

Title Wednesday, August 21, 2002 **FOIP Act Review Committee**

Date: 02/08/21

[Mr. Rathgeber in the chair]

THE CHAIR: Okay. If we could get started, please. Good morning, and welcome, everyone. For the record my name is Brent Rathgeber, and I am the chair of the special all-party committee reviewing freedom of information and the protection of privacy in Alberta. I'm also the MLA for Edmonton-Calder.

If we could start with the members of the committee, all of whom are seated on my right today, to introduce yourselves and your constituencies for the record, please.

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

THE CHAIR: Thank you.

Mr. Thackeray, beginning with you, if the members of the technical team could introduce themselves for the record, please.

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

THE CHAIR: Thank you.

Mrs. Karen Sawchuk is also here from the Legislative Assembly Office.

10:10

We have an agenda for today's meeting which was circulated last week. I'm assuming that the members had an opportunity to peruse it. Are there any questions, comments, or concerns regarding the agenda? Could I have somebody move it, please?

MR. JACOBS: I so move.

THE CHAIR: Thank you, Mr. Jacobs.

Any discussion or debate? Anybody opposed? The agenda has been approved.

We also have two sets of minutes that were circulated last week with the materials: the minutes of July 22, 2002, and the minutes from July 25, 2002. Are there any questions or discussions regarding the minutes? Could I have somebody move approval of both sets of minutes, please? Thank you, Mrs. Jablonski. Any deliberation or debate? Anybody opposed to the approval of the minutes? The minutes are approved.

On Monday there were also minutes circulated from the meetings of July 31 and August 1. Have the members had an opportunity to peruse those minutes? I take it by the silence that that means yes. Any questions or comments? Could I have somebody move approval of the minutes from the meetings of July 31 and August 1?

MS DeLONG: I'll move approval.

THE CHAIR: Thank you, Ms DeLong. Any deliberation or debate? Anybody opposed to approval of the minutes as circulated? Thank you. The minutes of July 31 and August 1 are approved as circulated.

The next item on the agenda is item 4. There was a request for some information regarding the accuracy of the list of electors, and I understand that the Chief Electoral Officer provided some correspondence. Mr. Thackeray, do you have any commentary, or is this fairly self-explanatory?

MR. THACKERAY: Mr. Chairman, I have no commentary. This

was information that the Chief Electoral Officer committed to providing.

THE CHAIR: Mr. MacDonald, I believe this was your request.

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

THE CHAIR: Have you had opportunity to peruse the information?

MR. MacDONALD: Yes, I did.

THE CHAIR: Do you have any further inquiry or comment? Is it satisfactory? Does it answer your query?

MR. MacDONALD: At this time, Mr. Chairman, no, it does not satisfy what I believe was my question. My question, I thought, was quite plain and quite clear, and that was: what percentage of the voters that were appearing at the polls were coming forward with a statutory declaration that had already not been on the list? As I recall from reading the information that was provided to me, that question was not addressed. I can take that up on my own time with the Chief Electoral Officer at a later date.

THE CHAIR: Thank you, Mr. MacDonald. Anything arising from that?

Okay. Then if we can move forward to New Business, which I guess is really the only remaining business other than the approval of the draft agenda. As the members are aware, motions to be addressed by the members of this committee were to have been submitted to Karen Sawchuk, the committee clerk, by last Wednesday, and they were all circulated to all members on Friday. So we've all had an opportunity to read them, discuss them amongst ourselves, and consider them. We can now put them forward as formal motions, debate them and pass them, not pass them, or amend them as the committee sees fit. Ms Carlson is not present. She's first on the list. We are expecting her, so perhaps we will come back to her and deal with the motion as put forward by Mr. Lukaszuk.

MR. LUKASZUK: Mr. Chair, can we defer my motion until a later part of the meeting and perhaps carry on with Ms DeLong's motion?

THE CHAIR: Any reason?

MR. LUKASZUK: At this point I'm not quite prepared to table it, but I will be within the next half hour.

THE CHAIR: Thank you.

Ms DeLong, are you ready to proceed with your motions?

MS DeLONG: Yes.

THE CHAIR: That being the case, yes, Mr. Lukaszuk, we will have you stand down on the agenda.

Which one did you want to deal with first, Ms DeLong?

MS DeLONG: Could we start with my second one?

THE CHAIR: Okay. That's the section 40 purpose test recommendation.

MS DeLONG: Yes, disclosure of personal information by public bodies. This has to do with sort of general information about how FOIP is supposed to be operating.

THE CHAIR: First of all, perhaps you can just read your motion for the record and explain it, and then we'll have you answer questions.

MS DeLONG: Okay. The first clause:

40(1.1) When determining if a public body may disclose personal information in accordance with section 40(1), a public body shall consider the purpose for which disclosure is being requested.

Let me just speak a few minutes about this.

THE CHAIR: Before you do, did you mean section 41 or did you mean section 40(1)?

MS DeLONG: Section 40(1), yes.

THE CHAIR: Thank you.

MS DeLONG: Sorry about that.

What we're hoping with this is to – what we say is add a note of common sense. In other words, if we think about why somebody is asking for the information, it makes the whole process a little more reasonable, I guess.

Now, the second clause:

40(1.2) If, after considering all relevant circumstances, a public body believes that disclosure for a particular purpose under section 40(1.1) is appropriate, the public body may disclose personal information to a person for that specific purpose.

Then, of course, going along with this, we have to have:

40(1.3) If disclosure of personal information is made to a person under [that previous section] and if the person uses the personal information for any purpose other than the specified purpose, the person is guilty of an offence and liable to a fine pursuant to section 92.

THE CHAIR: Thank you.

Any questions just regarding the wording of the motion?

Okay. Then, Ms DeLong, if you want explain the rationale for putting forward this motion.

MS DeLONG: As MLAs we bump into something which to us seems nonsensical, but strictly according to the FOIP Act it sort of makes sense. But if we were to add this, what we call, common sense to the act, we're hoping that we won't run into this. It's really simple. When kids graduate from high school, we like to be able to send out congratulatory scrolls saying: "Hey, good. Really glad that you've passed this mark. Hopefully you'll do well on the challenges of the future." It's just to be able to send out a nice letter to the graduates. Essentially, you know, when we want to do something good for someone, we just want to be able to do it without FOIP getting in the way.

Now, there are situations of course when perhaps somebody wants to sell life insurance to new graduates. This is an example where I think that FOIP should be standing in the way and saying: no, really we shouldn't be releasing all these names to a salesman. What we're trying to do here is essentially give organizations an out for when they want to do something good. So we're hoping that this will add that common sense to be able to do that.

THE CHAIR: Thank you, Ms DeLong.

Any questions for Ms DeLong on her motion or the purpose behind it? Mr. Jacobs, did you have a question?

MR. JACOBS: No questions. I think it's a good motion. I was going to propose an amendment to the motion.

THE CHAIR: Maybe we'll hear from Mr. MacDonald. Did you

have a question or a comment?

MR. MacDONALD: Yes, Mr. Chairman.

THE CHAIR: Then the floor recognizes Mr. MacDonald.

MR. MacDONALD: Thank you. I would like to ask at this time the representative from the commissioner's office if in the view of the commissioner's office this would erode the authority of the FOIP Act in any significant way.

10:20

MR. ENNIS: The motion as it's put would have a general application to all public bodies in all situations. I think the question is: does it erode any of the rights of individuals to have their privacy protected from the actions of public bodies? The answer to that, looking at this motion, would be: yes, it does.

The situation with high school graduate letters has been in our experience one in which the public bodies have not had the will to provide information to elected officials. The motion here doesn't compel them to provide that information. I think the will may or may not be there. This may be a situation in which identifying the specific case and conditions for this particular purpose might be advantageous as opposed to a broad consideration of the powers in section 40.

THE CHAIR: Does that answer your question, Mr. MacDonald?

MR. MacDONALD: Yes, Mr. Chairman.

THE CHAIR: Do you have any comment to that, Ms DeLong?

MS DeLONG: I'd be quite willing to go ahead with the amendment.

THE CHAIR: Well, were there any further questions or discussion on the motion?

If we could go off the record for five minutes, please.

[The committee met off the record from 10:22 a.m. to 10:27 a.m.]

THE CHAIR: Ms DeLong, did you have anything you wanted to say?

MS DeLONG: No; that's fine. Let's go ahead with the amendment.

THE CHAIR: There's going to be an amendment proposed, as I understand it, Mr. MacDonald. Did you want to make a comment now, or did you want to wait until you hear the amendment?

MR. MacDONALD: Yes. I have a question for Ms DeLong, Mr. Chairman.

THE CHAIR: Sure. Go ahead.

MR. MacDONALD: My question would be this: when you were drafting this motion, how many students from your area in the west side of Calgary did you hear from that were disappointed that they did not receive a letter of congratulations from either yourself or another Calgary MLA?

MS DeLONG: Zero.

MR. MacDONALD: Zero. Thank you.

MRS. JABLONSKI: Mr. Chairman, may I just make the comment,

please, that I did send out letters and certificates of congratulations to my graduates, and although I did not hear one comment of complaint that other people did not receive them, I did hear a lot of comments about “thanks very much; I appreciated that.”

