privacy impact assessment, which would be available publicly and would include the data elements that are involved.

MR. MASON: If I'm just a person who, you know, has maybe a question that I want answered or I'm a little concerned about some personal information that I have, right now we can get the directory at any library. It's like a phone book. It may in fact be out of date, but it's readily accessible, so you can go and you can flip through it. If it's not up to date, the person that you call, that's not the person anymore, can tell you probably where to go. So it's not perfect, but it kind of works.

Under this proposal where do you start? How do you do it? If you just want to get a little information or you've got a concern, where do you go? There's no directory anymore. Everybody has got their own.

MS LYNN-GEORGE: You would start with our web site, and that would give you something that looks like this. That would give you the contact information to any public body in the province. So you're probably about two clicks away from the telephone number of the person who can answer your questions directly. That's an individual, not just an office but the person who currently holds the position of FOIP co-ordinator in any of the 1,500 public bodies in the province.

MR. MASON: Now, that's if you use a computer.

1:25

MS LYNN-GEORGE: It's if you've got access to a public library as well, because any public library would do it the same way.

THE CHAIR: You'll recall that we had this broad discussion before the lunch break. The concern is that these hard-copy directories are obsolete before they even hit the printer. That's the impetus for this suggestion, so I think you need to bear that in mind.

MR. MASON: I appreciate that. There were two questions, though, Mr. Chairman. One is the question of the media; you know, should it be printed or should it be in some Internet form? This is something that I think is suitable to an electronic form, particularly if it's available at libraries. What I'm concerned with is: who maintains it? Who makes sure that it's all there in one place, and how do we make sure that all of these different bodies are in fact doing what they're supposed to do?

So we still need one-stop shopping for this information. We need one web site that gets it all, and we need to make sure that some hospital board somewhere or some irrigation district somewhere or something is actually taking the steps that they're supposed to take to make sure that their information is up to date and in the form and format that all the rest of the information is done in. I haven't heard a really strong statement that the department is going to continue to ensure that that is done.

MS LYNN-GEORGE: Two points. First, the obligation would remain in the act, particularly for personal information banks, and the requirement to have some sort of directory would remain in the act. The second point is that our branch does produce already two

guides in fact. They're listed in this question 6 paper. They are Identifying Personal Information Banks: A Guide for Provincial Government Ministries; and the same title, A Guide for Local Public Bodies. So that is for the personal information banks, and that provides the standards that public bodies can use in order to compile this information.

As Tom has said, when it comes to the general records, we would also be developing some sort of template, and this would probably be based fairly closely on what's in the directory that was developed in 1995 so that you would have a list of general records like administrative records, audit records, buildings and properties records, communications, equipment and supplies, et cetera; so classes of records. Then what they would be able to do is attach some more detail that would be tailored to their own particular organization.

MR. MASON: What if they don't? That's the question. All of these organizations are in some degree – they're also dynamic, and they have shortages of money and competing priorities. How many are there altogether? Fifteen hundred? If we have 1,500 organizations individually responsible for updating their information, the chances are that there's going to be a significant minority of those organizations that are delinquent at any one time. So who's going to make sure that this is up to date? The objective is to make the directory more up to date than it is now. Administratively how will that be done?

MS LYNN-GEORGE: Just one more point on the web design or the web concept, I guess, is that in the past when we were looking at alternatives to a print directory, which was perceived as not being terribly satisfactory, we were looking at the idea of hosting this information on a single web site. The web now enables you to have a distributed arrangement so that what we could do is to bring it all together through a single page that would link to all these other pages so that it wouldn't be necessary to actually host it on our site. It would just be a kind of distributed directory, developed to the standards, that we would produce for the use of public bodies. If we were to do it in print, we would be relying on exactly the same kind of co-operation insofar as we would send it out and they would send it in in hard copy or they wouldn't. I mean, the co-operation has to be there one way or another.

MR. MASON: I don't really want to debate that point, but it certainly seems to me that now you request the information and there are certain deadlines, and if they're not in by the deadline, there's some follow-up and so on. The department now takes some responsibility for the final product and therefore applies pressure to all the organizations to make sure they're in. Is that not correct?

MS LYNN-GEORGE: We've never done a directory that included local public bodies. At the time when this was done, it was only government, so we don't actually have the experience. We do have the experience of collecting statistics.

MR. MASON: Well, I missed that altogether then.

THE CHAIR: Ms DeLong, did I see your hand previously?

MS DeLONG: Yes. My understanding is that it has been the responsibility of individual departments to make sure that the information they provide is correct, so this is really no different. You don't actually go out and bug all of these people and say: make sure that you give us a new directory. Right now it's sort of up to them; isn't it?

MS LYNN-GEORGE: Yes.

MS DeLONG: So there's really no change.

MS LYNN-GEORGE: Well, it would be a change insofar as there would no longer be the requirement to produce it every two years in a print format.

MS DeLONG: But in terms of the responsibility of the individual public body there's really no change. I mean, it was their responsibility before to make sure that you were getting the right information, and now it's just their responsibility that the information is there. I understand also that with your web site, your web site will be fanning out to all of these different public bodies, and if they don't have their web page there, then it'll be very obvious.

MS LYNN-GEORGE: Exactly.

THE CHAIR: Anything arising? Any further deliberation or debate?

Mr. Mason, for your benefit I'm going to advise that we've already recommended recommending to the Legislature implementation of government recommendation 23 with respect to the electronic format for the directory. It appears to me that the motion currently under debate might be reasonably necessary to deal with, to give meaning to what the committee has already done.

MR. MASON: Can I hear the motion again, please?

THE CHAIR: The one that we've passed or the one that's under deliberation?

MR. MASON: The one that's under deliberation.

THE CHAIR: It's government recommendation 24 that

> each public body be responsible for maintaining and publishing a directory of its personal information banks in electronic or other form and that the directory for each public body include the title and location of the personal information bank, a description of the kind of personal information and the categories of individuals whose personal information is included, the authority for collecting the personal information, and the purposes for which personal information is collected, used, or disclosed.

Any questions or comments, Mr. Mason?

MR. MASON: I'd like to know the difference between the information that will be collected under this motion and what's in here, other than the form that it takes. By the sound of it there's going to be a whole bunch of information that's going to be collected that's not currently in here.

MS LYNN-GEORGE: Well, it would include all the local public bodies. At the moment, the local public bodies are maintaining their own directories of their personal information banks. Under this recommendation the requirements for local public bodies would actually increase a little bit, because at the moment they're not required to provide information about the purposes of the collection, use, and disclosure. The trend in legislation across the country is to have more transparency about use and disclosure.

1:35

MR. MASON: In terms of what's in this directory, will the department still be responsible for ensuring that the information that's currently contained in this directory is going to be available in an electronic form?

MS LYNN-GEORGE: It should be in a distributed arrangement. Each public body would put it together according to the template that we would provide to them, and we would link to them, but they would be responsible for ensuring that it was there and that it was current.

MR. MASON: All right. So some of the public body information that will be in this distributed electronic format is currently in this.

