

Title: Thursday, October 24, 2002 FOIP Act Review Committee

Date: 02/10/24

[Mr. Rathgeber in the chair]

THE CHAIR: I'd like to call this meeting to order, please. Welcome to fall in Edmonton. My name is Brent Rathgeber. I'm the MLA for Edmonton-Calder, and I am the chair of this all-party select special committee to review the Freedom of Information and Protection of Privacy Act. We have quorum. If I could start with Member DeLong to introduce ourselves for the record, starting with the members and then the members of the technical team.

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

THE CHAIR: Mr. Thackeray, beginning with yourself, could you have all the members of the support team, the technical team, introduce themselves.

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

THE CHAIR: Thank you, everyone, and again welcome.

I understand that the packages for today's meeting were delivered on October 21, so I trust that everyone has had an opportunity to review same. Included within those packages was a seven-item agenda. If everyone has had an opportunity to peruse that agenda and unless there are any discussions or additions, I would ask that somebody move acceptance of that agenda.

MRS. JABLONSKI: I move acceptance of that agenda.

THE CHAIR: Any discussion or debate? Anybody opposed? The agenda for today's meeting is carried. Thank you.

MR. MacDONALD: Mr. Chairman, I'm wondering if it's possible with the direction of the chair – it certainly would be appreciated. At 11 o'clock this morning in the Legislative Assembly, in the rotunda, is the annual poppy ceremony from the Canadian Legion. I was wondering, if possible, if we could break for maybe 20 minutes, half an hour to attend that ceremony. I would be quite willing to work through part of my lunch.

THE CHAIR: I don't see a problem with that if that is the wish of the members. Who is interested in it? With an informal show of hands, yeah, we have an overwhelming majority. We will break at the appropriate time. Thank you, Mr. MacDonald.

MR. MacDONALD: Okay. Thanks. I appreciate it.

THE CHAIR: The agenda has been carried.

Also in those packages that were delivered on the 21st were minutes from the last meeting, which was August 21 of 2002. The chair has reviewed the minutes and believes they are accurate. Unless there's any deliberation or discussion on those minutes, could I have somebody move acceptance of the minutes from the last meeting?

MS DeLONG: I move acceptance.

THE CHAIR: Thank you, Ms DeLong. Any discussion? Anybody opposed? The minutes from August 21, 2002, are accepted.

At the last meeting there was a request I believe by Member

Carlson to have some more information on self-governing professional organizations, and there were some materials attached to the materials distributed. Mr. Thackeray, do you have any further commentary, or, Ms Carlson, do you have any questions?

MS CARLSON: No. Thank you, Mr. Chairman. This was wonderful, and I thank you for the information.

THE CHAIR: Anything with respect to agenda item 4 with respect to the report on self-governing organizations? I take it your curiosity has been satisfied.

MS CARLSON: Yes. This actually provides the information that I required.

THE CHAIR: Could the record please reflect the attendance of Mr. Mason, the Member for Edmonton-Highlands.

Okay. Then moving along to item 5, New Business. We received a letter, and Mr. Thackeray has responded to the letter on my behalf to the War Amps. Mr. Thackeray, do you wish to discuss this item? It's fairly self-explanatory.

MR. THACKERAY: Yes, Mr. Chairman. Just for the information of the committee members Mr. Chadderton did phone me yesterday, and his question was: in my opinion would the criteria as indicated in recommendation 4 for inclusion in the Traffic Safety Act be in law by September of 2003? My response to him was that I don't control the legislative agenda, but I would certainly hope so, because that appears to be the date that they need a response from the Alberta government as to whether or not they'll be getting access to the motor vehicle database.

THE CHAIR: Well, it's my understanding that it is likely that legislation will be entered into the House in the spring of 2003 based on our report and our recommendations, so presumably that would be in accordance with the War Amps' time frame. Is that your understanding, Mr. Thackeray?

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

THE CHAIR: Thank you.

Anything arising regarding the exchange of correspondence and now the exchange of telephone calls between the CEO of War Amps, Mr. Chadderton, and Mr. Thackeray?

Okay. Then we will move to agenda item 5. This committee has received a request from Impark to make an oral presentation to this all-party select committee. The members are well aware that in our deliberations there was a recommendation put forward that affected Impark with an access issue. If my recollection is correct, they did not make a written submission in the first go-round. Is that correct, Mr. Thackeray?

MR. THACKERAY: That is correct.

THE CHAIR: Of course, they did not make any request to appear before this committee when we had oral presentations over the summer, so it's the position of the chair but not the determinative position of the chair that the window of opportunity for any applicant to appear before this committee is closed. However, I will take direction from the committee on this point. Does anybody wish to speak on this point?

MRS. JABLONSKI: I'm just concerned that if we make an exception to this, how many more presentations would we have to accept?

THE CHAIR: The chair agrees.

MS CARLSON: I agree with that, and I'm not really in a position to support them making a presentation. However, if they had any paperwork to share with us, I would be prepared to read it.

THE CHAIR: There is some material from Impark that was distributed in the materials.

MS CARLSON: Thank you.

THE CHAIR: Any other deliberation on this topic?

MR. MASON: Could we say that the recommendation that was made by the committee could have been anticipated by Imperial Parking?

THE CHAIR: That's speculative. You could say it. I don't know how truthful that would be, but you could say it.

MR. MASON: Well, I just wanted to raise that question. Sometimes outcomes can't necessarily be predicted.