THE CHAIR: Very good. Anything else? Anything arising? Mr. Jacobs, did you wish to speak?

MR. JACOBS: Well, first of all I'd like to say that I support the motion as brought forward by Ms DeLong. I think it brings common sense to this subject. I just think that there are now I guess a couple of amendments that I would like to propose. The first one would be that in section 40(1), “a public body,” would be “the head of a public body.”

The other amendment I would like to propose, Mr. Chairman, if I may, would be of a technical nature.

THE CHAIR: Just hold on before you go there. “A public body” is mentioned both in sections 40(1.1) and (1.2). Is it your intent to amend both those . . .

MR. JACOBS: Yes.

THE CHAIR: . . . to read “the head of a public body”?

MR. JACOBS: Yes.

THE CHAIR: Okay. Could the record reflect that “a public body” is changed to “the head of a public body”?

Thank you. Go ahead.

MR. JACOBS: Yes. Regarding just a technical amendment, where reference is made to section 40, I would like to move that the reference made to the section number be deleted and left to the Leg. drafting committee to decide whether it would be more appropriate to refer to section 40 or section 17, which also could have application here. So I'm just moving that section 40 be deleted and that that be left to the Leg. drafting people as to whether that's the appropriate section or another section would be more appropriate or both.

THE CHAIR: Ms DeLong, do you have any comments or concerns regarding your motion as it has been amended by Mr. Jacobs?

MS DeLONG: No. I think that's a good improvement. Thank you.

10:30

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

MR. MacDONALD: I have a question for Mr. Jacobs. If you want to have a wide broom in not only section 40 but section 17, what mechanism would there be for the head of the public body to consult, say, a grade 12 high school student in a high school, of course, to see if they wanted their personal information, their mailing address to be disclosed or not?

MR. JACOBS: Your question is: which section would be applicable?

MR. MacDONALD: No. With your amendment what mechanism would the head of the public body use to inform those students that their personal information was to be released to, say, an MLA from constituency ABC?

THE CHAIR: I think that might be a better question for Mr. Thackeray.

MR. JACOBS: I agree. I would like to refer that question to a member of our technical team. Tom, if you'd like to respond to that.

MR. THACKERAY: Currently, when students start the school year in September, most institutions send home information packages dealing with the Freedom of Information and Protection of Privacy Act and how it relates to the student attending the school. Notice could be given at that time for a school to indicate that it would be their intention to provide this information to elected officials in order for them to provide congratulatory letters upon graduation. The process also allows for the parents and/or the student, depending on the age of the student, to not give the consent to have that information released, and that would be honoured by the school.

THE CHAIR: Any supplementary, Mr. MacDonald?

MR. MacDONALD: No; that's fine.

THE CHAIR: Any further questions or deliberation on the motion as proposed by Ms DeLong and as amended by Mr. Jacobs? Okay. We'll put it to a vote then. The amended motion without section numbers and leaving it to Leg. drafting to determine whether or not it's section 40 or section 17 of the act which ought to be amended would read:

When determining if a head of a public body may disclose personal information in accordance with these sections, a public body shall consider the purpose for which the disclosure is being requested.

If after considering all relevant circumstances, the head of a public body believes that disclosure for a particular purpose under the relevant section is appropriate, the public body may disclose public information to a person for that specified purpose.

If disclosure of personal information is made to a person under the appropriate section, and if that appropriate person uses the personal information for any purpose other than the specified purpose, the person is guilty of an offence and liable to a fine pursuant to section 92.

All those in favour of Ms DeLong's motion as amended by Mr. Jacobs, please raise your hands. Opposed? It's carried. Thank you.

Ms DeLong, you're batting one for one with an amendment. Would you like to continue with your next motion, please?

MS DeLONG: The next one is called my WCB motion. The WCB, as you can well understand, is very concerned that they promote safety in the workplace. It of course costs them dearly whenever there is a safety problem. One of the things they'd like to be able to do is to publish the names of companies that do very well in a particular industry in terms of their safety record and also to highlight the ones that are not doing so well, just for the purpose of making a safer workplace. So my motion is that the committee recommend that

the Workers' Compensation Act be amended to permit the WCB to publish only that information contained in its injury prevention register, which is comprised of employer names and their injury prevention performance information, as determined by the WCB. It is understood that this is business information only, not personal information. The Board of Directors of WCB would also pass a policy to define the indices, measurements or standards and further circumscribe the publication.

THE CHAIRMAN: Thank you, Ms DeLong. As the members are aware, the chair has ruled on previous occasions that we can recommend changes to other pieces of legislation if they deal with FOIP and if they are necessary for this committee to do its work and

mandate, and the chair so rules with respect to this motion.

Any questions for Ms DeLong with respect to her motion, or is this a question to the chair?

MR. MacDONALD: A question, Mr. Chairman, for Ms DeLong, please.

THE CHAIR: A question to Ms DeLong on her motion. The chair recognizes Mr. MacDonald.

MR. MacDONALD: Yes. Ms DeLong, could you please elaborate for me on what exactly this injury prevention performance information as determined by the WCB is? I have no idea what that idea of injury prevention would be.

MS DeLONG: Not injury prevention information. Essentially it's their track record as to how many people get injured. What they'd like to be able to do is to publish the 10 best companies to work for where you're least likely to get injured. This is especially important in the oil industry. You've got various companies running the rigs out there, and some of them are really good and some of them are not as good as they ought to be. If we can just sort of give kudos to the ones that are doing well and highlight the ones that aren't doing so well also, we hopefully will be able to make a little more progress here.

THE CHAIR: Mr. MacDonald, I believe you should have received a copy of a letter addressed to me from the general counsel of WCB.

MR. MacDONALD: Yes, I did.

THE CHAIR: I'm hoping that some of those questions might be answered.

MR. MacDONALD: Again to Ms DeLong. Why are you comfortable with allowing the WCB to determine this and not the Human Resources and Employment department, which oversees the occupational health and safety regulations and statute in this province?

THE CHAIR: Did you want to respond to that, Mr. Lukaszuk?

MR. LUKASZUK: Perhaps by way of offering a little bit of information. It's my understanding that what the Workers' Compensation Board does is keep very close statistics on rates of accidents per industry basis – the entire workforce in Alberta is divided into a number of sectors of industry, so you have your construction industry, oilfield industry, and many others – and then more specifically on individual companies. So they are in a position to provide very precise statistics on which industry has what rate of accidents on a per capita, employee basis or which employer in specific has how many accidents based on a per capita basis. As I understand it, at the present time – and correct me if I'm wrong, Mr. Chair – because of FOIP limitations in the Workers' Compensation Act, they cannot publish those statistics on performance relative to the number of accidents per employer.

THE CHAIR: That's certainly my understanding, Mr. Lukaszuk, based on my meetings with Mr. Mah.

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

MR. THACKERAY: No. That was consistent with what we heard from the counsel for the WCB.

THE CHAIR: Does the government have a position with respect to this proposed amendment?

MR. THACKERAY: No, we don't.

THE CHAIR: Anything further?

MR. MacDONALD: These are the words of the Minister of Human Resources and Employment: we know that public opinion is a powerful motivator for employers, and we are looking at publishing the names of the best and worst safety performers; we will not let concerns about protection of privacy compromise safety. What sort of consultation has gone on between the WCB and the minister in charge of the occupational health and safety law and regulations in regards to this? Obviously the minister wants to publish the names of the best and worst safety performers, but my interpretation of this motion is to allow the WCB, if they so wish, to sweep a lot of this information under the carpet. There are many people in this province who feel that the WCB is already operating under a veil of secrecy.

10:40

THE CHAIR: I'm not sure that I agree with your interpretation of Ms DeLong's motion, but I'll let Ms DeLong respond to that.

MS DeLONG: This is about disclosing information, not holding back the disclosure. This allows the WCB to release these names, and it's perfectly in line with what the minister was suggesting.

THE CHAIR: Mr. Ennis, did you have a comment?

MR. ENNIS: Thank you, Mr. Chairman. On reviewing the attached correspondence supplied by the secretary and general counsel of the WCB, I think it's important to point out that there is a presumption in this correspondence that doesn't square with how the act works. In my understanding of the second paragraph of the letter where Mr. Mah describes the dilemma that would be provided by section 16 in keeping the WCB from doing what it wants to do, the test in section 16 would only be applied in the event that an access request is made. A public body is not precluded by the FOIP Act from publishing information about a company. There's nothing in the FOIP Act that would prevent a public body from doing that. Section 16 is only activated, if I can use that word, in the event that an access request is made, and it's there to protect third parties from, I suppose, indirect inquiries via government departments about those third parties' businesses, but there's nothing in section 16 that prevents a public body from developing statistics or reports or comments about companies with which it deals. So I don't see that there actually is a problem with section 16 in its current wording that would get in the way of the WCB's program plan.

THE CHAIR: Mr. Thackeray, you and I met with one of the board directors and the general counsel for WCB. Perhaps you might be able to shed some light onto why this proposed change might be necessary.