MS LYNN-GEORGE: Yes. Many local public bodies do an exceptional job of this. The Edmonton Police Service, for example, has an outstanding directory of their personal information banks. Others haven't yet produced it because we've been in a sort of limbo while we've been waiting for a decision on how is the best way to proceed, whether we're going to go with a print directory or not.

THE CHAIR: Anything arising, Mr. Mason? Anything arising among the rest of the committee members from that exchange? Any further debate? Then if we could put it to a vote. The motion before the committee as proposed by Member DeLong is that we recommend implementation of government recommendation 24. All those in favour of that motion, please raise your hand. Opposed? It's carried.

Is there anything further with respect to the directory? I suspect that that's it with respect to the government submissions. Do any of the members have anything further that they wish to discuss, debate, or move with respect to the directory issue?

Now, then, the chair proposes that we deal with the genetics and DNA issue. Mr. Thackeray, thank you very much for the paper that was distributed this morning. It was fairly self-explanatory. Will somebody be making a brief presentation on the highlights? Ms Lynn-George. Thank you.

MS LYNN-GEORGE: The question that was asked was: "Should the definition of "personal information" in the FOIP Act specifically include DNA or genetic information?" Some background on this. The definition of personal information at present is "recorded information about an identifiable individual." This definition is followed by an illustrative list including "the individual's fingerprints, blood type or inheritable characteristics." No other Canadian public-sector privacy legislation specifically includes DNA or genetic information in its definition of personal information. It has been assumed in Alberta that DNA or genetic information is already included in the meaning of the term "inheritable characteristics."

Alberta's Health Information Act does have a provision for genetic information, and this provision suggests that an individual's genetic history is that individual's own health information but that an individual may have an interest in the genetic information of a family member in the context of health care. Ontario's draft Privacy of Personal Information Act – it's in draft but is intended to apply to the private sector and to health information – also has a provision for genetic information. It's not included in the definition, but the act requires express consent by any organization that collects, uses, or discloses genetic information. It also says that an organization must not make providing genetic information a condition of a transaction with an individual. The Ontario information commissioner has commented positively on this but had some reservations about the definition.

Some of the considerations when you're deciding about whether or not to include an additional element in the definition of personal information. First, there is the general question of whether it's advisable or desirable to use an illustrative list. The advantage really is that it provides guidance, and this would be particularly the case in the FOIP Act with something like opinions about other individuals: whose personal information is it? The act provides some guidance on that through the illustrative definition. The advantage of a general definition is that it's flexible and adaptable to changing circumstances.

A specific point about science and technology is that including references to new technologies is problematic because science and technology tend to outpace legislation. Generally speaking, there is a trend towards more general definitions in the newer privacy legislation, such as PIPEDA, the draft Ontario act that I just mentioned, and the B.C. FOIP Act as recently amended. I would assume that that is because people are looking for some consistency between public-sector and private-sector legislation.

One point to note is that if there were any expansion of the definition of personal information, it would apply only to the record that contains the analysis of the DNA specimen. It would not apply to any specimens themselves. Also, any expansion of the definition of personal information would not in any way address issues of proprietary interest in DNA itself, the collection of DNA under the federal DNA Identification Act, or the use of DNA in a commercial context. So this is whether or not insurance companies can collect DNA.

One jurisdiction that has done some work in this area is Australia, where the Australian Law Reform Commission and the Australian Health Ethics Committee are conducting a joint inquiry into the use of DNA information and considering the question of whether genetic information is so fundamentally different from other types of information that it needs a separate regime to regulate its collection, use, or disclosure.

If the committee favours including DNA or genetic information in the definition of personal information, it may also want to consider a related question, and that is whether it should include biometric information, which is not already covered within a broad category such as inheritable characteristics. A biometric is a unique, measurable characteristic or trait of a human for automatically recognizing or verifying identity. Examples of some biometric technologies include fingerprints, facial recognition, voice recognition, and iris and retinal scans, all currently in common use. Applications of biometric technologies include law enforcement, fraud prevention, computer network security, and physical access. Many jurisdictions are considering the use of biometrics to enhance the reliability of documents used for identification, such as drivers' licences, and that's going on currently.

The Electronic Transactions Act, which recently received royal assent in Alberta but has not yet been proclaimed, has a definition of biometric information. There's a provision that was included in the specific recommendation of the Information and Privacy Commissioner to the effect that the Electronic Transactions Act does not allow the use of biometric information as the equivalent of a signature unless it's specifically allowed by another act. This provision protects individuals against the collection of more personal information than is necessary for the purpose of most routine electronic transactions.

There are strong indications that the use of biometric technology by government, law enforcement, and business will grow dramatically in future years and in the near future, and the threats to privacy arise mainly from the ability of third parties to access this data in identifiable form and then to link it to other information. So rather than the identification it's the linking that is the privacy issue.

We've proposed here three possible options for consideration by the committee. One is the status quo option, on the basis that genetic information is already included in inheritable characteristics. The second is that for greater certainty the definition of personal information might be amended to add "genetic information."

Thirdly, again for greater certainty, the definition of personal information might be amended to add "genetic information" and to specify that personal information includes not only information relating to an individual's fingerprints but also biometric information in general.

1:45

THE CHAIR: Thank you, Ms Lynn-George.

Any questions to Ms Lynn-George on her presentation? General discussion?

MR. MASON: Just a question to the commissioner's office. Does the commissioner's office believe that the act would benefit by having greater certainty around the definition of personal information by including genetic information and biometric information?

MR. ENNIS: On the issue of genetic information and from my discussions within the office the view of the office is that the current phrase "inheritable characteristics" does cover genetic information of an individual. There might be advantages to expanding that, but at this point it's a large enough hook to grab onto when analyzing information.

The question of biometric information is somewhat different though. Biometrics is generally some kind of a calculation by a computer that's reading some kind of external countenance of an individual, eyeballs or lips or noses or whatever, and identifying them that way. That wouldn't fall within the scope of inheritable characteristics necessarily, so that's a bit of a different dimension to the problem.

I think in the case of genetic information that "inheritable characteristics" seems to do the job for us and seems to be something that the public would understand. On the issue of biometrics, though, I don't believe that that's covered by the current reference to blood type and fingerprints.

MR. MASON: And it should be? That's really what I'm asking.

MR. ENNIS: It seems that the technology has moved beyond blood type and fingerprints as a way of identifying an individual, yes, so perhaps it should be.

MR. MASON: I'd be pleased to move this when other people have finished.

THE CHAIR: I have a question following up on Mr. Ennis's comment. If that is so, why is that not a fourth option, that for greater certainty the definition of personal information be amended to add "biometric information" without the need to add "genetic information"?

MS LYNN-GEORGE: That's not been given as an option because the committee didn't actually invite an opinion on biometric information. It was something that was considered to be relevant to the discussion but not the focus, I guess.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. I have a question for Mr. Ennis, Mr. Chairman. The Ontario Information Commissioner, in the information that's been provided to us, has her own proposal for a definition of genetic information. In your opinion or in the opinion of the commissioner's office, that would include biometric information – correct? – as well as DNA.