THE CHAIR: I mean, this is a procedural matter, so I think the chair is at liberty to express comment on it. We advertised quite extensively for submissions, and the chair takes the position that they had an opportunity to present and chose not to, but again the chair will take direction from the committee. I'm sensing some agreement with the chair's position, and accordingly I wonder if somebody would be prepared to make a motion in that regard.

MRS. JABLONSKI: I move that
the deadline for verbal presentations has passed and that no exceptions be made.

THE CHAIR: Thank you.

Any questions to Mrs. Jablonski on her motion? Any deliberation or debate? All those in favour of Mrs. Jablonski's motion, please raise your hand. Opposed? Mr. MacDonald, are you abstaining?

MR. MacDONALD: No.

THE CHAIR: You voted?

MR. MacDONALD: Yes.

THE CHAIR: I believe that the motion is carried. Thank you.

Item 5(c) on the chair's agenda is comments received in response to the preliminary report, with the preliminary report and summary of submissions attached. Mr. Thackeray, were you going to speak on this issue?

10:15

MR. THACKERAY: Thank you, Mr. Chairman. I have a few introductory comments, and then I will turn it over to other members of the technical team, with the agreement of the committee, to walk through the recommendations one by one if necessary.

On August 28 the preliminary report of the Select Special Freedom of Information and Protection of Privacy Act Review Committee was released to the public. Interested parties were requested to provide comments to the committee about the recommendations by the 4th of October. In total 33 submissions were received, and all but nine were from individuals or organizations that had made a submission at the start of the process. Eight of the submissions were from the general public, and seven were from local public bodies, four being from municipalities and

one each from a health care body, a school jurisdiction, and a postsecondary educational institution. Five were from business or professional associations, five were from the government sector, and two each from business, self-governing professional associations, and other organizations. There was also a submission from the office of the Information and Privacy Commissioner. Of the 66 recommendations contained in the preliminary report, there were 22 recommendations which received no comment.

What we have prepared for the members and provided to them was a report that is organized in sections, following the structure of the preliminary report. That is why you will notice that the recommendations are in such an odd order. They go 1, 2, and then 48. We were trying to deal with all of the access issues together, all of the exceptions together, and so on.

The report also contains a section where the respondents have raised new issues. In some cases respondents have commented on whether the committee addressed issues that were raised in an original submission, and those are in the section on access issues.

The final section is general comments that were not related to anything else in the report.

As you can see from the size of the document, there is quite a lot of information to cover today, so what we were planning to do was to highlight some of the comments that are in front of you and then try to respond as best we can to any questions.

THE CHAIR: Thank you.

Go ahead.

MS LYNN-GEORGE: I would like to begin with the scope of the act, and we have a number of recommendations relating to the scope, both recommendations for changes and recommendations for no change that attracted comment from respondents.

Recommendations 1 and 2, on delegated administrative organizations and criteria for the inclusion of government agencies, boards, and commissions, attracted very little comment, but I would note that Enmax was uncertain whether the recommendation would affect Enmax's exclusion from the application of the FOIP Act, and it should perhaps be brought to the attention of the committee that the recommendations do not affect the status of Enmax.

THE CHAIR: Yes, Mr. Thackeray.

MR. THACKERAY: Mr. Chairman, perhaps we could benefit from some direction. When we deal with an individual recommendation, if we are proposing, based on the comments received, that there is no change to the recommendation, do you want to deal with it each time or as a group?

THE CHAIR: I think that maybe it would make the most sense if we had a brief overview of what was received and then if we dealt with the recommendations recommendation by recommendation. That way the comments will be fresh in our minds when we deliberate on specific recommendations.

MR. THACKERAY: So, for example, dealing with recommendation 1, delegated administrative organizations, there were no comments.

THE CHAIR: Yes.

MR. THACKERAY: So would we then ask for a motion?

THE CHAIR: Yes.

MR. THACKERAY: Okay.

THE CHAIR: Did you want to give a brief overview, and then we'll deal with specific comments recommendation by recommendation? I don't know if that's possible at this point. How are you prepared?

MR. THACKERAY: Perhaps, Mr. Chairman, we could do it by section.

THE CHAIR: Yes.

MR. THACKERAY: We could deal with the scope, go through all of the recommendations on scope, and then come back and deal with them one by one.

THE CHAIR: That's agreeable to the chair. Do any members have any comments one way or the other? Apparently that is agreeable.

MS LYNN-GEORGE: So on self-governing professional and occupational organizations there were four expressions of support for the recommendation of the committee, and they came from the College of Physicians and Surgeons of Alberta, the Law Society of Alberta, the Alberta Construction Association, and the Minister of Alberta Human Resources and Employment.

There were three submissions that raised questions about the application of the act to self-governing professions. The first was from the Information and Privacy Commissioner, who is of the view that self-governing professional organizations should abide by fair information practices regarding access to information and should also be accountable for the collection, use, and disclosure of personal information within their custody and control. The commissioner remains of the view that these organizations must either be subject to the FOIP Act or, at a minimum, be subject to private-sector privacy legislation. Two respondents asked the committee to reconsider this recommendation. An individual felt that there should be greater accountability of self-governing professional organizations considering the vital role that they play in our society, and one organization submitted that it is in the public interest to require self-governing professions to provide full access to records about policy decisions.

On recommendation 49, in relation to private schools and colleges, the Calgary board of education suggested that students who transfer between public and private schools may not have the same protection for their confidential records given that private schools are not subject to the same legislation as public and charter schools. The respondent indicated that private-sector privacy legislation might not be a solution because it won't apply to the noncommercial activities of private schools, at least as far as the federal act goes, and the board believes that there is a need for further harmonization for all sectors, whether or not there is any commercial activity. The Minister of Alberta Infrastructure asked for a clarification insofar as the recommendation referred to private schools and colleges, and he was suggesting that it should be private schools and private colleges. The Alberta Mental Health Board did not support the recommendation.