MR. THACKERAY: Thank you, Mr. Chairman. That very point was discussed in the meeting that we had with the two gentlemen from the WCB. I guess their point was one of consistency in that if someone put in an access request under the Freedom of Information and Protection of Privacy Act, the WCB would have to look at section 16 to determine whether or not the release of the information would be an infringement of a third party's business interests. However, as you say, if there isn't an access request, they can

release the information anyway, and there seemed to be a little inconsistency there. Their concern was more that the current wording of the Workers' Compensation Act with the confidentiality clause would be more restrictive on what they could release, and that's why the motion is worded that the Workers' Compensation Act would be amended to allow them to release this limited amount of information about employers and their safety records.

THE CHAIR: Ms Lynn-George, did I see your hand raised?

MS LYNN-GEORGE: Tom just addressed the point I wanted to raise.

THE CHAIR: Thank you.
Any response, Mr. Ennis?

MR. ENNIS: I appreciate that background from Mr. Thackeray, and I agree with him that the resolution of this issue is within the workers' compensation legislation, not within the FOIP Act.

THE CHAIR: Thank you.
Mr. MacDonald, anything further?

MR. MacDONALD: No. Just, Mr. Chairman, for the record, in light of the work that the Department of Human Resources and Employment has put in in the last couple of years to make our workplaces safer, I for one am not convinced that allowing the WCB to pass a policy to define what information is going to be made public or not is in the best interests of workers or the department. One must recognize that there is \$6 million annually in the transfer from the WCB to the occupational health and safety department to try to improve the safety record in this province, and the minister may be on to something here, certainly with his notion of publishing the names of the best and worst safety performers. I don't think he can do that accurately if this motion is put forward and it eventually becomes an amendment to the FOIP Act, so I cannot support it.

Thank you.

THE CHAIR: Thank you.
Any further deliberation or debate? Ms DeLong, do you have anything to say in closing?

MS DeLONG: No. This is quite straightforward as far as I can see.

THE CHAIR: Okay. The motion on the floor, as unamended, reads that this

committee recommend that the Workers' Compensation Act be amended to permit the Workers' Compensation Board to publish only that information contained in its injury prevention register, which is comprised of employer names and their injury prevention performance information, as determined by the Workers' Compensation Board. It is understood that this is business information only, not personal information. The Board of Directors of the Workers' Compensation Board would also pass a policy to define the indices, measurements, or standards and further circumscribe the publication.

Did I get that correct, Ms DeLong?

MS DeLONG: Exactly.

THE CHAIR: Thank you.
All those in favour of Ms DeLong's motion, please raise your hand. Opposed? It's carried. Thank you.
Ms DeLong, the floor is yours. I've received notification from Mr. Lukaszuk that he's ready to proceed, so I leave it to you if you

wish to continue or whether you wish him to go to his motion and then we'll return to you.

MS DeLONG: No. We'll go forward with Thomas's.

THE CHAIR: Okay. Mr. Lukaszuk, the floor is yours.

MR. LUKASZUK: Thank you, Mr. Chairman. Thank you very much, Ms DeLong. I have circulated a motion throughout the membership of this committee, and for those of you who were too busy over the weekend to familiarize yourself with it and if you are readers of the *Edmonton Journal*, now you are familiar as well.

Before I start off, let the record show that this is not a matter that's personal. I have not received a parking ticket from any parking company for the last two or two and a half years. However, in the past I have. Nonetheless, my motion reads that private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection.

First of all, the most primary issue as it relates to this committee is an issue of consent and privacy. I do not believe that Albertans who register their vehicles with Alberta Registries, which is mandatory in order to operate a vehicle in this province, do automatically consent that the registries department sell that information to private companies so that they can collect debts that are owed to them which are not relevant to either Highway Traffic Act or motor vehicle act offences or nontraffic-related offences.

When an individual parks a vehicle on a private parking lot and either does not pay enough by leaving the parking lot late or simply does not pay at all, what he indeed commits is an act of trespassing by parking his or her vehicle on a private piece of property, but he is not committing any traffic violation whatsoever. However, what results in such an act is that he will receive a notification of money owed to the company, which the company refers to as a parking ticket, and the parking tickets that are currently issued by private companies in Alberta look very similar to those that would be issued by peace officers or police officers and are referred to as parking tickets. If an individual does not pay that parking ticket by either not receiving it personally because of it not being under the windshield wiper or simply chooses not to pay that parking fee, he then will receive by way of mail a notification that he owes an amount of money to the private parking company.

Now, the only reason that that individual is in receipt of that notification is because the company at a cost of \$11 will have purchased the person's address based on the licence plate that appeared on the vehicle. If that individual continues not to pay that fee, then this matter is later referred to a collection agency, which will pursue this matter quite vigorously, I should say.

It is my position that it is not the intent of Alberta Registries and of Albertans when they register their vehicles to have their information released to private companies so that they collect their debts. Indeed, it is the intent of Albertans to have their vehicles identified for purposes of traffic violations in the specific Highway Traffic Act or motor vehicle act, but it is not Albertans' intention to have their addresses released for purposes of private companies, any private companies, to be able to access the owners to collect debts. The debt owed to a parking company is no different than a person owing outstanding fees to a video rental company and/or a dry cleaner. He or she has simply trespassed.

This practice of selling addresses to private parking companies is not a uniform practice. Not all provinces sell the addresses. I know that Manitoba does not sell, and I am not sure but I believe some of the maritime provinces don't sell those addresses either.

10:50

Now, I understand by having read the recent media articles that

the private companies obviously would object to my motion by saying that the only alternative that they would have, if not able to notify individuals that money is owed to them by way of mail, is to either tow the vehicle or put a Denver boot on it. Well, I personally don't subscribe to that theory. There is an option that those companies practised for a number of years prior to the recent automation of parking stalls, and it is that of having a parking lot actually manned, where when you enter with the vehicle, you receive a ticket, and then when you exit the parking lot, you actually pay what is owed for the time that you have used on the private parking lot. Many parkades in our large cities still utilize that system, and it is quite efficient. It does not require purchasing database information from the Alberta government in order to notify individuals. However, many of the large companies in our municipalities have automated their parking lots, where you have to estimate how long you will be at a parking lot, prebuy a ticket, and then park your vehicle. Very often, as I imagine all of us would have found out from time to time, sometimes our estimate is not correct. We stay five to 10 minutes longer, and that's how we receive those parking tickets.

So for purposes of the FOIP review I believe that this is not the intended use of information gathered by the Alberta government, and I believe we don't have the consent from Albertans to have this information released to private companies, any private companies, to collect such debts.

Thank you.

THE CHAIR: Thank you, Mr. Lukaszuk.

Any questions or comments from any members of the committee?

MR. JACOBS: I would like to ask Mr. Thackeray and Mr. Ennis if they would sort of respond as to how this proposed motion would affect the present system, especially in view of the recommendations we made to amend the Traffic Safety Act to cover the War Amps situation. I would like to hear their comments if I may, Mr. Chairman.

THE CHAIR: I was going to do that, so thank you. Mr. Thackeray first.

MR. THACKERAY: Thank you, Mr. Chairman. Earlier in the deliberations the committee made a recommendation that the Traffic Safety Act be amended to delete the reference to section 40 of the Freedom of Information and Protection of Privacy Act as it relates to information concerning individuals and prescribe specific criteria for permitting the disclosure of personal information from the motor vehicle registry by the registrar. When this recommendation was put forward in the government's submission and I believe supported by the commissioner's office, it was with a mind to the issue of War Amps but also included other organizations that were getting or were interested in receiving personal information from the motor vehicle database.

It was certainly the intent of the government in its submission that once the criteria for permitting access to the motor vehicle registry was incorporated into the Traffic Safety Act and passed by the Legislative Assembly, we would be looking at a level playing field, that all of those organizations that currently have access to the database would, for lack of a better word, have to be requalified in ensuring that they met the criteria that was felt appropriate by the elected persons from Alberta. That being the case, I am a little uncomfortable with suggesting that the committee pass a motion that deals with only one of the organizations that currently has access to the database and ignores the others.

THE CHAIR: Thank you.

Anything to add to that, Mr. Ennis?

MR. ENNIS: On a point of clarification I concur completely with what Mr. Thackeray has described as the background to this situation. There is a list of many different types of users. Automobile manufacturers come to mind as potential users of this information. They are private companies, and there may or may not be the same view as to whether or not they should have access to the information. So these situations were meant to be dealt with in the previous recommendation from the committee on removing the criteria from the FOIP Act and putting it into the Traffic Safety Act for the determination of who gets access to information. The parking situation was just one of many scenarios that would be covered there.

On another point, I'm not clear on the motion as to whether this would include the commercial activities of public bodies involved in the administration of parking, which is particularly a large venture in the city of Calgary. I don't know if this motion is meant to cover that. I think that's the extent of my comments, Mr. Chairman.

THE CHAIR: I have two questions. The first one is on that point to Mr. Lukaszuk. Is it the intent of your motion to deal with municipal corporations that have contracts to deal with their parking issues?

MR. LUKASZUK: It is my intent for the motion to address any private companies.

THE CHAIR: What if a municipal corporation contracts the administration of its parking enforcement to a private contractor?

MR. LUKASZUK: Then it would be much the same.