MR. ENNIS: From what I'm reading here, I'm seeing this as a reference to the phrase "the information about genes, gene products or inherited characteristics that may derive from an individual or family member." I do not believe that would include biometric information necessarily. Biometric information may be the result of an accident. Someone may have sustained an accident as a child which has left them with a certain disfigurement. That would be biometric information. A computer would simply read the distance from the tip of your nose to the outside of your eyebrow back down to your chin, measure that angle, and say: that's John Ennis. So how these equations are arrived at may not be through genetically inherited characteristics.

MR. THACKERAY: Mr. Chairman, notwithstanding the fact that there was not a fourth option, there certainly could be one.

THE CHAIR: Thank you.

Any further deliberation or debate? Does Alberta Justice have anything to say about this matter?

MR. DALTON: Just to say that fingerprints, for example, were put in there at the time when there wasn't the great move forward on biometric information. I think it's a comment well taken that we've moved along and there's more to it than just fingerprints, so it does reflect an expansion of that.

THE CHAIR: Thank you.

Mr. Ennis, just one final follow-up to you. I take it that it's a position of your office that although inheritable characteristics include genetic information – do you see a potential problem if genetic information is added to the definition of personal information?

MR. ENNIS: No, Mr. Chairman.

THE CHAIR: You just believe it's redundant?

MR. ENNIS: Yes.

THE CHAIR: Anything arising from that exchange?

Did you want to make a motion, Mr. Mason?

MR. MASON: Mr. Chairman, I'll move that for greater certainty the definition of personal information be amended to specify that personal information includes not only information relating to an individual's fingerprints but to biometric information in general. That would be option 4, I think.

THE CHAIR: It would be.

Any questions to Mr. Mason on his motion? The chair accepts that motion.

Mr. Jacobs.

MR. JACOBS: Yes. Mr. Mason, did you include "genetic information" in your motion?

MR. MASON: No. I left it out because I was trying to come up with option 4.

MR. JACOBS: Do you see any need for that? You said "for greater certainty," so just to make sure it's included, do you see a reason to leave it out? I mean, what does it hurt to be in?

MR. MASON: No, it doesn't hurt to be in. I don't think it hurts to

be in, except I think we just heard that it was already covered, so that's the only reason I left it out. I'd certainly be amenable to putting it back in.

THE CHAIR: Mrs. Jablonski, your hand was up.

MRS. JABLONSKI: Yes. So my position would be that I would like to propose an amendment to Mr. Mason's motion to add the words "genetic information."

THE CHAIR: As an addition to the definition of personal information?

MRS. JABLONSKI: That's correct.

THE CHAIR: In addition to biometric information?

MRS. JABLONSKI: Correct.

THE CHAIR: The chair accepts that amended motion.

Any questions to Mrs. Jablonski on her amendment? Any deliberation or debate?

Okay. We'll vote on the amended motion.

Are you scratching your ear, or are you putting up your hand, Mr. MacDonald?

MR. MacDONALD: I was just giving you the signal that you could steal second if you would like.

THE CHAIR: I'm sorry? Oh, I can steal second. Thank you. I've played a lot of baseball, but you have to have a key before the signal.

We'll vote on the amended motion first, and if it is passed, then there'll be no need to vote on the unamended motion, which we'll vote on second if the amended motion doesn't pass. The amended motion put forward by Mrs. Jablonski is that the definition of personal information be augmented to include "genetic information" and "biometric information" for greater certainty.

MRS. JABLONSKI: Well, I didn't need to add "biometric information." I just wanted "genetic information" added because he had already included it.

THE CHAIR: Biometric was in the original, and you amended it, so in the amended motion they're both in.

MRS. JABLONSKI: That's correct.

MR. MASON: And if she's amending it, if I may, Mr. Chairman, it will go back to option 3. It'll read just as option 3.

THE CHAIR: So let's make the amended motion that

> for greater certainty the definition of personal information be amended to add "genetic information" and to specify that personal information include not only information relating to an individual's fingerprints but biometric information in general.

Any discussion or deliberation on the amended motion? All those in favour? It's carried unanimously. Thank you.

I take it that not only does that answer the only question with respect to DNA, but that concludes our discussion with respect to question 11. We dealt with the rest of it last time. Okay. Thank you.

I take it we haven't heard from the Chief Electoral Officer.

1:55

MR. THACKERAY: I'll try phoning him again.

THE CHAIR: Well, it's 5 minutes to 2. If we haven't heard from him now, he still has an option to appear tomorrow, but we won't be able . . .

MR. THACKERAY: Okay. I'll try to contact him after the meeting.

THE CHAIR: Thank you.

If we can then move to questions 16 and 17, to deal with the commissioner's powers and processes. I read the notes that were attached. I thank you for them, and I look forward to the oral presentation.

MS RICHARDSON: Mr. Chair, that would be me that's taking questions 16 and 17.

THE CHAIR: The chair recognizes Ms Richardson.

MS RICHARDSON: Thank you. We've combined questions 16 and 17 into the one paper because the responses to the discussion guide tended to sort of flow back and forth between powers and processes. Just in terms of the numbers, the statistics, question 16 asked: "Are the powers and responsibilities of the Commissioner appropriate?" A minority of respondents remarked that the powers and responsibilities were not appropriate in some way. For question 17 the question was: "Is the process established by the Act for the Commissioner to review decisions of public bodies appropriate?" On that question again a minority of respondents, this time 10 percent, remarked that the commissioner's process for review was not appropriate in some way. Now, we've grouped the comments in the paper first in terms of general comments, and then we put them under the corresponding sections of the act just for ease of reference.

Just in terms of general commentary, as you know, the Information and Privacy Commissioner is responsible for monitoring how the FOIP Act and regulation are administered by public bodies to ensure that the purposes of the act are achieved. The commissioner may be asked to provide an independent review of decisions made by public bodies. As a result of a review, the commissioner may make an order regarding duties imposed by the act. So he could order a release of records, or he could make orders regarding administrative matters such as reducing a fee estimate. He can also make orders regarding collection, correction, use, or disclosure of personal information. In addition to reviews of decisions by public bodies, the commissioner may also carry out investigations of complaints to ensure compliance with any provision of the act or compliance with rules relating to the destruction of records. The general powers of the commissioner are set out in section 53 of the act.

There were a number of general comments that indicated support for the work done by the commissioner's office and responses that indicated that the process was preferable to the federal system of two commissioners and that the process was more expedient than the federal system because it kept disputes out of the courts. One business said that the rights of access are invariably balanced against rights to privacy and exceptions to disclosure and felt that the commissioner was able to do that very adequately.

In terms of more specific comments on the commissioner's powers, there were comments on the costs of the review process, the jurisdiction of the commissioner to deal with all the issues in a review or investigation, comments on the commissioner's power to levy fines, and also comments from a business that said that if the commissioner reviews a public body's plans dealing with collection, use, disclosure, protection, or disposition of personal information

and finds them inadequate, he should be able to either hold a public hearing on those plans or prohibit their implementation until adequate privacy protection is ensured.

Now, the issue of the cost of the review process and the issue of sort of the complexity and cost of administering the act in general for local public bodies have been dealt with somewhat under the question on administration, but I will be talking about the specific issue of cost of the review process, and some of that is dealt with in the questions at the end of the paper.