Those were the comments on the scope of the act.

THE CHAIR: Okay. It looks like we'll be dealing with agenda items 5(c) and 5(d) concurrently, the summary of the reports and the deliberations, if that's agreeable to the committee.

Mr. Thackeray, you're looking at me strangely.

MR. THACKERAY: Mr. Chairman, when we suggested that 5(d) be placed on the agenda, that will be a discussion of the final report that will be brought forward to the committee for their review.

THE CHAIR: That's not deliberation of item-by-item matters?

MR. THACKERAY: No, sir. It was planned that the deliberation was under 5(c).

THE CHAIR: Thank you. The chair stands corrected. We are at 5(c) and 5(c) only.

Okay. We've heard from the technical team with respect to the first section of our draft report, dealing with the scope of the act, which encompasses four recommendations: three status quo recommendations, 1, 2, and 48, and a change with respect to one of the recommendations. Is there any deliberation with respect to any of those recommendations as contained in the draft report? Ms DeLong.

MS DeLONG: Yes. I'd like to make a motion that recommendation 49 be amended to add the word "private" before the word "colleges," just as a clarification of it.

THE CHAIR: We should do these by number.

Are there any recommendations with respect to our previous recommendation 1? I take it, then, the committee is satisfied with recommendation 1 as worded. Thank you.

Recommendation 2. Going once. Going twice. Recommendation 48.

Okay. Ms DeLong, you wanted to make a motion with respect to recommendation 49.

MS DeLONG: That recommendation 49 be amended to read that "private schools and private colleges not be made subject to the FOIP Act." That's adding the word "private" in front of "colleges."

THE CHAIR: You wish to add the word "private" before "colleges"?

MS DeLONG: That's right. It's just a clarification.

10:25

THE CHAIR: Any questions to Ms DeLong on her amendment to recommendation 49? Any deliberation or debate?

MR. MASON: I'm just confused, Mr. Chairman. I'm trying to catch up between the two documents. This recommendation currently is "that private schools and colleges not be made subject to the FOIP Act." What is the change?

THE CHAIR: Insertion of the word "private" before "colleges." In the draft it says "private schools."

MR. MASON: So it would read: private schools and private colleges.

THE CHAIR: Yes.

MR. MASON: I see. Okay. Just to speak to this, this is one that I didn't agree with in the first round. I realize the amendment is just for clarity, but the intent of the recommendation as a whole is something I have difficulty with.

THE CHAIR: The chair understands and respects that. I believe it was a member of the Legislature that brought this issue before the committee. Is that correct?

MS LYNN-GEORGE: It was the Minister of Infrastructure.

THE CHAIR: Thank you.

Any further deliberation or debate on Ms DeLong's motion? If we could put it, then, to a vote. The motion is that the word "private" be inserted before "colleges," so recommendation 49 would be amended to read that

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

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

The next set of recommendations deals with records and information to which the act applies, and they're recommendations 4 through 12 exclusive.

MS LYNN-GEORGE: I'll address that, if I may, Mr. Chairman.

THE CHAIR: Certainly.

MS LYNN-GEORGE: I will perhaps provide a little bit more detail on these particular recommendations, because they did attract quite a lot of comment. The first one was on disclosure of personal information in the motor vehicle registry. I believe the War Amps' correspondence has already been discussed, so there's perhaps no need to repeat that. The War Amps are hoping to receive the list of motor vehicle operators on the same basis as it did prior to 1998.

The Information and Privacy Commissioner agrees in principle with this recommendation, but he states that the criteria must reflect the balance between the social value in allowing the information to be disclosed and the narrowing of the privacy expectations of individuals. The commissioner believes that the recommendation should be revised to ensure that the criteria are developed in consultation with all stakeholders, including his office. The interest in consultation with stakeholders was repeated in a number of the submissions.

The Minister of Transportation reports that he is undertaking a review with Alberta Government Services to develop some criteria for permitting disclosure by the registrar of personal information from the motor vehicle registry, and the minister reports that the review process is consistent with the recommendation.

The Alberta Association of Private Investigators asked the committee to include a requirement for consultation with all stakeholders in prescribing specific criteria for disclosure of this information and notes that previous consultations relating to registries were very helpful for both government and stakeholders.

The Canadian Association of Direct Response Insurers supports the recommendation, but they question the need to empower the Information and Privacy Commissioner to review decisions by the registrar. They feel that this could be rather confusing, and they also say that they would like to participate as a stakeholder in future consultation on amendments to the Traffic Safety Act.

The Law Society considers it crucial to have additional stakeholder input on how to best obtain the right balance between protection of privacy and access to the information required for the legitimate purpose of pursuing and enforcing legal rights and remedies.

One county supported what it believed to be the substance of the recommendation, which they thought was making the motor vehicle registry subject to the FOIP Act, so it perhaps needs to be clarified that that is not the intent of the recommendation.

Recommendation 5, on disclosure of driver information to parking lot companies, attracted some quite detailed comment, and I would just mention that there were two submissions in support of this recommendation. The Information and Privacy Commissioner believed that the recommendation may be premature and perhaps inconsistent with recommendation 4. A decision regarding whether private parking lot companies should be given access to motor

vehicle registry information should, he believed, be postponed until after the prescribed criteria have been developed. Imperial Parking Canada Corporation states that "the public was not made aware of the proposed Recommendation prior to its introduction, discussion and adoption by the Committee" and respectfully requests permission to appear. That matter has already been addressed. The company notes that of all the recommendations made by the committee, "the parking industry is the only industry specifically singled out to be excluded from access to records which would otherwise be available to it, with no discussion of whether to exclude any other industry." They provided detailed comments, and a summary of those comments is presented on page 6 of this report. The company also proposed an alternate recommendation, and that is also provided on page 6 of this report.