THE CHAIR: My other question is to Ms. Dafoe regarding Mr. Lukaszuk's explanation of his motion where he indicated that debts owed to parking lot owners are no different than debts owed to dry cleaners and/or to video store operators. I was wondering from a legal perspective whether or not the parking lot owners are in a different situation given the purpose for which the data was collected in the first place, – i.e., to determine ownership of the vehicle – or is it, as Mr. Lukaszuk indicated, to determine ownership of the vehicle for traffic violations? I don't mean to paraphrase what you said, Mr. Lukaszuk. Did I understand you correctly?

MR. LUKASZUK: You're not only paraphrasing, Mr. Chairman, but you're also editorializing.

THE CHAIR: I'm asking a question.

MR. LUKASZUK: Are you asking me the question?

THE CHAIR: I'm asking if I summarized your position accurately with respect to why the data was collected for licence plate administration.

MR. LUKASZUK: The Alberta government collects the information from drivers in order that all vehicles can be identified in the event of their committing an offence under the Highway Traffic Act or the motor vehicle act, any motor vehicle offence that could be identified by a police officer or any other interested party, so that they can then trace the driver, potentially, or the owner, particularly, of the vehicle. But that information was not collected so that private companies who do business with the owner of the vehicle – and the owner just happens to drive the vehicle to their place of business so

that he can conduct business with them – use that information to track down who the owner is.

So the reason I drew the parallel is that if you drive your vehicle to a local video store and park your vehicle in their parking stall and then don't pay whatever moneys you maybe owed, I don't believe that the fact that you drove your vehicle to the place of business should then give the store the access to find out who you are so that they can collect your debt.

THE CHAIR: Thank you. I did understand you correctly.

My question, then, either to Mr. Thackeray or to Ms Dafoe – and this I guess should actually be directed to Registries, but they're not present, so perhaps one of you or Mr. Ennis might take a shot at it – is: is the purpose for registering a motor vehicle to identify ownership generally, or is it to identify ownership for the purposes of violations under the Highway Traffic Act?

MS DAFOE: I don't have that information. I couldn't tell you. What I could say, though, is that I think it's correct to assess the situation as one of trespass, so it's not directly a motor vehicle violation. However, I think the argument can also be made that there is a closer link between that kind of situation of trespass and motor vehicle information than there would be over, say, a dry cleaning bill. I think an argument can be made that there is a closer link there.

11:00

THE CHAIR: Mr. Thackeray, do you have anything to add?

MR. THACKERAY: No, I don't, Mr. Chairman.

THE CHAIR: Mr. Ennis?

MR. ENNIS: No, Mr. Chairman, I don't.

MR. LUKASZUK: Well, if we want to hang ourselves on a technicality over here, whether it is or isn't a trespass, I believe it is the motor vehicles act that clearly indicates that a vehicle has to bear a licence plate and be registered on any public roadway or highway. Technically speaking, when a vehicle is parked on private land, being a parking stall, it does not even have to bear a licence plate, and that would not be a violation of either of the highway traffic acts.

THE CHAIR: I don't think anybody is taking issue with you that it is a trespass.

Anything further? Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. I just wanted to ask Mr. Thackeray: would the motion that's put forward that private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection be one of the questions that would be considered by the registrar under the recommendation that we made earlier? Would this be one of the questions that he would look at? In other words, I think you said that everybody would have to requalify.

MR. THACKERAY: The intent of developing the criteria would be to bring back a relationship to the Traffic Safety Act and the reasons behind collecting the information in the first place. The criteria would be developed keeping in mind all of those organizations that currently have access and ensuring that they would have an opportunity to make application once the Traffic Safety Act is amended, if that's the decision of the Legislature, to ensure that they

would still have the opportunity to make their case before the registrar to continue access or, if the registrar decided not to make an application to the commissioner, to review the decision of the registrar.

MRS. JABLONSKI: Thank you.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Yes. To Mr. Thackeray for clarification: if the amendments that we've been talking about relative to the Highway Traffic Act were to be completed and made, would that then give the registry the authority to deny access to someone on the basis that the purpose for the release of the information was for debt collection? Would that actually give them the authority to say: "No, we think this is for debt collection," for example, for a parking violation, "therefore we won't give you the information"?

MR. THACKERAY: If it was the view of the registrar of the motor vehicle database that the organization did not meet the criteria as specified in the Traffic Safety Act, then the registrar could deny access.

MR. JACOBS: Supplementary to Mr. Lukaszuk: what's your response to that? Do you not think that that would cover your intent here? If you do not, could you please explain your position in relation to the information we've just received?

MR. LUKASZUK: Thank you. Gladly, Mr. Jacobs. I am not satisfied that that would achieve the same purpose because the registrar of the department currently is satisfied that the parking companies are utilizing that information for proper purposes. So why would one want to conclude that once this comes to a review, the registrar would be suddenly of a different opinion?

THE CHAIR: Anything arising from that?

MR. ENNIS: I'd like to point out, Mr. Chairman, that under the recommendations being advanced by the committee to the Legislature, the scheme would be that if persons were not happy with the registrar's decision, there would be a right to request review by the commissioner. So there are basically two gates of decision here: one is at the registrar's level; the other is at the commissioner's level. It would invariably end up with the commissioner, I believe, no matter what the registrar decided, because the companies themselves of course would also have the right to challenge the decision made by the registrar.

THE CHAIR: Thank you.

Anything arising? Anything further?

Mr. Lukaszuk to close if you wish.

MR. LUKASZUK: Mr. Chairman, instead of utilizing various processes of appeal, if the committee members believe that parking violations on private properties are indeed not offences under any current legislation but rather just trespassing cases and that the information that we as Albertans release to the Alberta government is misused, then we can simply put an end to this practice right here at this table.

Thank you.

THE CHAIR: Thank you, Mr. Lukaszuk.

The motion, unamended, reads that this committee recommend to

the Legislature

that private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection.

All those in favour of the motion, please raise your hand. Opposed? Well, not that it matters, but how did you vote, Mrs. Jablonski?

MRS. JABLONSKI: In favour.

THE CHAIR: It's carried.

We have Ms Carlson's two motions and Ms DeLong's one remaining motion.

I propose that we take a five-minute recess. We're adjourned for five minutes.

[The committee adjourned from 11:06 a.m. to 11:18 a.m.]

THE CHAIR: The next item is one further motion as put forward by Member Alana DeLong. Ms DeLong, the floor is yours.

MS DeLONG: Okay. My motion is to amend section 84, exercise of rights by other persons. Currently the provision is worded this way,

- (e) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor.

Now, essentially there are two things that I'll be changing here. Right now "guardian" tends to be defined very narrowly, and it tends to be defined as only the custodial parent or legally appointed guardian. I am concerned about that because of, well, partly parents' rights but more that a child needs both parents, and often the noncustodial parent might be the best person to speak on behalf of the child. So the child should have the right for that parent to speak for them.

So let me read the motion as is.

That section 84 of the FOIP Act be amended so that where an individual is less than 16 years of age, the right or power conferred on an individual by the FOIP Act may be exercised by a person who has lawful custody of the individual or a noncustodial parent who is exercising the right or power in the best interests of the minor.

It's interesting to note that even though it's not sort of worded specifically in here, because of the rights and freedom of a child the right of access by a parent on behalf of a child is in addition to the rights of the child. Children would still be consulted if a parent requests access to the child's personal information.

11:20

One of the key phrases here was something that, even though it's at the end of the sentence, is very key because it addresses very key issues such as the abuse of a child or the situation when a noncustodial parent is essentially trying to get back at the other parent by using the child's information. This key phrase is: "a noncustodial parent who is exercising the right or power in the best interests of the minor." That's very key.

That's my motion. I'd be happy to take any questions.

THE CHAIR: From the members first: any questions for Ms DeLong on her motion? Mr. Jacobs.

MR. JACOBS: Yes. Ms DeLong, would you please clarify for me again the last phrase in your motion: "parent who is exercising the right or power in the best interests of the minor." Who makes that decision? What criteria do they use? Just how do we ensure that the best interests of the minor are being protected?

MS DeLONG: Would you be interested in amending it so that we actually specify who it is that would make that decision? I'd be happy to put in an amendment that says "in the opinion of the head of the public body concerned" at that point; in other words, a noncustodial parent who in the opinion of the head of the public body is exercising the right or power in the best interests of the minor.

MR. JACOBS: Mr. Chairman, could we have comments on the amendment from Mr. Thackeray and possibly Mr. Ennis?

THE CHAIR: Yeah, we'll hear from the technical team. I'm curious, though, if any of the members had any questions to Ms DeLong.

Now, before we get to the technical team, are you proposing an amendment to your own motion, or are you just soliciting thoughts and advice?

MS DeLONG: I'll put that amendment in. It's obvious that it's unclear to other people.

THE CHAIR: I'm not convinced that you can amend your own motion. We may need somebody else to amend your motion after we hear from the technical team.

Mr. Thackeray, do you have any comments regarding this motion?

MR. THACKERAY: When we received notice of this motion, we did have some discussions with the FOIP co-ordinator for Children's Services, and I also had some discussions with Justice. I think Ms Dafoe may have some comments from the Justice perspective. Children's Services have some real concerns with the motion as presented by Ms DeLong. I guess their concerns centre around any changes to the legislation that would enable a child's information to be disclosed against a child's wishes or interests. This includes changes that would require that the information be disclosed if the child is unable to provide a valid consent or where the consent is questionable given the reliance of the child on the parent for sustenance.