In the review and inquiry process the commissioner tries to deal with all of the issues presented, whether they're administrative or dealing with access to records. However, the commissioner has no jurisdiction to deal with issues related to records that are excluded under the act or where there is another act that is paramount over the FOIP Act.

In terms of the question related to the powers of the commissioner to hold a public hearing or to order a public body to not proceed with implementation of certain plans if the privacy protections are inadequate, the current powers of the commissioner under section 53(1) and his order-making authority under section 72 do not clearly include the power to hold a public hearing on the matters that I just spoke of nor the power to prohibit the implementation of a public body's plans. However, you can sort of draw out of some of the commissioner's powers some of that ability, but it's not clearly set out in the act.

Most FOIP legislation in other jurisdictions doesn't grant authority to the commissioner to require particular measures to be implemented by a public body to ensure compliance. Generally, the duty is characterized as one of giving advice or recommendations to the public body and leaving the final decision with the public body on the structure of their proposed plans or program, and that's the way it's framed in the Alberta FOIP legislation as well, sort of giving advice and recommendations. One jurisdiction, Quebec, does give the commissioner this kind of authority but only with respect to the handling of personal information; for example, in an adoption file. So it's very specific to that type of record.

In terms of the issues that were raised over the power of the commissioner to levy a fine directly, the commissioner does not currently have that power, to levy a fine directly, because the Provincial Offences Procedure Act applies to offences under section 92 of the FOIP Act, which is the offence provision. The way it works is that the commissioner would lay an information with the Provincial Court of Alberta alleging the commission of an offence under section 92, and proceedings for imposition of a fine would be conducted under that act.

Section 92(2) of the FOIP Act, which sets out the penalty for contravening the act but doesn't authorize the commissioner to collect the fine, is a typical provision both within Alberta legislation where there are offence provisions and also compared with FOIP legislation in other jurisdictions. However, there are other provincial acts that authorize a board, council, or other entity operating under the authority of an act to collect fines in limited circumstances, but the fines in those cases are often less than a thousand dollars, and the governing act clearly specifies where those funds that are collected from the fines are to be allocated or that they are a debt due to the public body itself; for example, under the Health Insurance Premiums Act, the Real Estate Act, or the Workers' Compensation Act. The offence provision under the FOIP Act does enable fines to be imposed up to $10,000, so that would be above the thousand dollar limit in some of these other acts.

So that dealt with sort of the general powers of the act under section 53. I don't know if there are any questions or whether I should just go through all the sections.

THE CHAIR: Why don't you go through the presentation, and then we'll ask the questions en masse?

MS RICHARDSON: Okay. I'll next deal with comments on section 53(1)(e), which deals with breach of privacy complaints, because there is a question at the end that deals with this issue. The universities and an association, the Universities Co-ordinating Council, said that investigations under section 53 are made public, but public bodies do not have an opportunity to argue the facts as established by the investigating officer without resorting to an expensive inquiry process. They felt that that should be remedied.

They also asked that the purpose of the reports produced by portfolio officers be reviewed. They felt that the process under section 69, which is the review inquiry process, would be improved if the public body had the ability to file a request for review of the decision of a portfolio officer when there are serious questions with respect to the understanding of the facts of the case, because a judicial review is expensive and not always an acceptable choice if there are serious implications of a case.

2:05

One university said that the practice of publishing investigation reports is a concern, and it sort of related to the last point. I think they were indicating that the findings and the orders may be acceptable, but in some cases the conclusions or observations of the author may not be accurate in the opinion of that public body.

A school board commented that once the commissioner has published an order, they weren't sure whether the commissioner should be able to identify and comment negatively about a public body or any of its officials in a news release or in a public forum.

Now, it should be noted that there are procedural differences between requests for review and investigations of complaints. A review can only arise out of an access request. Under section 68 the commissioner may authorize a mediator to investigate and try to settle a matter, and if the matter is not resolved, an inquiry is held. The inquiry process enables the public body, the applicant, and if there's a third party involved to provide submissions and rebuttals setting out their respective arguments. Following the inquiry, an order is issued.

Under the investigation process a request for access is not needed to trigger an investigation, and the public body isn't entitled formally to rebut the findings of an investigation. However, the commissioner's office does generally seek the public body's input on the factual parts of the investigation. The commissioner may report his findings or recommendations to the head of the public body without making an order. When a complaint respecting a duty to assist or time extension or inappropriate fee or protection of privacy arises as part of a request for access – and that quite often happens, particularly the administrative matters – the complaint and access issues are treated as part of the review process. If the access issues are settled, then the complaint issues are handled as a section 53(2) investigation. If there's a breach of privacy complaint that arises outside of an access request, then the matter is dealt with as an investigation under section 53(2). So there are two sort of different but somewhat related processes in terms of reviews and investigations, because they can tie in together in certain instances.

We talked about in the comments the role of the portfolio officer in terms of investigation, and it should be noted that if a privacy complaint is investigated by a portfolio officer and proceeds to inquiry, currently the investigation report is not forwarded to the commissioner and is not publicly released. The commissioner conducts an inquiry in accordance with the provisions outlined under section 69 if the complainant isn't satisfied with the report's findings and then issues an order.

The inquiry gives the parties the opportunity to present their

evidence to the commissioner fresh or to rebut or support any evidence the commissioner may already have. The commissioner has all the powers, privileges, and immunities of a commissioner under the Public Inquiries Act when he is conducting an investigation or an inquiry. The commissioner's office has issued some practice notes outlining the process for dealing with privacy complaints, but the act itself doesn't set out a required procedure for handling this type of complaint.

There were comments on where the commissioner is conducting an inquiry regarding the review of fees. There were a number of comments on fee waiver criteria, but that question has already been dealt with by this committee. The issue of the cost of the review process was dealt with somewhat indirectly under the question regarding administration.

The next issue that arose from the responses was the issue of the commissioner's authority to enable a public body to disregard a request, and that arises under section 55 of the act. Under section 55 a public body may ask the commissioner to authorize the public body to disregard a request if the request is repetitious or systematic in nature and processing the request "would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make . . . requests" or if it is frivolous or vexatious. The commissioner has only issued two decisions to date authorizing public bodies to disregard a request. If the public body feels that the request is frivolous or vexatious, for example, then the public body has to make the request to the commissioner. Some of the responses sort of raised the question as to whether or not the ability to disregard the request should be with the head of the public body, and then if the applicant disagreed, the applicant could ask the commissioner to review that decision.

British Columbia's and Quebec's FOIP legislation are similar to Alberta's, and a public body may ask the commissioner to allow the public body to disregard the repetitious or systematic request. British Columbia recently amended its legislation to enable the commissioner to disregard a frivolous or vexatious request.

Both of the Ontario FOIP legislation take a different approach. They permit the head of an institution to refuse an access request if the head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious. Then the regulations under those acts prescribe certain standards as to what constitutes reasonable grounds for such a refusal.

Section 13(1) of Manitoba's act permits an institution to refuse access to a record if the request is repetitive or incomprehensible or is for information that has already been provided to the requester or is publicly available. So one of the questions at the end of the paper deals with this issue of disregarding a request.