Recommendation 6 was on disclosure of personal information to the Chief Electoral Officer, and there was one county which believed that this recommendation would be onerous on municipalities by requiring them to create a registry of electors. The county believed that this should be a decision of each municipality. Government Services has received some further information from the Chief Electoral Officer to the effect that the way the recommendation is currently worded does not precisely reflect the intent of his proposal, and Mr. Thackeray may be able to speak to that if there are some questions from members of the committee.

Recommendation 7, on disclosure of personal information in the motor vehicle registry to private-sector organizations, received three comments. The Alberta Association of Private Investigators believes that separate consultations dealing with this recommendation would be beneficial to both government and relevant stakeholders. Parkland county agrees with the recommendation, which they understand to mean that the motor vehicle registry would be subject to the FOIP Act, which, as we noted, was not the intent of the recommendation. The Law Society of Alberta is concerned about the possibility of the creation of parallel registries that might be developed by private interests through the use of information from public registries. They believe that it's important to have guidelines and regulations on the use by private interests of information available from public registries. The Law Society asks, if this recommendation is pursued, whether they would be given an opportunity to make further submissions.

Recommendation 10 received two responses from the local government sector. They both supported the recommendation, but it should perhaps be noted that this recommendation would not actually affect municipalities.

On recommendation 11, harmonization of the FOIP Act and the Health Information Act, there were three expressions of support, and the Information and Privacy Commissioner requested a minor change to the recommendation. He agrees that harmonization of the FOIP Act and the HIA must be addressed in the near future. He recommends amending this recommendation to ensure that harmonization will occur during as opposed to after the three-year review of HIA. He states that the three-year review would be the most appropriate forum to address concerns in a cost-effective manner.

10:35

The recommendation with respect to public bodies engaged in commercial activities received two comments. One was from the Law Society of Alberta, who invites the committee to amend this recommendation to include a further recommendation that self-governing professions be included in the consultation process in the early development stages of any private-sector privacy legislation that might be put forward in Alberta. The Calgary board of education also said that they would like to be involved in any consultation process concerning private-sector privacy legislation.

That is all the comments on the application of the act.

THE CHAIR: Thank you.
Questions?

MS DeLONG: In number 7 there is something I don't understand here. When we talk about registries, are we just talking about motor vehicle registries? I'm referring to number 7. We've got two different things here. We've got disclosure of personal information in the motor vehicle registry to the private-sector organizations – that's what number 7 is about – but our actual motion refers to all registries.

THE CHAIR: Who wants to take that? Go ahead.

MS LYNN-GEORGE: The federal private-sector privacy legislation has a regulation that deals specifically with registries, and it seems likely that the federal legislation will have a significant impact on the private sector when it comes to collecting information from registries, even organizations that have been collecting that information for some time. So this recommendation, as I understand it, attempts to ensure that should the province develop private-sector privacy legislation, those organizations that are currently collecting information from any registry have an opportunity to comment on the implications of any provision relating to any public registry.

THE CHAIR: Anything further, Ms DeLong?

MS DeLONG: So this is not specific. In number 7 our recommendation is not specifically about the motor vehicle registry then?

MS LYNN-GEORGE: It was raised in the context of the motor vehicle registry, but the recommendation is more general than the issue that was originally raised.

MS DeLONG: Thank you.

THE CHAIR: Anything further from Ms Lynn-George?
Mr. Thackeray, do you have anything to add to that presentation?

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

THE CHAIR: Okay. We've been briefed on the submissions. Did you wish to say something, Mr. Mason?

MR. MASON: I just had a couple of questions, Mr. Chairman. I wonder if someone can enlighten me a little bit under number 7, and I hope this wasn't dealt with while I was trying to get some information from Mr. Thackeray. The Law Society of Alberta is concerned about parallel registries, and I'm not entirely in a position to understand what it is they're concerned about.

MR. THACKERAY: Mr. Chairman, it's my understanding that the concern raised by the Law Society would be that if an organization had access to a registry, received information from the registry, and then in turn developed their own registry, what controls are there on their use and disclosure of that information they have compiled into their own registry, on the secondary use of the information that they collected for a bona fide purpose? So if I were an organization that had access to the motor vehicle database, I would go and get some information based on my agreement with the registrar. I would create my own database, which could become a registry, and what controls are there on me for secondary use of that information?

MR. MASON: So it's not access to public information that's just available on a web site somewhere; it's information that's provided to an organization for specific purposes and they are given privileged access to it. Is that a fair statement?

THE CHAIR: That's my understanding.

MR. THACKERAY: That's my understanding as well.

MR. MASON: So in that case, then, it would be reasonable to say that they can only use that information for the purposes for which they were given access to it. I take it that the Law Society is saying that we haven't provided for that. Is that correct, Mr. Thackeray?

MR. THACKERAY: I think what the Law Society is suggesting is that they're not sure if there is adequate control over the secondary use of the information that people may have from developing a database from information they get from industries.

MR. MASON: Do you think we have?

MR. THACKERAY: Right now when someone has access to the motor vehicle database, there is a contractual arrangement signed by the two parties. Could I have a little time maybe, and I'll just review one of the agreements?

MR. MASON: Sure.