A couple of examples were given by the folks at Children's Services, which I would like to put out. The first is that if a mother and child are hiding from an abusive husband and father in a shelter and he makes a FOIP request for the child's information, he would always be able to locate them as he would have access to the child's address. The second example: if parents are divorced and the custodial parent is on welfare after the divorce, there would be a conflict should the noncustodial parent request all records with their children's information. If we follow the FOIP legislation, we should refuse to confirm or deny the existence of a supports for independence file under those circumstances. If the noncustodial parent were provided with the children's information in this scenario, we would be violating the privacy rights of the custodial parent.

The third example. The worst case scenario would be to provide the interview of a child who has disclosed abuse to a child protection worker to a parent with a history of violence toward that child. To do so could willfully cause a child to be in need of protective services, which is an offence under section 130 of the Child Welfare Act.

The last example given by Children's Services is more of a question. What about 16 and 17 year olds who have their own support agreement or children with custody agreements under the Child Welfare Act? These youths often have no contact whatsoever with their parents and surely should have some privacy rights in

terms of what their child welfare file may contain.

MS DeLONG: Tom, my understanding is that all of those would be covered under the last clause there in terms of “the best interests of the minor.” The other one that you referred to is children that are over 16, and again this gets covered. So which of those things that you had on that list would not be covered under the last clause?

MR. THACKERAY: With due respect, I would suggest that the current wording of section 84(1)(e) would cover those things if the individual is a minor because minor is defined in the Interpretation Act as a person under the age of 18, I believe.

MS DeLONG: Right.

MR. THACKERAY: The only thing that isn’t covered in the current wording of 84(1)(e) is the issue of a noncustodial parent. I don’t know if Ms Dafoe wants to make a comment about noncustodial versus custodial.

MS DAFOE: Well, I’d rather not make a comment about that, but I have a bunch of comments I’d like to make about the motion just generally.

THE CHAIR: Maybe just hold onto them.
Did Mr. Thackeray answer your question?

MS DeLONG: Not entirely. Which of those things that you listed would not be covered under the last clause that I’m proposing?

MR. THACKERAY: The issue of refusal to confirm or deny the existence of a record.

MS DeLONG: But aren’t SFI records under the parent’s name? They’re not under the child’s name.

MR. THACKERAY: But there may be some reference in the record to the child if the child is in the care of the person who is the SFI client.

MS DeLONG: So then, in other words, the father might find out that his child is being supported by SFI?

MR. THACKERAY: That’s correct.

MS DeLONG: And he wouldn’t know that beforehand?

MR. THACKERAY: Not necessarily.

MS DeLONG: I understood that SFI always went after maintenance from fathers or mothers.

MR. THACKERAY: That would be maintenance enforcement.

THE CHAIR: Okay?

Ms Dafoe, I understand that you have some concerns from the Department of Justice perspective.

MS DAFOE: A few quick ones and then one that is a little longer. First, one thing that has to be considered is that the personal information of the minor, or the child, is sometimes linked to or the same as the personal information of the custodial parent. For example, simple things like the address and phone number of the

child should be the same as the address and the phone number of the custodial parent, and there may be situations where that information shouldn’t be released to the noncustodial parent.

Secondly, the Supreme Court has said that children have a right to privacy of their own, too, and that has to be taken into account particularly in situations where the interests of a parent and the interests of a child are not the same.

The last thing – and this is probably my biggest concern – is that this amendment would require a public body to take on a new role in terms of determining what the best interests of a child are. The public body would almost be taking on an investigatory role to do an analysis of what is in the best interests of the child. You know, a lot of law has been written about this area: what are the best interests of the child? It involves, as you would imagine, a lot of case-specific analysis including what’s best for the psychological development of the child, its spiritual development, the emotional and physical development, how important or what kind of ties does the child have with the parent? All sorts of different things. Under FOIP public bodies haven’t had to do that sort of analysis before, and this would be taking them into a whole new area just to process a FOIP request. So it’s something to consider.

11:30

MS DeLONG: Let me back up a little bit and tell you where I’m coming from with this. As a society we have decided that parents should support their children, and we have come out with a whole child maintenance department that collects money from fathers or from mothers to make sure that they do support their children. This is something where we have crossed a lot of boundaries, and we’ve sort of stepped out of line in a lot of places. We even take away drivers’ licences from parents who don’t support their children because we believe that that’s their responsibility.

But there is something that children need from their parents more than they need money, and that is the love and involvement of both parents. The input of their parents is way more important than the money that they get in support, yet here there are examples in government where FOIP is being used to essentially separate the parent from the child. It is being used to stop the parent from having basic information about the child: basic health information and basic schooling information about the child. One of the things with a child growing up is that usually one of the parents – and most of the time it is the father who tends not to be the custodial parent, and it tends to be their responsibility or it tends to be their role, I guess, to bridge between the family and society. When that parent does not have access to basic information about their child, it’s very difficult for, usually, the father to handle that role, to accomplish that role.

I realize that we’re sort of pushing in a slightly different direction here, but I think it’s very, very important for the well-being of the child that we actually value the parent, that we value the parents being involved in their children’s lives. So that’s where I’m coming

from with this.

MR. JACOBS: I would like to ask a question of Mr. Ennis. In light of what Ms DeLong just said, which I think makes sense and has validity – we certainly don't want to take away from honest parents who are trying to raise their children, who may have got into a marital dispute but are both still interested in the welfare and the best interests of the children – I guess what I want you to tell me is that surely FOIP wouldn't be used to deny information that was relevant to a legitimate father or mother. If that's the case, then that's unfortunate. Could you just comment on that, John?

MR. ENNIS: Thank you for the question. We haven't seen activity in the office on this issue. We've had incidents shared with us by public bodies, and I recall one of the very first ones that we ever came across was a case in which a school board had inadvertently disclosed a great deal of personal information to someone they thought was the mother of a child attending the school. It turned out, though, that over the summer her status as the mother of the child had been superceded by a new mother of the child through a remarriage of the father to his original bride. This stuff can get complicated. So the school was caught having actually disclosed a whole boot of information to an individual that had actually no legal bearing to the child at that point. So trying to match children with parents isn't always as easy as we might think, and I appreciate Ms DeLong's interest in trying to make it possible for parents to take an interest in their child's life.

One of the interesting parts of this motion is that in the rationale that we have at our fingertips here to explain some of it, I notice that in the last bullet on the first page there's a consideration that the child be consulted. I think that the technical group would be remiss if we didn't point out that at this point there is no obligation under section 84(1)(e) to consult the child if someone is acting in the child's interests. There's not a current obligation. For example, if you have a child who's in grade 3 and you want to act on that child's behalf in requesting information about that child, there's no obligation to tell the child that you're doing it, and there's no obligation for the public body to tell the child that you've done it. So just on a point of clarity, if someone is acting in the shoes of the child, they are acting in the shoes of the child without having to have the child's okay to do so, the way the act is currently set up. I don't quite know how we would run in the right of a child as a third party to their own access request, in a sense. That's just a technical point that's of interest here.

This hasn't been an area of great problem in our office. I think that we have seen a tendency on the part of people who work for public bodies to adopt rules of thumb as to how they operate in situations like this. The one that we were watching for, I suppose, is a rule of thumb that would say that a noncustodial parent would never get access to a child's records, and we did see some social workers moving down that road. That's the road that Ms DeLong is concerned with, that a father who doesn't have day-to-day custody would not have access.

Now, we've seen it modified over time to a practice – and I hope I'm properly representing this practice – where social workers tend to look at who has the most daily contact or information sharing with the child and treat that person as critical in the equation, in deciding that that person should have a say as to whether someone else has access to the information. So reasonably it works out that a custodial guardian would be given sort of a pre-eminent position in the current structure. This amendment moves a bit against that trend, but as things now stand, there's nothing to prevent a public body from giving a noncustodial parent the ability to operate as the child under the act if in doing so the disclosure doesn't result in an

unreasonable invasion of the child's privacy.

I think the other change from this motion is the independent status given to 16 and 17 year olds. Currently under the act a 16 or 17 year old could be acted for by their guardian if there was no breach of privacy involved, whereas under this motion I'm not sure that that's possible.

THE CHAIR: Thank you, Mr. Ennis.

MR. LUKASZUK: I'll preface my question with a statement. Our courts have been trying very hard whenever possible and applicable to grant some form of joint custody in situations of a marital breakdown. This is a trend that has now developed over some time. My question to Ms DeLong is this: if indeed a noncustodial parent is so interested in the child's well-being that he or she will seek information from public bodies in the best interests of that child, why would that parent be a noncustodial parent and not have been granted custody or some portion of custody of that child to begin with? Would you consider the fact that a judge in his or her wisdom has not granted custody to that parent an indicator that perhaps that individual is not a suitable candidate to be in possession of personal information on that child?

11:40

THE CHAIR: Do you wish to answer that, Ms DeLong?

MS DeLONG: I'm not sure that I'm the best person to answer that. I'll answer it, and maybe I could get some confirmation from somebody else that this is the right answer.