Next were comments dealing with mediation under section 68, and there were a number of comments that you can see there. Under section 68 "the Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review." In most reviews the commissioner does instruct a portfolio officer to try to resolve the matter through mediation. The mediator doesn't impose a settlement. The process is intended to help the public body and the person requesting a review to arrive at a settlement before a formal inquiry is started. If a mediator isn't appointed or the matter isn't resolved with the help of the mediator, the commissioner under the current legislation must conduct an inquiry unless he determines that the subject matter of the request for review has already been dealt with in an order or investigation report of the commissioner. There's no provision in the act or regulation that sets out exactly how the mediation may or must be conducted nor imposes time lines on the process. Some of the comments certainly raised issues regarding the time lines for the process. Section 69(6) of the act states that an inquiry must be completed within 90 days of the request for the review. That would encompass all of the elements of the review process including mediation, but the mediator is not required to report to the commissioner on the results of the process.

2:15

The next section was dealing with comments on section 69, the inquiries provision. The commissioner's powers in conducting inquiries are provided in sections 56 and 69 of the act. The commissioner has broad discretion to determine how an inquiry will be conducted. It may be conducted in private or in an open public setting, and the commissioner may decide whether representations are to be made orally or in writing or a combination of the two.

Section 66 sets out the time lines for requesting a review both for third parties and for applicants.

The next comment section was related to inquiries, and it had to do with participation in an inquiry. The chiefs of police in their response recommended an amendment which would allow another public body not formally subject to an appeal but affected by it to be given standing as a right under the act and not simply notice. Under the act the person who asked for the review, representatives of the public body concerned, and any person given a copy of the request for review are entitled to make representations to the commissioner during the inquiry.

Section 67 of the FOIP Act requires that affected persons be notified regarding the review, and section 69 further requires that those persons be given the opportunity to make representations to the commissioner. Although the commissioner has not set out a threshold test to determine when a person is deemed to be affected, it's likely that he would follow the legal reasoning involved in granting standing to a party for the purposes of judicial review. Although the determination of whether a party has standing is in the opinion of the commissioner, the commissioner's decision would likely be held to a standard that allowed him some discretion but ensured that the decision was reasonable in light of the facts, relevant case law, and statutory interpretation. There's no evidence that the commissioner has abused his discretion or erred in law in this matter, so it is felt unnecessary to explicitly state in the legislation who can be granted standing as an affected party under section 67.

Then in terms of comments on time lines for the inquiry, we've spoken about the time line of having the inquiry process completed within 90 days after receipt of the request for review. The intent of the act is to ensure that an independent review of decisions can take place, so even if the process is not completed within the commissioner's ability to extend the time limit, the commissioner does have the power to complete the inquiry. That was indicated in an order of the commissioner.

The next comment section is related to section 70, the refusal to conduct an inquiry. There were some comments, including a health authority that indicated that there should be a process to delay or adjourn the start of inquiries when in the view of the commissioner the matter is very similar to an inquiry under way or there's a significant order pending.

Another health authority recommended that the commissioner be given discretionary power in ordering an inquiry under section 69, and that is allowed in B.C.'s FOIP Act. Currently the commissioner may refuse to conduct an inquiry only if he believes that the subject matter of the request for review has already been dealt with in an order or in an investigation report. But the B.C. FOIP Act does give the commissioner the discretion somewhat to review the merits of each case and, if circumstances warrant it, to refuse to conduct an inquiry. That decision of the commissioner would be final but would be reviewable on an application for judicial review. In the Information and Privacy Commissioner's submission he recommended that section 69(1) be amended to provide the

commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances. So the commissioner recommended that section 69(1) be amended to replace the words "must conduct an inquiry" with the words "may conduct an inquiry."

I guess the only other comments other than what you see in the paper would be with respect to offences and penalties under section 92. Again, because one of the questions deals with the commissioner's power to levy a fine directly, this is reiterating that the Provincial Offences Procedure Act does apply to offences under section 92, and other jurisdictions have similar wording in their FOIP legislation.

That's all my comments before the questions, Mr. Chair.

THE CHAIR: Thank you, Ms Richardson.

Mr. Ennis, do you have anything to add to that on behalf of the office of the Privacy Commissioner?

MR. ENNIS: Just a short comment, Mr. Chairman. Thank you. I appreciated the powers and processes being described by Ms Richardson. These are the things we live with every day, and sometimes it's nice to hear them all rolled up in a definitive statement.

After having read so many of the submissions where the term "appeal" has come up, I think the one thing that I would remind the committee is that a request for review and the review process that goes on is not an appeal. It is something other than that. The process is set up to be truly a nonadversarial process in many respects in that public bodies do not always come representing their own position or their own interests to this process, nor do applicants and third parties necessarily represent a specific identifiable interest to themselves. So often we have cases where the public body is trying to do the right thing, the applicants and third parties are trying to have the right outcome, but it isn't the same thing as a lawsuit. It isn't the same thing as what we would normally think of as an appeal of a lower level, quasi-judicial decision.

It's recognized that the decisions that are made by public bodies at the outset are somewhat self-interested. Public bodies may be trying to reduce the amount of work they have to do. They may be trying to prevent information from being disclosed that's embarrassing to the public body. I don't think anyone at that level is pretending to be operating within the full rules of natural justice. When a request for review comes to the commissioner, it is not an appeal of a lower level decision, so it doesn't have all of the trappings that we normally associate with an appeals process and that are sometimes mentioned in the submissions, including the allocation of costs and matters of that nature.

I just thought I would throw that out because of the ease with which many of the submissions have fallen into the use of the term "appeal" to describe the request for review process.

THE CHAIR: Thank you.

Any questions from the committee members to Ms Richardson or to Mr. Ennis?

MS DeLONG: In terms of what we have right now with "must conduct an inquiry" versus "may conduct an inquiry," there is also section 70, which is the refusal to conduct an inquiry, so we already have sort of a way out. Should we maybe be looking at expanding the grounds for refusal? Rather than working in section 69, should we maybe be working in section 70?

MS RICHARDSON: That would be a possibility, but there's only one ground currently in section 70, and you'd have to try to sort of anticipate all the different possibilities that may come up in terms of the commissioner being in a position to refuse to conduct an inquiry. I mean, it's sort of another way of looking at it. In B.C. they've taken the approach to give the commissioner some discretion to weigh the merits of a case, and that's why I believe the commissioner's office was looking at that as well as perhaps a better way to go.

2:25

MS DeLONG: If we were to change it from "must" to "may" in section 69 and we were to leave section 70 in there, wouldn't that still restrict when the commissioner would be allowed to refuse to conduct an inquiry? Don't we have to change section 70 anyway if we're going to open up the grounds under which they can . . .

MS RICHARDSON: Yes.

MS DeLONG: So we'd have to take out section 70, then, if we were to change the "must" to "may"?

MS RICHARDSON: Yes, you probably would want to do that. I don't know, Clark, if you're – yes. Clark is nodding his head too. Yes.

THE CHAIR: Any further questions on the paper or on the presentation? Mr. Jacobs.