I did want to put the question to the office of the Information Commissioner as well, Mr. Chairman.

THE CHAIR: It's 20 to 11. Ms Carlson, was it your intention to read those materials that were provided by Imperial Parking? What the chair is suggesting – and again I'll take direction from the committee – is that we ask any further preliminary questions on this group of questions, I think 4 through 12, and then we break for about an hour and allow those who want to attend the poppy ceremony to do so and allow those who want to read materials that they haven't had the opportunity to do so and allow Mr. Thackeray to think about things he has not had the opportunity to do. Is that agreeable? There may be supplemental questions as people think about these things over the break, but is there anything that can be asked or clarified now so we can make some use of this time? Ms DeLong. [interjection] Oh, I'm sorry, Mr. Mason. The floor is yours, Mr. Mason.

MR. MASON: I wanted to put that question also to the Information and Privacy Commissioner, and then I'll be done.

THE CHAIR: I thought that that was part of the thinking about things.

Are you prepared to answer that now? Okay.

MR. ENNIS: Thank you, Mr. Chairman. As I recall the Law Society's beef – and I have it before me here – their concern was with any kind of undermining or deterioration of the authoritative base of information that is in the public registries and the thought that if parallel registries were to develop, that would cause problems for the Law Society and for users in terms of the confidence that could be placed in public registries as the authority for much of what the legal profession does. So they are looking for some kind of prohibition on setting up parallel registries or something to discourage people from doing that. That's as far as I think we can read into what the Law Society is asking us to do.

MR. MASON: But the question was: do you agree with it? Should

this be done?

MR. ENNIS: I think it would be fair to say that we have a concern for the authoritative base that is in registries information, and we would anticipate that any private-sector privacy legislation would have to deal with this issue of secondary uses of registries information.

MR. LUKASZUK: If I may ask of Mr. Thackeray that when he does his research during our intermission he could also ascertain, in reviewing the contracts that he will be reviewing, whether any bulk purchasers of our registry information are currently allowed to set up parallel registries for databases.

MR. THACKERAY: I'll try.

THE CHAIR: Mr. MacDonald.

10:45

MR. MacDONALD: Yes. Thank you, Mr. Chairman. With regard to Mr. Ennis's comments I'm wondering if he could please provide me with any information he has regarding the parallel system of private registries that may now exist or may exist in the future with regard to the concerns that the Law Society of Alberta has. With the information that's available on the Internet, whether it's about a person or about a corporation, am I correct in my assumption that there is absolutely no regulation on that? Data banks are set up all the time with information regardless of whether it's consumer information, health information, credit information. Are there no guidelines or regulations for that?

MR. ENNIS: Currently there are certain laws in place. Certainly the federal law, the Personal Information Protection and Electronic Documents Act, or PIPEDA, as some people call it, has rules about gathering databases on individuals, but that only applies to federally regulated industries. The other laws that are in place – for example, we have the Fair Trading Act in place in Alberta, which has some rules around personal and financial reporting on individuals but no rules that specifically address the issue of Internet databases.

MR. MacDONALD: So what you're telling me is that an Internet database registered in West Virginia – the federal government and our provincial government under the Fair Trading Act have no control of what goes on as far as the gathering and the assembly and the selling of information. None; correct?

MR. ENNIS: Much of that is correct. The control would extend only as far as the reach of the jurisdiction of the provincial acts. If someone in Alberta were to do something that affected a person, I believe that person could ask for remedies under the Fair Trading Act regardless of where the database lands, but the legal control of databases on the Internet is an international problem now.

MR. MacDONALD: Okay.

THE CHAIR: On that point, Ms Dafoe, did you have something to add?

MS DAFOE: No. Mr. Ennis covered my point. Thank you.

THE CHAIR: Thank you.
Mr. MacDonald, supplemental?

MR. MacDONALD: I'd like to express my gratitude for that. Thank you.

THE CHAIR: As does the committee.

Anything further before we break? Ms DeLong.

MS DeLONG: I'd still like some clarification on number 7, and I wonder whether maybe we should clarify it. "The issues relating to the collection, use, and disclosure of personal information from registries" – is that supposed to be government registries there? – "be revisited in relation to the development and implementation of private-sector privacy legislation." Is that what it's referring to there? I don't remember.

MS LYNN-GEORGE: Well, the committee deliberated on a matter that was raised by a respondent to the discussion paper, that neither the access nor privacy provisions of the FOIP Act apply to information in the office of the registrar of motor vehicle services. However, the disclosure of information in that registry to lawyers, insurance companies, private investigators, businesses, and charitable organizations may be affected indirectly by the federal Personal Information Protection and Electronic Documents Act or similar provincial private-sector privacy legislation.

So what the committee thought at the time when this was raised was that this was a broader issue than simply the motor vehicle registry. Since private-sector privacy was outside the scope of the review, the committee felt that the issues raised by the private-sector respondents to the discussion paper should perhaps be considered in the context of private-sector privacy legislation and believed that it would be helpful to ensure that those concerns were considered comprehensively. So that was, as I understand it, the basis of the committee's recommendation. I believe that when this was raised in this context, only the registries that are created by public bodies were under consideration. Within the context of private-sector privacy legislation it may be worth while to consider other kinds of registries, but that was certainly what was under consideration within this context.

MS DeLONG: Thank you.

THE CHAIR: Anything further? Anything supplemental?

It would be the recommendation of the chair that we break now until about 11:30 and then we work until 12:30 and then have lunch from 12:30 to 1. Does that seem agreeable?

SOME HON. MEMBERS: Agreed.

THE CHAIR: If I could have a motion in that regard.