My understanding is that there's a difference between a custodial parent and a parent with visitation rights. I believe that often there is one custodial parent and then the other parent usually has visitation rights. I don't know how often there are two custodial parents. Is there anybody who can help me out with this?

The other thing is that because currently it's the word "guardian," the word "guardian" tends to be interpreted too narrowly. It tends to ask the question of who is the guardian rather than who are the guardians. In other words, no matter what the divorce result is, the interpretation of the FOIP Act is looking for the guardian rather than the guardians.

THE CHAIR: Ms Dafoe, are you able to help out with the definition of custody versus guardian?

MS DAFOE: I guess the short answer is that I'm certainly not an expert in this area, and it may be wise for me not to answer that. Although I would say that my impression is that Mr. Lukaszuk is correct when he says that there is a trend towards more joint custody when possible, but I can't confirm whether that means more than just joint custody, whether that means there's custody and access as well.

THE CHAIR: Anything arising out of that?

MR. LUKASZUK: Just by way of comment, access is totally irrelevant to this matter, because there are two orders that are granted by a judge. One is the custody, who becomes the legal custodian of the child, and it could be a combination of mother alone, father alone, or a combination of both thereof. Then the visitation rights are a totally separate matter that's agreed upon between the two parties with the consent of the judge, whether it be daily, weekly, monthly, supervised, or non-supervised. It has no relationship to the actual custody whatsoever.

THE CHAIR: I have to agree save for the fact that it's not always

agreed upon. Sometimes it's imposed by the judge.

Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chair. I think that Alana has a very important concern here, but I am disturbed about the inherent dangers in this motion that would violate the rights of a custodial parent, especially those under SFI and those who have suffered abuse. I understand that Mr. Ennis has clarified that information can be granted to noncustodial parents as long as it is considered not to be an unreasonable invasion of a child's privacy. So I feel that Alana is addressing a concern that we have but that the biggest problem is with the interpretation of the word "guardian" in this section.

THE CHAIR: Any response, Ms DeLong?

MS DeLONG: That leaves me with the question as to: how can we expand the definition of guardian without getting into what you would consider to be a difficult area?

THE CHAIR: That's addressed to . . .

MS DeLONG: Anybody at the table.

THE CHAIR: Well, your question is premised on that we're not entering a difficult area already.

MR. THACKERAY: I think there are a number of ways that the interpretation of this section of the act could be clarified. Part of the role of the information management, access, and privacy division of Government Services is to provide advice to public bodies on interpreting the legislation. We meet regularly with the FOIP coordinators from government ministries, and we also have regular meetings with the co-ordinators from the school sector, the health care sector, some municipal sectors, and the postsecondary sector. We would certainly be in a position where we could develop an interpretive bulletin that would be of assistance to local public bodies especially in a more consistent interpretation of section 84(1)(e) to ensure that there is a level playing field across the province.

THE CHAIR: Questions or comments on that answer, Ms DeLong?

MS DeLONG: Tom, can you help us in terms of how we can amend this so that "guardian" would be interpreted more broadly than it is right now?

MR. THACKERAY: Perhaps if the motion were amended to not necessarily suggest a change to section 84 but to be more instructive to administrators of the act to provide guidance to public bodies both at the provincial level and at the local level to use a more uniform interpretation of some of the terms used in section 84(1)(e). Does that help?

MS DeLONG: Uniform but how can we make the term "guardian" actually encompass both parents?

MR. ENNIS: If my experience with child welfare records is an accurate one – I think it is – the status of guardianship is not denied to a noncustodial parent. The status of guardianship is there, as I understand it, and can be invoked in this situation. If someone says, "I am a legitimate guardian of this child; I do not have day-to-day custody of the child, but I am a legitimate guardian of the child" – and I'll check the *Hansard* record on this very carefully after this

meeting and consult with Children's Services – I believe the guardian status does attach to the parent who does not have day-to-day custody of the child. That's my understanding of how this section has been interpreted by Children's Services and by the child and family services authorities.

One of the important points here is that we often hear of the FOIP Act precluding people from getting access to something when the access has actually been requested under another act, and I'm thinking specifically of the School Act, which has specific rules about how a parent or a guardian goes about getting access to student records and who does have automatic access to those student records. Occasionally people are turned away under the School Act and are told that they can't have the information because of the FOIP Act. We have heard of that happening in some of the larger school districts, and I suppose it happens in the smaller ones as well. So in addressing this problem, I think there would be a need for a multifaceted approach that would also look at other types of access to children's information outside of the FOIP Act but under other pieces of legislation to make sure that there is some consistency and harmony in how that happens.

THE CHAIR: Anything arising?

MS LYNN-GEORGE: Just two points of clarification. The Guidelines and Practices manual defines a guardian in policy, I guess, as "a person who has care and custody of the minor or is involved in his or her daily care," and it notes, "This definition may not extend to the parents of the child in all circumstances."

My second point is that a review of all the cases on access by personal representatives of minors in Canada indicates that no matter really what the wording is, the representative of the minor is the person who has lawful custody, so it's understood to be the parent with custody.

MS DeLONG: So essentially it's only the parent who has the child most of the time who has access. Is that what you're saying?

11:50

MS LYNN-GEORGE: That seems to be the interpretation. Children's Services have indicated that they look for some evidence of the custodial rights of a parent before they provide information, and they would be looking for some sort of court document.

MS DeLONG: So, in other words, for us to actually expand the actual definition of guardian, we do have to specifically do it?

MS LYNN-GEORGE: That would seem to be the case, and it would seem to be the case that no matter what wording you use, it's going to be interpreted consistent with the other legislation that grants certain rights to custodial parents rather than others.

The other point coming out of a review of the cases in this area was that regardless of the wording of the specific provisions, there is a very strong tendency by commissioners and by public bodies to consult children who are as young as eight on the disclosure of their information even to a custodial parent. Mr. Ennis commented on the fact that the personal representative stands in the shoes of the child and that there's no obligation to consult. I think that's the interpretation that we would agree with, but the decisions have generally placed a great deal of emphasis on finding out what information they can from children.

MS DeLONG: Mr. Chair, I'd like to move that we break for lunch.

THE CHAIR: I take it you want more time to consider these matters.

MS DeLONG: That's right.

THE CHAIR: Anybody opposed to breaking until 1 o'clock? We're adjourned.

[The committee adjourned from 11:53 a.m. to 1:02 p.m.]

THE CHAIR: Okay. If we could go back on the record, please. Good afternoon, everyone.

When we broke for lunch, Ms DeLong, your motion with the proposed amendment to section 84, the Freedom of Information and Protection of Privacy Act, was on the floor. Now, I understand that over lunch you have decided not to proceed with that motion, or there may be an amendment to that motion. Is that your understanding?

MS DeLONG: I believe that there is an amendment. I believe that Mary Anne Jablonski has an amendment.

THE CHAIR: Before we get to that, is there any further commentary or debate on the unamended motion as put forward by Ms DeLong? That being the case, Mrs. Jablonski, did you wish to propose an amendment to Ms DeLong's motion?

MRS. JABLONSKI: Yes, I would.

THE CHAIR: Thank you. Go ahead.

MRS. JABLONSKI: The amendment that I would propose is that the information management, access, and privacy division review the definition and interpretation of the word "guardian" in section 84(1)(e) to recognize the importance of shared parenting and to ensure harmony with developments in family law that further the goals of shared parenting.

THE CHAIR: May I have that, please?

MRS. JABLONSKI: Yes.

THE CHAIR: And of course this would involve a policy initiative from the government, and accordingly, the amended motion is in order and is accepted by the chair. Are there any questions to Mrs. Jablonski on her amended motion? Does the motion raise any concerns from either Government Services or from the Information and Privacy Commissioner?

MR. THACKERAY: No, Mr. Chairman.

MR. ENNIS: No, Mr. Chairman.

THE CHAIR: Department of Justice?

MS DAFOE: Can I just ask: this is amending the original motion, so the original motion still exists with this tacked on at the end of it; is that right?

THE CHAIR: No, I think that this replaces the original motion. Is that correct, Mrs. Jablonski?

MRS. JABLONSKI: That's correct.

THE CHAIR: Is that your understanding, Ms DeLong?

MS DeLONG: That's also my understanding.

THE CHAIR: You raise a good point, Ms Dafoe. I think the original motion is deleted and is substituted by what Mrs. Jablonski read into the record. Does that clarify matters?

MS DAFOE: Yes, it does. Thank you.

THE CHAIR: Thank you. Any further deliberations or debate? Okay, the motion as proposed by Ms DeLong and as amended by Mrs. Jablonski with the first part deleted now reads as follows: that the information management, access, and privacy division review the definition and interpretation of the word "guardian" in section 84(1)(e) to recognize the importance of shared parenting and to ensure harmony with developments in family law that further the goals of shared parenting.

All those in favour of that amended motion as I've just read it, please raise your hands. Opposed? It's carried. Thank you.

Now, the only items that I have remaining on my agenda are approval of the draft report and two motions submitted by Ms Carlson. Mr. MacDonald, are you prepared to put Ms Carlson's motions before this committee?

MR. MacDONALD: No.