MR. JACOBS: I'm really curious to hear your answer to this question. Under section 53, the commissioner's powers, an association said that many gray areas of the act are increasingly being interpreted through rulings handed down by the IPC. Are we going to do away with that complaint when we get through with this process in your opinion? Have we sort of removed some gray areas and made the commissioner's job easier? Please tell me yes.

MS RICHARDSON: I don't know if John wants to comment on that. I guess I could only say at the outset that I think whether it's an administrative tribunal or an adjudicative tribunal, like the commissioner or a court, that is part of their role, interpreting legislation. You can't cover off all of the gray areas. You would have legislation that would be hundreds of pages long in order to cover off all the potential sort of possibilities. But certainly the commissioner is there to give some interpretation, to give some flesh to the statutes and to maybe deal with, you know, lack of clarity or ambiguities, which can be dealt with by amendments to the legislation as well.

THE CHAIR: Does that help, Mr. Jacobs?

MR. JACOBS: Well, not really.

THE CHAIR: Do you have a supplemental?

MR. JACOBS: It seems to me that the process here is intended to clarify the act and also to remove gray areas, notwithstanding that we don't want to make a thousand amendments and regulations. We do have confidence in the commissioner and want to leave him the ability to use common sense, if you will. Still, I would hope that at the end of the day this process is going to bring the act more clarity and be easier to interpret and understand.

THE CHAIR: Any response, Ms Richardson?

MS RICHARDSON: I guess the only thing I would say is that the commissioner's orders are certainly available for public bodies to

look at, and there are resources available to them to help them weed through those orders. There's an annotated FOIP Act, which is available through the Queen's Printer, which sort of puts them in the perspective of each section of the act. Also, the Guidelines and Practices manual does refer to many of the orders and puts them in perspective, and there are FOIP bulletins and those sorts of things which help. Those are resources for public bodies to help them understand what the act means.

MR. JACOBS: Thank you, Ms Richardson.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. Ms Richardson, could you tell me how many times applications have wound up before the commission? Is there a percentage?

MS RICHARDSON: I suspect Mr. Ennis would know. I have kind of a basic percentage, but you might have more accurate . . .

MR. ENNIS: I think we can work with the number of 10 percent. There have been something over 10,000 FOIP requests made in the seven years of the act. In that time we've had slightly over 1,000 requests for review under part 1 of the act come to the office, so it's about a 1 in 10 ratio.

MR. MacDONALD: Can I ask another question, please, Mr. Chairman?

THE CHAIR: Supplemental, Mr. MacDonald.

MR. MacDONALD: Again to Ms Richardson. Now, the commissioner's orders – earlier this month we were provided with order 96-002, which goes back to 1994 and the issue of excessive fees or the cost of an application fee, and this goes back to a former Liberal MLA, Dr. Michael Percy. When the commissioner rules, if I could use that word, or writes a decision, that then has precedence; correct?

MS RICHARDSON: It does to some extent, but I don't believe the commissioner feels that he's completely bound by precedent. Would that be a correct statement?

MR. ENNIS: Well, unlike a court a commissioner generally is not bound by the precedents of his own decisions. Of course, the commissioner likes to show consistency and takes every previous decision he's made to be an important decision. So there's some respect for previous decisions, but the commissioner is able to alter course as he comes to understand an issue differently.

THE CHAIR: Mr. MacDonald, the floor is still yours.

MR. MacDONALD: Thank you, Mr. Chairman. Now, another question, please. You in your remarks discussed B.C., for instance. Do we in Alberta have an account or a reflection of those decisions, for instance, that would occur in British Columbia or Ontario?

MS RICHARDSON: Well, as I understand it – and again Mr. Ennis may want to comment – particularly in areas where the commissioner hasn't issued an order before, he will often look at orders in other jurisdictions, particularly Ontario and B.C., particularly if the legislation is worded exactly the same, to see how the commissioner has ruled on that particular matter in another jurisdiction. But, you know, they're certainly not precedential. They're more instructive, I would think.

THE CHAIR: Let me answer that, Mr. MacDonald. The rulings of other commissioners from other jurisdictions would have persuasive value to the commissioner in Alberta. He certainly would not be bound by them. Similarly, he is not bound by his own decisions the way that a court is bound by its own decisions and/or the decisions of higher courts.

MS CARLSON: An internal comment by the chair is inappropriate.

THE CHAIR: I believe Mr. MacDonald's question was a question of law, and I'm trying to be helpful. Does anybody disagree with the chair's opinion? Thank you.

I have a question, Ms Richardson, that follows up exactly on that point with respect to the Chiefs of Police's recommendation which would allow another public body not formerly subject to an appeal but affected by it to be given standing as a right under the act and not simply notice under the act. Given the fact that the commissioner is not bound by his own decisions, if a decision was dealing with one police force, would another police force be deemed to be a party affected by it and therefore would be given notice under section 67?

MS RICHARDSON: Well, as indicated in the notes, the commissioner tries to bring in all affected parties, but currently the act doesn't deal with a question of standing. I don't know if another police association or a chief of police in a different area would automatically have standing. At this point it's up to the commissioner to decide who gets notice, who is seen to be an affected party.

THE CHAIR: Anything to add to that, John?

MR. ENNIS: Yes, Mr. Chairman. When the commissioner is holding an inquiry, be it a written or an oral inquiry, the commissioner of course checks the radar scope to see if there are affected persons, which is the wording used in the act. They may be people who have already had involvement, such as applicants in cases where third parties are asking for an inquiry or third parties in cases where applicants are asking for an inquiry, but they may be other persons as well that are affected by the outcome of a disclosure. The commissioner also has a practice of inviting intervenors, who are persons who are not necessarily affected persons but might have an interesting opinion to offer on a matter or some new perspective to offer. It would not normally be the commissioner's practice to invite parallel public bodies. If there's one police service before the commissioner, the commissioner would not normally alert other police services to the presence of that case or to them being welcome to attend that case. That hasn't been a part of our procedure.

2:35

The commissioner would, for example, hear from an association if the matter were so broad that it affected an entire sector of society. The commissioner might want to hear from an umbrella organization representing a particular group. We've had that case come up. Always one of my favourite examples is the grizzly bear hunters' case, in which a certain number of grizzly bear hunters were third parties to a case where someone was seeking access to licence information about grizzly bear hunters. The commissioner invited to that case a hunting association to discuss the impact generally on people involved in that activity. That's been the commissioner's practice, so the short answer to your question is no; another police chief would probably not be apprised of the presence of an inquiry

into an issue.

THE CHAIR: Would an umbrella organization under the appropriate circumstances be granted intervenor status?

MR. ENNIS: There are two scenarios there. One is that it could catch wind of the case and request a chance to intervene, which is fairly compelling. I mean, the commissioner is looking for as many views on issues as possible. The second scenario is that the commissioner would expect the portfolio officer who handled the case to make recommendations regarding the advisability of having intervenors present. On a number of occasions the commissioner has reminded his staff that he is expecting to see constructive suggestions for intervenors on inquiries that involve critical matters of public policy.

THE CHAIR: Thank you.
Mr. MacDonald.