Any opposed? It's carried. We stand adjourned until 11:30. Thank you.

[The committee adjourned from 10:51 a.m. to 11:45 a.m.]

THE CHAIR: Okay. Let's go back on the record, please. Before we adjourned, Mr. Thackeray had undertaken to provide further information on a variety of topics related to our deliberations. Mr. Thackeray, I understand that you were successful in getting some additional information.

MR. THACKERAY: Yes, Mr. Chairman. The question was raised by Mr. Lukaszuk as to whether or not bulk purchasers of information from the motor vehicle database can set up their own registries or their own databases. I believe everybody received a copy of the Impark submission, and at tab 3 in their submission is a copy of the agreement between Impark and the registrar. On page 2 under point 6(c) it states that "information obtained from the Minister shall not be used by the Contractor for the purpose of establishing a database." I contacted registries during the break, and they confirmed that this is a relatively standard agreement for all bulk users of the motor vehicle database. So the agreement prohibits them from establishing their own database.

In addition, if I could comment, the agreement also states that the information obtained from the Minister shall be used solely by the Contractor. Where the Contractor requires the services of a subcontractor to collect outstanding parking payments, it shall first obtain written consent from the Minister.

So in order for someone who has access to this information to pass the information on to a third party, written consent of the minister is required.

The third point I would like to make goes back to the original question, I think, about the Law Society's submission. If I could, I'd just like to read one paragraph from their submission because I think it puts it in context:

As well, it can be anticipated that collateral or parallel registries may be developed by private interests through the use of information from the public registries. That could undermine and deteriorate the confidence in the public registries. Therefore, it is important to have guidelines and regulations on the use by private interests of the information available from public registries. If recommendation 7 is pursued, we would appreciate the opportunity to make submissions in that regard at that time.

So it's something that the Law Society sees as a potential problem in the future but not necessarily a problem today.

When we begin consultation, if the decision is to proceed with private-sector privacy in the province, we would certainly include the Law Society, and as I indicated in the briefing note that I provided before the meeting on self-governing professions, we would include most or all self-governing professions in the consultation process.

THE CHAIR: Mr. Mason, I believe that that answer was in response to your query. Do you have any supplementals, or does that tame your curiosity?

MR. MASON: Well, my curiosity is insatiable, Mr. Chairman. If I can put this to the office of the Privacy Commissioner: in that context do you feel that this adequately protects the public and the system that we have in place for the protection of privacy?

MR. ENNIS: This being a recommendation that's on the books now regarding . . .

MR. MASON: What we just heard from Mr. Thackeray.

MR. ENNIS: Then the contract and the contract system that registries have. It does so long as the other parties are executing the contract properly and respecting the conditions of the contract. There have been unfortunate cases in other jurisdictions where similar arrangements have blown up. Specifically, the one that comes to mind is the state of Texas, which had actually contracted out its motor vehicle registry system to a private company, became disenchanted with that company when the company developed information products from the motor vehicle registry, discontinued the company, but the company kept the database, moved offshore, and sells that product from an Internet site. I don't think that kind of incident can happen given the care that registries is taking on entering these contracts and the history that it has with the contractors that currently have access, but it's always hard to anticipate where information will go once it's in the hands of someone else.

MR. MASON: So do you have a recommendation?

MR. ENNIS: The current provisions exclude information made from the seven registries cited in the act from the operations of the FOIP Act. As I understand, the set of recommendations we're looking at would ask that the use of registries' information be addressed in any

private-sector privacy legislation. It's the private sector that uses the information, so that's probably the right place to be placing provisions around conditional use of the information.

THE CHAIR: Anything arising out of that? Any further discussion with regard to the draft report's recommendations 4 through 12 inclusive?

MRS. JABLONSKI: I think that in number 11 there was a recommendation for an amendment, so I'd like to move that amendment. I would like to move that the recommendation be amended to read that consideration be given to the harmonization of the Freedom of Information and Protection of Privacy Act and the Health Information Act during the initial three-year review of the Health Information Act. Just a comment now that I'm only changing one word. It's not after the initial three-year review; it's during. I think it makes more sense too.

THE CHAIR: Okay. Any questions to Mrs. Jablonski on the wording of her amendment? It's the addition of the word "during" after "Health Information Act," if I understand it correctly.

MRS. JABLONSKI: Yes. I'm removing the word "after" and replacing it with "during."

THE CHAIR: Thank you. Any questions to Mrs. Jablonski on her motion? Any deliberation or debate?

The motion on the floor is that recommendation 11 be amended to read that

consideration be given to the harmonization of the Freedom of Information and Protection of Privacy Act and the Health Information Act during the initial three-year review of the Health Information Act.

MR. MacDONALD: Mr. Chairman, just a point of clarification. Is it April of next year that the three-year time frame for the Health Information Act is up?

THE CHAIR: That's my understanding.

MR. ENNIS: My understanding is that it's April 2004. It was in April 2001 that the act came into play, so it would be April 2004.

THE CHAIR: Any further questions or anything arising from Mr. MacDonald's question or the answer thereto?

Then if we could put it to a vote. All those in favour of Mrs. Jablonski's amendment, please raise your hand. Opposed? It's carried.

Any other proposed amendments?

MR. THACKERAY: Mr. Chairman, during the brief overview that was provided by Ms Lynn-George, she indicated that her office had had discussions with the office of the Chief Electoral Officer with regard to recommendation 6. The recommendation as it stands today reads:

That the Election Act be amended, in accordance with the recommendations of the Chief Electoral Officer of Alberta's proposal, to require the creation of a registry of electors.