THE CHAIR: Are any members of the committee prepared to put forward Ms Carlson's motions? The problem is that we cannot approve the draft report until we deal with these motions because they may end up becoming recommendations that will form part of the draft report.

MRS. JABLONSKI: Are we able to contact Ms Carlson?

THE CHAIR: I've been trying to do that all morning. The motions were submitted to LAO last Wednesday. They appear to the chair to be quite straightforward. Notwithstanding the fact that the carrier is not here – are you going to attempt to make contact? There's nothing that we can do, so we'll take a five-minute adjournment unless there's anything else we can do. Okay. We're adjourned for five minutes.

[The committee adjourned from 1:07 p.m. to 1:09 p.m.]

THE CHAIR: Okay. If we could go back on the record, please.

The remaining items on my agenda are approval of the draft report and two notices of motion as put forward by Member Debby Carlson. Ms Carlson, I am assuming that you wish to proceed with those motions.

MS CARLSON: I do.

THE CHAIR: If you could please introduce them one at a time, and then we will discuss them and deal with them.

1:10

MS CARLSON: Can you read them from the record for me, please?

THE CHAIR: Sure I can. The first one is that the information management, access, and privacy office initiate discussions with all self-governing professions to evaluate any progress made since the 1998 Select Special Freedom of Information and Protection of Privacy Committee report with respect to meeting fair information principles and greater transparency in governance.

MS CARLSON: Thank you.

THE CHAIR: Perhaps you could outline for the committee the

purpose of the motion and why you believe it's important.

MS CARLSON: Well, we saw in the last report that there was some discussion there about the self-governing professions evaluating progress being made, and to date we haven't had many coming forward with any kind of reports or updates. It doesn't mean that they don't want to do it; it means that it really hasn't made it as a priority in their criteria for self-evaluation. So what this will do is just make sure that these self-governing professions are going forward themselves, that they're not having to be pushed by government or regulated by government but that in fact they are also going to be accountable within their professions, and I think this is a nice measure to be able to take without having to bring in any new regulations or rules in this regard.

THE CHAIR: Thank you.

Any questions first of all from the members to Ms Carlson on her motion?

MS DeLONG: I wonder if we could get a report from Tom in terms of what the status is with these self-governing associations.

THE CHAIR: Mr. Thackeray, do you have a comment?

MR. THACKERAY: Thank you, Mr. Chairman. Alberta currently has about 55 self-governing professions and occupations which are regulated under various statutes administered by different ministries.

Those include Health and Wellness, which is responsible for the Health Professions Act, which covers 28 self-governing professions from acupuncturists to physicians to speech language pathologists. Human Resources and Employment is responsible for nine acts which cover 23 self-governing professions including, for example, the Alberta Association of Architects, the Association of Professional Engineers, Geologists and Geophysicists of Alberta, and the Alberta Veterinary Medical Association. Alberta Justice is responsible for the Legal Profession Act, which applies to the Law Society of Alberta. Government Services is responsible for the Real Estate Act, which applies to the Real Estate Council of Alberta, and Alberta Learning is responsible for the Teaching Profession Act, which applies to the Alberta Teachers' Association.

Prior to the commencement of the deliberations of this committee, meetings were held with Government Services, Learning, Human Resources and Employment, Health and Wellness, and Justice to review what progress has been made by the self-governing professions in complying with the recommendation of the previous committee. In summary, there are currently only three cases where the government of Alberta has not recently or is not currently working with self-governing professions on legislation relating to access. Those include the Alberta Teachers' Association, the Law Society of Alberta, and the Real Estate Council of Alberta.

On the privacy side the health professions are mostly subject to the Health Information Act. All of the other professions will probably be subject to the Personal Information Protection and Electronic Documents Act for at least some parts of their activities or substantially similar provincial legislation as of January 2004. It is the view of the government that this motion is not necessary because this work is going on as we speak. In fact, the next meeting that I'll be having with my colleagues from the other ministries will be on Friday morning.

THE CHAIR: Thanks, Mr. Thackeray.

Does that answer your question, Ms DeLong?

MS DeLONG: Yes. Thank you very much.

THE CHAIR: Do you wish to respond to that, Ms Carlson?

MS CARLSON: I do, thank you. Will there be some sort of an update in your report in terms of what the self-governing professions are doing?

MR. THACKERAY: I guess it's not our report; it's the committee's report. If the committee so directed, we could certainly attempt to provide an update either in the report or individually to the committee prior to the next meeting.

MS CARLSON: That would be a second best choice for me. I would still like to have a motion passed, but I would be satisfied if we had that information available in the report.

THE CHAIR: Okay. Your motion is still on the floor, so we're going to have to deal with it.

Are there any further questions to Ms Carlson or to the technical team regarding the merits of the motion? Do you have any questions or comments, Mr. Ennis?

MR. ENNIS: One thing that might be useful for the committee to consider is that while Mr. Thackeray has mentioned the potential for self-governing professions to fall under other privacy legislation, particularly PIPEDA, the Personal Information Protection and Electronic Documents Act, we have heard the concern that that act really only governs commercial activity, and much of what these organizations do may not be classed as commercial activities, so they actually might fall into a legislative void. If the FOIP Act and PIPEDA are expected to be the safety net, there might actually be a hole in the net in terms of the individual privacy of Albertans whose information is held by these organizations.

THE CHAIR: Thank you.

Any follow-up on that? Any further deliberation or debate? Anything to close, Ms Carlson?

MS CARLSON: No, thank you. I think that especially in light of what we have just heard, this motion deserves consideration or at least some sort of reporting back to the committee in the absence of any other reporting.

THE CHAIR: Okay. The motion before the committee is that the information management, access, and privacy office initiate discussions with all self-governing professions to evaluate any progress made since the 1998 Select Special Freedom of Information and Protection of Privacy Committee report with respect to meeting fair information principles and greater transparency in government.

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

Mr. Thackeray, will you informally report back to us regarding your meeting on Friday in answer to some of Ms Carlson's concerns?

MR. THACKERAY: Yes, Mr. Chairman. What I'll try to do is provide an update on all 55 self-governing professions for the next meeting of the committee or circulate it prior to the next meeting of the committee.

THE CHAIR: Now, that being the case, there will be no recommendations that make it into the interim report, but it would be my understanding that that doesn't preclude us from making a recommendation in the final report if we feel the need for it. Would that be your understanding, Mr. Thackeray?

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

THE CHAIR: Thank you.

Okay. Ms Carlson's second motion was that the information management, access, and privacy office develop a database of requests filed with provincial public bodies similar to the foilaw.net web site.

If you could tell us what that's all about.

MS CARLSON: Thank you. Before we have a general discussion, could we have someone on the technical team explain to us how foilaw.net is actually working?

THE CHAIR: That is, if anybody knows.

MS LYNN-GEORGE: I think you've heard the name Professor Alasdair Roberts several times in the course of these proceedings. He's conducted a certain amount of research on the Access to Information Act, and where he gets his information from is a database called CAIRS, which is used, we understand, by all or most federal government agencies – institutions they're called – that administer the Access to Information Act. He uses this information for his research, and he posts it on his own database on his own web site. It includes some very raw data on the requests that are submitted under the federal act.

We're not quite sure about the text of the requests, whether it represents the original request that was submitted or the way it was finally clarified, but in any case it provides information on those requests, and I believe that individuals who are interested in the same information can basically request whatever the other applicant received. So there are some cost savings, I think, to a second applicant. I'm not quite sure how it affects some of the commercial applicants who attempt to sell this information. I understand that there is a little bit of a time lag so that the person who has done the research and made the request and then packaged it for perhaps the media or something gets the first use of the information.

1:20

It's fairly indigestible the way it appears, and I suppose it would be reasonable to say that it doesn't look particularly useful. It would be another administrative activity that would be added to information management, access, and privacy, and it's somewhat difficult to assess how beneficial it would be to people who are interested in government information.

THE CHAIR: Thank you, Ms Lynn-George.

Any questions to Ms Lynn-George on her synopsis? Ms Carlson, do you have further information to help the committee support or not support your motion?

MS CARLSON: I do. Thank you, Mr. Chairman, and thank you, Jann. Even if you don't like the idea, that's okay.

This is in response to people who have talked to me who are trying to use the information that's generated around the requests with the provincial public bodies. It's hard to access. If you go to a source like this, you're not sure about the credibility of how the information has been transcribed. Are you getting a true interpretation of the concept or not? If information management, access, and privacy offices were to organize this, then we would know that the excerpts they were taking of the information would accurately reflect what's happening there. We all know the problem these days of having access to so much information yet not actually being able to get the information you require. How does that happen? How can you synthesize what's out there in a manner that

you can use? Generally speaking, that's by having a good database developed where you can go to access the information.

That was the intent here particularly for applicants looking for information and some background, for them to be able to access it in a manner that was more digestible. So the recommendation here would hope that information management, access, and privacy offices would do a much better job, given their track record, than what is currently available out there otherwise.

THE CHAIR: Ms DeLong, did you wish to speak to this motion?

MS DeLONG: Yes. I'd like to speak in support of this motion. I think this is a very good idea. I think it's something that we really should look into. I'm sure that it's something where once it's set up, the time that it takes to enter in another record is very small. Once it's entered in there, you'd be able to do, say, a search on a key word or something like that, and the kind of information that you'd be able to get out of it could be very valuable. So I'd like to speak in support of it, but I would also like to propose a small amendment.