MR. MacDONALD: Yes. I have another question for Ms Richardson, please, Mr. Chairman, and it's to do with section 72, the commissioner's orders. If the commissioner makes an order or a ruling regarding the matter, how long does the public body have to comply with that order?

MS RICHARDSON: I believe that's set out in section 74 of the act, and it says, "Not later than 50 days after being given a copy of an order of the Commissioner, the head of the public body concerned must comply," except that's subject to subsection (2), which says that the head of a public body must not take any steps to comply with an order until the period for bringing judicial review has ended, and that ends at 45 days, so it's basically 50 days.

MR. MacDONALD: Okay. It's 50 days after the 45-day period?

MS RICHARDSON: No. It's 50 days after the head of the public body is given a copy of the order. The reason it's 50 days is because they have to allow a period of time for a judicial review application to be brought.

MR. MacDONALD: And if the judicial review application is not pursued?

MS RICHARDSON: Then the public body must comply with the order within 50 days.

MR. MacDONALD: What happens if they do not?

MS RICHARDSON: Then the commissioner could enforce compliance with an order under section 92 of the act.

MR. MacDONALD: Are you aware of any other loopholes that may be in this act where one would not have to provide the information within that 50-day period?

MS RICHARDSON: I'm not aware of any.

MS LYNN-GEORGE: If there are fees involved and there has to be a new fee estimate and any kind of payment of fees, that can be extended. We did the calculations on one occasion. I don't remember exactly what they were, but it ran up to about 75 days or something like that.

MR. MacDONALD: Thank you very much.

THE CHAIR: Anything arising from that exchange or the previous exchange? Any further questions to Ms Richardson or Mr. Ennis?

We have a number of questions proposed in the discussion paper that need to be answered. Question 16(a): "Should the FOIP Act be amended to permit the head of a public body to refuse or disregard an access request if the head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious?" If there's no further discussion, perhaps the committee would like to entertain a motion. Mr. Jacobs.

MR. JACOBS: Certainly. According to the government's recommendation on 16(a) I would move that

> the FOIP Act should not be amended to permit the head of a public body to refuse or disregard an access request if the head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious.

THE CHAIR: Thank you, Mr. Jacobs.

Any questions to Mr. Jacobs regarding the wording of his motion? Any debate regarding the merits of the motion? Then I'll call for a vote. All those in favour that FOIP not be amended to permit the head of a public body to refuse or disregard an access request if that head is of the opinion, on reasonable grounds, that the request is frivolous or vexatious, raise your hands. It's carried unanimously. Thank you.

Question 16(b): "Should the FOIP Act be amended to provide the Commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances?"

Do you have a question, or do you wish to make a motion?

MS DeLONG: I'd like just one more question on that.

THE CHAIR: Certainly.

MS DeLONG: This is a question of Mr. Ennis in terms of the grounds that you think we should allow an inquiry not to take place. Okay? Right now you're sort of covered under section 70 if "the subject-matter of a request for a review under section 65 has been dealt with in an order or investigation report of the Commissioner." If we were to add at that point "or that the request is frivolous, vexatious, or not made in good faith," would that cover all of the situations where in your opinion we should not be moving forward with an inquiry?

MR. ENNIS: I take your question to be that the request for review itself was frivolous, vexatious, or not in good faith. I think that the commissioner's recommendation is somewhat broader than that in that there are cases in which there's absolutely nothing to be gained by going to inquiry. The inquiry process itself is somewhat expensive. The commissioner has streamlined processes. Nevertheless, he has staff to pay and arrangements to pay for. In some cases the point is an extremely small one and perhaps doesn't warrant the outlay of resources to resolve, or it has no value in principle or precedent. This is not anticipated to be a broadly used power, but its presence would perhaps assist the mediation process if nothing else. The presence of the commissioner, having some discretion, would enable mediators to attempt to resolve issues more definitively with the prospect that a very low-grade case would not be taken up by the commissioner. That was the intent behind what happened in British Columbia in terms of amending their legislation, and we can see some benefit to that in Alberta as well. So it's more than just cases in bad faith. There are actually cases from which nothing is to be gained and which become fairly large distractions, but there's really no potential for any positive outcome for any party involved.

MS DeLONG: So would that be considered frivolous then? No?

MR. ENNIS: The difficulty with the term "frivolous" – and this was something that Mr. Lund's committee pointed out back in 1993, when they were touring the province and looking at the act. As I recall, at that time the MLAs involved in that process didn't want to set up a situation in which a bureaucrat at any level would be able to say to a citizen: the thing that's so important to you is frivolous to us. So I think that the use of the term "frivolous" is a difficult thing to work with in law. It's sort of in the eyes of the beholder. What the commissioner has requested is recognition of the ability that has been built up in the office over time to recognize that some cases carry no particular benefit going to the inquiry process. So this is I guess a more sophisticated level of ability for the commissioner to be able to look at cases and decide on the merits before investing the time and energy into resolving those cases through an inquiry and an order.

2:45

MS DeLONG: Does that mean that what you're looking for then is to change the "must" to a "may" and to remove section 70?

MR. ENNIS: Somehow perhaps an amendment to section 70 would be required. The conditions that are in section 70 are rather narrow right now. The commissioner can only refuse to hold an inquiry if he already has a case on point. I'll give you an example of one of those. We had a case where someone was asking for access to records in the hands of the director of maintenance enforcement. The commissioner held an inquiry, made an order, and determined that he does not have jurisdiction for access to those records, as they are excluded under section 4 of the act. Records in the hands of the director of maintenance enforcement are not accessible under the FOIP Act. Within months along came a second case, exactly the same set of facts basically. Different players; same facts. The commissioner in that case determined that he would not hold an inquiry because he'd already done a decision on point. Basically, simply by pulling up his old order and sending it off to the parties, the parties should have seen how the act would play out in their particular circumstance. That's a case where there's an order of the commissioner.

A case of the investigation report of the commissioner is much more problematic. The portfolio officers do investigation reports, and as you've seen from the submissions by public bodies, they aren't always welcome reports and sometimes land like bricks on the public bodies. The commissioner can only refuse to hold an inquiry in the case of a complaint if the commissioner has accepted that report as a report of the commissioner. What invariably happens is that when a draft report is shared with the parties and goes against the complainant or the complainant disagrees with some portion of the report, the complainant will ask that the matter be pushed to inquiry at that point, and the entire investigation goes for naught. That is, all the effort that has gone into the investigation to that point is swept away because the commissioner does not read that report, does not in a sense bias himself by having read the report.

So right now the restriction is on the commissioner having already issued an order on point or having approved an investigation report that has moved to him for signature. In the current circumstances either of those two cases has to be in play before he decides not to hold an inquiry. The commissioner is looking forward to some broadening of that ability to include situations where a matter has been thoroughly investigated and all the questions have been answered and there's nothing more to be gained by going to inquiry.

THE CHAIR: Does that answer your question, Ms DeLong?

MS DeLONG: I'm sorry; I'm still confused. It seems to me that if we just change the "must" to a "may," then the commissioner is still bound by section 70, so I don't know what to do with section 70.

THE CHAIR: Mr. Dalton, does Justice have anything that can help us with this?