In our discussions with the Chief Electoral Officer, he requested that we present a proposed amendment to this recommendation to the committee for their consideration. The proposed amendment would read that

the Election Act be amended to require the creation and revision of the registry of electors using personal information that the Chief Electoral Officer has determined is necessary for this purpose and to permit the office of the Chief Electoral Officer to use telephone

numbers listed in a public telephone directory where available for the purpose of creating and revising the registry of electors.

This would more accurately reflect the request that the committee received when Mr. Fjeldheim appeared before the committee on both occasions.

11:55

THE CHAIR: Any questions to Mr. Thackeray on Mr. Fjeldheim's submission?

MRS. JABLONSKI: Actually, Mr. Chairman, I was going to make that motion.

THE CHAIR: We'll hold off on that.

MR. MASON: Does that mean that people are just going to develop a voters list by taking the phone book and converting it into a voters list? Is that what that means?

THE CHAIR: That's not my understanding.

MR. THACKERAY: No. What it means is that it specifically gives the Chief Electoral Officer the ability to use publicly available information to augment the register of voters by adding the telephone number. If the telephone number is publicly available in the phone book and the field is blank, then he can incorporate that number into the field.

MR. MASON: That sort of doesn't answer the question of how the information in the voters registry is obtained in the first place. I mean, it could be a couple of names and then they fill it out with the phone book. Is there no requirement for a systematic enumeration of the voters?

MR. THACKERAY: Mr. Chairman, as I recall, when Mr. Fjeldheim appeared before the committee on the second occasion, he indicated that enumeration would still be a part of the process for developing the voters list. What we're talking about here is the register of voters, which, as I recall, is a requirement of the Election Act as it was amended in 2000 or 2001.

The intent of the amendment that I read earlier would be that for those public bodies that are inclined to co-operate with the Chief Electoral Officer's request for personal information, this provision in conjunction with section 40(1)(z) of the Freedom of Information and Protection of Privacy Act would be seen as providing sufficient authority for them to disclose personal information to that officer of the Legislature. For those public bodies that are not inclined to co-operate perhaps because of more stringent requirements for confidentiality in their own legislation, section 40(1)(z) would be seen as enabling, not mandatory. In some cases they may not provide the information. The intent would be for the Chief Electoral Officer to get information about voters through a ministry database, create the register of electors, and then double-check with a public telephone book to see if they can incorporate some telephone numbers into that register. The intent is not to use the telephone book to create the register.

THE CHAIR: Anything arising, Mr. Mason? Anything further on this point?

Does anybody wish to make a motion with respect to recommendation 6?

MRS. JABLONSKI: Mr. Chairman, I would move that recommendation 6 be replaced with the following: that the Election Act be amended to require the creation and revision of the register of electors using personal information that the Chief Electoral

Officer has determined is necessary for this purpose and to permit the office of the Chief Electoral Officer to use telephone numbers listed in a public telephone directory where available for the purpose of creating and revising the register of electors.

THE CHAIR: Thank you. Before we debate the merits, any questions to Mrs. Jablonski on the wording of her motion? Any deliberation concerning its content? The motion on the floor is that current recommendation 6 be amended to read that

the Election Act be amended to require the creation and revision of the register of electors using personal information that the Chief Electoral Officer has determined is necessary for this purpose and to permit the office of the Chief Electoral Officer to use telephone numbers listed in the public telephone directory, where available, for the purpose of creating and revising the register of electors.

All those in favour of that motion as put forward by Member Jablonski, please raise your hands. Opposed? Mr. MacDonald, did you vote?

MR. MacDONALD: Yes, I did.

THE CHAIR: It's carried.

Okay. We have dealt with recommendations 11 and 6 in this bunch. Maybe we'll go sequentially at this point.

Number 4. Does anybody have a problem with number 4 as it's currently worded?

MR. MASON: I guess, Mr. Chairman, the concern that I have with this one is that it doesn't really set a direction. It creates a mechanism to deal with information that may be required by private companies, but it doesn't really put any principles around it, and that's sort of the difficulty. The next one, number 5, puts principles around it, but it's highly directed to just one sector. I'm wondering if we can't come up with something that would deal more broadly with requests for private information and set some sort of policy guideline for when it would be appropriate and when it wouldn't be appropriate. I'm sorry. I don't know how to do that exactly, but that's sort of what I'd like to do.

THE CHAIR: Mr. Thackeray, can you comment on Mr. Mason's concern?

MR. THACKERAY: Yes, Mr. Chairman. I think that in the submission that the committee received from the Minister of Transportation, he indicated that his department is working together with Alberta Government Services to develop the criteria for permitting disclosure by the registrar of personal information from the motor vehicle registry. The intent of recommendation 4 was that the criteria would be included in a consequential amendment to the Traffic Safety Act, which would then receive full debate in the Legislative Assembly by the elected members.

THE CHAIR: Mr. Mason, a supplemental?

MR. MASON: I guess I'd like to see something here that says that public information will not generally be released to individuals or organizations for commercial purposes except where it has been determined that it has served some public interest, something like that.

MR. THACKERAY: So if I understand Mr. Mason, he would like to suggest that the recommendation contain an overarching policy statement . . .

MR. MASON: Policy direction, yes.

MR. THACKERAY: . . . that the criteria would have to fall under.

MR. MASON: Yes. That's exactly what I would propose. I don't know if that's going to mess everything up, but that's what I'm looking for, Mr. Chairman.

THE CHAIR: I'm thinking out loud here, but it appears to me that next on our agenda is recommendation 5, which deals with a specific commercial entity, and perhaps if your concern is with commercial entities, you may wish to consider expanding the scope of that recommendation.