Since this of course is a financial request, I'd like to add the phrase that the information management, access, and privacy office investigate and study the merits of developing a database of requests. So we'd give you a little bit of an out, but certainly I want to encourage you to look at this very seriously.

THE CHAIR: Okay. Thank you, Ms DeLong.

MS RICHARDSON: Just a point for consideration by the committee. The bulk of access requests provincially relate to personal information, so it's going to be difficult, you know, given that you're trying to protect the anonymity of applicants. Very likely all of those FOIP requests wouldn't be able to find themselves in a database except in very general terms, so that might leave it at just requests for general records, I would think. So it wouldn't be the same kind of database. Personal information requests aren't handled under the federal Access to Information Act. They're handled under the Privacy Act.

THE CHAIR: Mr. Thackeray, this motion is asking your office to either do something or in the amended motion study to do something. Do you have concerns or comments regarding the motion or the amended motion?

MR. THACKERAY: Thank you, Mr. Chairman. First of all, I'd just like to make a comment to make sure everybody is reading from the same page. The foilaw.net database to the best of my knowledge – and I've got a few excerpted pages here – only includes the request that is made to the federal ministry. It does not include any of the records that are released. So you would search and find out if somebody else has requested the same information, but you wouldn't know what information was released. Just to clarify that point.

I would be much more comfortable with the amended motion versus the original motion. I think we need to do some work to find out how labour intensive this is going to be, whether or not we have to develop a new tracking system in order to be able to transpose the wording of the actual request to a provincial government ministry into the database and what the cost might be and how we could manage it.

THE CHAIR: Thank you.

The chair forgot to mention that the motion and the amended motion are both in order. They both clearly fall within the ambit of policy and administration of the act.

Ms Carlson, if you're still advocating your original motion, do

you have any comments for Ms DeLong regarding the amendment to the motion as she made it?

MS CARLSON: Thank you. I will support the amended motion. It has a high likelihood of being passed, and that's a lot further along the road than what we were a few minutes ago. So that's it.

THE CHAIR: Thank you. That might be an appropriate place to close unless anybody has anything further.

Okay. The motion as put forward by Member Carlson as amended by Member DeLong reads as follows:

That this committee recommend that the information management, access, and privacy office investigate and study the merits of a database of requests filed with provincial public bodies similar to foilaw.net.

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

And that, I'm happy to report, is the end of the members' motions.

The final item that we must deal with today is approval of the draft report. The draft report was circulated last Friday minus the motions that were passed today. I've read it. I am assuming that most of the members had an opportunity to read it or at least peruse it. You will note that it's brief. It does not have a lot of commentary or a lot of discussion. It's my understanding with Mr. Thackeray and the members of the technical team that the final report will contain the commentary and discussion, but this is an interim report to send out to stakeholders, to make available to the public via the web site and otherwise to encourage further feedback and further public input and consultation.

Mr. Thackeray, did you wish to comment, or did I sum it up?

MR. THACKERAY: You summed it up very well, Mr. Chairman.

THE CHAIR: Does anybody have any questions for Mr. Thackeray or the individuals that prepared this interim report? It's basically a summary of what we've decided, and I'm assuming that what we've decided today will make its way into the interim report.

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

THE CHAIR: Any questions or comments?

MS DeLONG: We've made it this far. Can you tell me how we are going to be proceeding from here on in terms of going from the preliminary report to the final report?

1:30

THE CHAIR: Yes. We'll discuss that as soon as we hopefully approve the interim report.

Any questions regarding the interim report? Any concerns with releasing it with the additions of the motions that were passed this morning and this afternoon? Then if I could have a motion.

MR. JACOBS: I would so move that we adopt the interim report.

THE CHAIR: And release it.

MR. JACOBS: And release it, certainly.

THE CHAIR: Any questions or any deliberation on Mr. Jacob's motion? Anybody opposed? Yes, Ms Lynn-George.

MS LYNN-GEORGE: The committee would then be approving the proposed changes to the wording in the preliminary report. Would that be an accurate assumption? There are some just minor, mostly

editorial amendments to the motions that were passed by the committee.

THE CHAIR: Yes.

MS LYNN-GEORGE: So this would be approval as amended.

MR. THACKERAY: Mr. Chairman, if I could just make a comment. As we will all recall, at the beginning of these deliberations there were questions posed at the end of discussion papers or policy option papers, and sometimes it got really confusing. If you were in favour of the question, you were voting no, and if you were against the question, you were voting yes. Some of the motions were a little confusing in the way that they were recorded in *Hansard*, so what we've tried to do without changing the intent of the motion is just clean it up so it reads better, so that it's not a negative, you know, a negative negative.

THE CHAIR: I know which motions you're talking about, and yes, Ms Lynn-George, I think we're voting to approve the motion with those editorialized sanitations in place. Any further questions?

Mr. Jacobs has moved that

this committee adopt the interim report with the additions of the motions passed here today and that interim report be circulated for further stakeholder consultation and be made available on the web site.

All those opposed to that motion? Thank you. It's carried unanimously.

Ms DeLong raised a question during deliberations regarding what happens next. The report goes out. It goes onto the web site. We get further input, and I think we need a date early in October for a deadline for those submissions if stakeholders and/or Albertans wish to make further comment. Tom, did you have a date in mind?

MR. THACKERAY: We had two dates in mind. The first was that if we were successful in getting the report out next week, then we would suggest that the comments be in by the last Friday in September, which is September 27. If it's going to take more time and we don't get it out until the first week in September, then the date would be October 4.

THE CHAIR: What's your best guess as to how long it's going to take you to get it out? The end of the month is always nice and easy, but I don't want to put any undue strain on your folks who've worked so hard during the duration of this committee and/or not allow stakeholders enough time to give us their final comments and input.

MR. THACKERAY: I think it's reasonable that we could get the report out by the 28th of August, which is a week today.

THE CHAIR: You think that's reasonable?

MR. THACKERAY: Yes, because there were only two or three motions that were passed today. They can be incorporated. We have to do something with the title page to include the Mace to make it appropriate for an LAO publication, and then it's just a matter of making the appropriate copies, stuffing the envelopes, and putting them in the mail.

THE CHAIR: As an interim report do the members have to sign it or do I have to sign it or neither?

MR. THACKERAY: The last one wasn't signed, Mr. Chairman.

THE CHAIR: Thank you.

Well, that being the case, I suspect it's reasonable that we should have submissions in by the last Friday in September unless anyone has any strong feelings one way or the other. Does that seem reasonable?

I don't think we need a motion; do we? It's administrative.

MRS. SAWCHUK: Yes, it's administrative.

THE CHAIR: Okay. So we'll publish on the web site and in the interim report that any comments must be submitted to the clerk of the LAO no later than close of business on Friday the 27th of September 2002. Seem reasonable? Then we will meet in October. Your staff again will synthesize and summarize those submissions?

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

THE CHAIR: So we need to pick a date or dates in mid to late October to go through the final stakeholder input and to make any final recommendations that the committee wishes to make based on what we hear in the second round of consultations or based on anything, really. Every motion is open for revisitation if the member wishes to raise it.

Tom and I tentatively talked about the 23rd and if necessary the 24th of October. Now, I don't know if the members brought their schedules, but that's far enough in advance, hopefully, that we can have the members come. If there's not a lot of stakeholder input in the second round, we may not need the second day, maybe not the second whole day.

MR. THACKERAY: The suggestion for two days was to book it now, and if you didn't need it, then everybody would have a free day. Mr. Chairman, originally you and I had talked about the 22nd and 23rd, Tuesday and Wednesday.

THE CHAIR: What I'm going to suggest we do is that we block off those three days, the 22nd, 23rd, and 24th, and if all the members could contact either my office or Karen Sawchuk's office and advise which of those days you are available, then we'll go with the highest common denominator between the 22nd, 23rd, and 24th. Hopefully we'll be able to pick at least one day out of the 22nd and 23rd so that we can come back on the 24th if necessary, if we don't finish. Does that seem reasonable?

Okay. So everybody contact my office or Karen's office about your availability on Tuesday the 22nd, Wednesday the 23rd, and Thursday the 24th of October.

Are there any other housekeeping matters?

MR. THACKERAY: Mr. Chairman, just to indicate that the plan would be to circulate the report to all of the organizations that put in

submissions, to all of the organizations that requested a copy of the report even if they didn't put in a submission, and to all of the Members of the Legislative Assembly.

THE CHAIR: And you're going to put it on the web site.

MR. THACKERAY: Karen will ensure that it's on the LAO web site.

THE CHAIR: Thank you.

MR. THACKERAY: And we will circulate it internally to all government FOIP co-ordinators.

THE CHAIR: Thank you. Any questions to Mr. Thackeray on that? That seems reasonable; doesn't it?

Anything further?

Well, we made great progress. Perhaps if somebody wishes to move adjournment. Mrs. Jablonski so moves. Anybody opposed? We're adjourned to either October 22, 23, or 24. Thank you.

[The committee adjourned at 1:38 p.m.]