MR. DALTON: Yeah. Thank you, Mr. Chairman. I think you would have to amend section 70 not only to reflect the suggestion that the commissioner can refuse to carry out an inquiry under the present circumstances but to give him some discretion in certain other circumstances to do so. I think you're right; you would have to do that. You could leave in the "must" but subject to the ability under section 70 to refuse, as you are suggesting. If you put in "may," then you probably don't need section 70, but the beauty of section 70 is that it tells everybody when the commissioner can or cannot refuse to do an inquiry. That's why it's there right now, so it kind of puts limits around it.

Does that help a bit? I think you'd keep the "must" there subject to section 70.

THE CHAIR: Mr. Thackeray, do you have anything to add or detract from this discussion?

MR. THACKERAY: If you look at the wording now of 69(1), it does refer to "unless section 70 applies." So what Mr. Dalton is suggesting is that no change needs to be made?

MR. DALTON: No.

MR. THACKERAY: I'm sorry; I missed something.

MR. DALTON: If the committee were to accept the proposition that the commissioner should have a broader power, as explained by Mr. Ennis, to refuse to carry out an inquiry, then the appropriate spot in my view would be to put it in section 70. What Ms DeLong is suggesting, it seems to me, is a drafting point, to put it in there. So you wouldn't change section 69; you'd simply change 70 to reflect the wider powers of the commissioner.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Well, I thought we were changing section 69(1) to give the commissioner some latitude in whether or not to conduct an inquiry, inasmuch as inquiries are expensive to conduct. All we're doing here is giving him the option to use his common sense. You know, we're saying "may" instead of "must." So I don't see a problem here with proceeding with changing "must" to "may" and leaving section 70 as is.

I recall that when the commissioner appeared before the committee, he did spend some time talking about common sense and hoping that the committee would leave some latitude for common sense in our deliberations. So I don't have a problem. In fact, I'm prepared to move 69(1) whenever you want, Mr. Chairman.

THE CHAIR: Well, I'm not going to allow any motions until the general discussion has been concluded.

MR. THACKERAY: We seem to be debating as to whether one section or another is amended, and maybe the way to resolve that is just to have a general recommendation that the act be amended to give the commissioner the discretion and leave it up to Leg. Counsel as to whether it's more appropriate in section 69 or whether it's more appropriate in 70.

THE CHAIR: That's a reasonable suggestion, I suppose.
Mr. Mason, was your hand up?

MR. MASON: Yes. As I read the sections, 69 says that "the Commissioner must conduct an inquiry," and 70 gives the exception, and the only exception is if the review has been dealt with either "in an order or investigation report of the Commissioner." So, in other words, the only exception now is if he's already got something at hand that speaks to it; right? If we're going to allow further exceptions, then I'm just wondering if we can't specify them a little bit more. Under what specific grounds are we going to permit additional exceptions? I think we could just amend section 70 to add more grounds if those were considered desirable. So what grounds?

THE CHAIR: Mr. Lukaszuk.

MR. MASON: No, I'm not asking him that question.

THE CHAIR: Oh, I'm sorry.

AN HON. MEMBER: He'll have the answer for you, though. Right or wrong, he'll answer.

MR. MASON: I'm sure I'll get an answer.

THE CHAIR: I apologize to Mr. MacDonald, who was next.
Did you want us to address that?

MR. MASON: It was a question to staff.

THE CHAIR: Does somebody have an answer? Mr. Thackeray.

MR. THACKERAY: If you look at the commissioner's submission to the committee on page 2 . . .

AN HON. MEMBER: I don't have it.

MR. THACKERAY: I can share my copy with you.
He does list, I believe, four circumstances that the commissioner might review before deciding to proceed with an inquiry. They include whether

(a) the public body has responded adequately to an access request or a complaint, . . .
(b) a complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure under another piece of legislation,
(c) the length of time that has elapsed between the date when the subject-matter of a complaint arose and the date the complaint was made is such that an inquiry is not warranted, or
(d) a complaint is frivolous or vexatious or is made in bad faith.

That was part of the commissioner's submission.

2:55

MR. MASON: Now, just to speak to it, I would be more comfortable, if we're going to amend whichever section, probably 70, if those specific cases were added to the one that exists there now. I'd rather have some fairly clear reasons and not give a general opportunity for the commissioner to deny an inquiry.

THE CHAIR: Mr. MacDonald, then Mr. Lukaszuk.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. I believe this question would be appropriately directed to Mr. Ennis. Of the thousand applications or files that have gone to the commissioner's office for review, how many would be considered frivolous or vexatious? Do you have any idea? We'd be giving the commissioner pretty broad, wide-sweeping powers here if we were to go ahead and proceed with this.

MR. ENNIS: We have never assessed cases as being frivolous or vexatious, and I would have no idea what the answer to that question would be.

THE CHAIR: Anything arising, Mr. MacDonald?

MR. MacDONALD: No. That tells me all I need to know at this time. Thank you.

MR. LUKASZUK: As I understood the commissioner's presentation, he was seeking the mandate to be allowed to make that judgment call not only in cases where appeal would be vexatious or frivolous but also when there are appeals of a repetitive nature, where he would have already ruled on a specific issue prior and where there is no change in the facts or circumstances before him, where the only changes would be perhaps the appellant or perhaps not even the appellant but just another appeal of the same nature. That would again allow the commissioner to exercise his ability to refuse to carry on an investigation.

If we venture into the practice of listing specific cases where and when he may or may not refuse to launch an investigation, we always run into the possibility that we will miss a circumstance which at a later time would perhaps prove itself to be a prudent one to have included. Lists are always not all-inclusive; we always have a tendency of missing a few. Since we have already given quite significant power to the commissioner and we have left the commissioner with the trust of administering the FOIP Act in many respects, I don't think we would be misplacing that authority in giving the commissioner the ability to make that judgment call.

THE CHAIR: It's now 3 o'clock. I'm not convinced that we're going to resolve this issue momentarily, much less the remaining questions under 16 or 17. Unless the members overwhelmingly want to sit late, I'd ask for an adjournment motion.

MRS. JABLONSKI: I gladly move that we adjourn.

MR. MacDONALD: Just one point before we adjourn, Mr. Chairman, please. You were going to provide me, Mr. Thackeray, with some written information today regarding the Power Pool of Alberta and also the Auditor General – the exemptions from the provinces. Can I have that, please?

MR. THACKERAY: The problem is that I haven't written it yet. They are handwritten notes. I just wrote down the provinces and the comments that they gave me. I was going to type it up when I go back to the office and bring it tomorrow morning.

MR. MacDONALD: Oh, excuse me; I thought it was already done.

MR. THACKERAY: No.

MR. MacDONALD: That's fine. Tomorrow morning will be fine. Thank you. I just was left with the impression that you had it readily available when you were reading into the record.

MR. THACKERAY: My chicken scratches.

THE CHAIR: Anything else? There's a motion put forward by Member Jablonski that we adjourn until 9 o'clock tomorrow morning. Anybody opposed? It's carried unanimously.

We're adjourned.

[The committee adjourned at 3 p.m.]