12:05

MR. MASON: Would there be a difficulty from the point of view of the administration or the Privacy Commissioner if an overarching policy direction was included in number 4?

THE CHAIR: Mr. Ennis, do you have any light to bear on the matter?

MR. ENNIS: I'll speak directly for the commissioner on that point, Mr. Chairman. The commissioner would welcome that kind of development in that he's asked for that in his submission, not only that he be involved in the development of the criteria but that the criteria reflect fair information practices and reference cases in which the public good is served by reducing individual privacy. So the public interest is certainly something that the commissioner is hoping to see as the anchor for all of the criteria that are established in the Traffic Safety Act.

MR. MASON: Mr. Chairman, then I'd like to try an amendment. If you look at number 4 and you go down to about the end of the third line, it says, "And prescribe specific criteria for permitting the disclosure of personal information from the motor vehicle registry by the Registrar." I would like to put in there a section that says: which generally provide that public information shall not be disclosed or sold for strictly commercial purposes without the consent of the individual involved.

THE CHAIR: Thank you, Mr. Mason.
Ms Dafoe, did you have a comment?

MS DAFOE: I believe you said: which generally provide that public information shall not be disclosed. Do you mean personal information?

MR. MASON: Yes, personal information. Thank you.

THE CHAIR: Before we debate the merits, are there questions other than Ms Dafoe's good question for clarification regarding the exact wording of the motion? Do you have a question on the wording?

MR. THACKERAY: If I could, Mr. Chairman, I believe that the proposed motion talks about commercial. Can you define commercial purposes?

MR. MASON: I probably could.

MR. THACKERAY: Can you give me an example other than parking lots?

MR. MASON: Other than parking lots? Sure. I guess things like people that want the information for a private investigation or things like that.

MRS. JABLONSKI: So would you be including legal reasons with commercial purposes? Usually private investigators and lawyers are

looking at legal actions.

MR. MASON: I guess the way I'm used to working in this is to sort of phrase a general thing and have administration come back with something that meets all the tests, and I don't know if we can do it that way, Mr. Chairman, but I'm just trying to draft something on my own here. I think that if the intent is clear, I would certainly leave it to the administration to produce a wording that would be better.

THE CHAIR: I understand that, Mr. Mason, but you'll have to appreciate that we're approving or not approving a draft report.

MR. MASON: I appreciate that.

THE CHAIR: So the wording has been put before us, and the committee has agreed to that wording. However, we are providing sober second thought and re-examining some of these issues based on subsequent consultation. I believe that to some extent your amendment defeats the purpose of the original recommendation, and I'm terribly concerned that it might include the War Amputations of Canada, which was the impetus behind this recommendation in the first place.

MS CARLSON: I would like to ask Mr. Ennis if this helps or hinders what they were looking for.

MR. ENNIS: In terms of working from this amended regulation to the development of criteria, the qualification "strictly" ahead of the word "commercial" is helpful in that, to me anyway. It would indicate that if something were being done only for the purpose of benefiting from the sale and not for any other allied purpose or related or associated purpose, then perhaps it shouldn't be an allowable activity, but if something were done that involved a sale but had some other purpose or allied activity with it, then perhaps that was an approvable kind of situation. So it would require a look at a larger scheme. It's not only why is the transaction happening or whether money is changing hands but what is the effect of that transaction on the public good, the public interest.

THE CHAIR: A supplemental, Ms Carlson.

MS CARLSON: So, then, in your opinion with this amendment the War Amps still get their list and insurance investigators could still access names.

MR. ENNIS: I wouldn't have an opinion on those particular issues because that would depend on what the criteria were, but in my opinion it would be possible to develop criteria that would lead to those outcomes with this amendment.

THE CHAIR: Anything further?

MS CARLSON: Then, given that, I support the amendment and would look to the administration to develop that criteria with that in mind, that we don't want to exclude either the War Amps or those kinds of investigators that need access to that information.

THE CHAIR: Mr. MacDonald and then Mrs. Jablonski.

MR. MacDONALD: Yes. Mr. Ennis, could you tell me please: if I were an insurance company targeting a specific demographic of drivers in regard to age and gender, could I possibly, with this amendment or without this amendment, gather that information as this currently stands?

MR. ENNIS: Well, considering that is a hypothetical question, I'll attempt it. If what was being promoted by your activity was the interest of your company to no other benefit, I would see that as being a strictly commercial activity. We have in the past seen the development of mailing lists from registries' information not only in Alberta but in other places where people have attempted to do it, and that's probably the best example of strictly commercial activity: using information, turning it into databases, and selling the databases to whoever will buy them for the purposes of having up-to-date addresses. There is nothing in that that is anything but commercial activity, I would say, but there may be an argument that it is in the interests of the consumers in Alberta that insurance companies have the kind of access that you were suggesting. So it would be premature to look at that particular case without knowing what the criteria will be.

MR. MacDONALD: Thanks.

MRS. JABLONSKI: In number 4 on page 4 of the review that we have, we have a brief from the presentation of the Information and Privacy Commissioner, and he agrees in principle with number 4. However, he thinks it's important that "the recommendation should be revised to ensure that the criteria are developed in consultation with all stakeholders, including his office." I'm just wondering. I don't think this amendment includes that in it; does it?

MR. ENNIS: It does not.

MRS. JABLONSKI: I think that's an important thing to be looking at at this time as well.

12:15

THE CHAIR: Any further debate on this point?

Okay. The committee had adopted recommendation 4. There is a proposed amendment to that recommendation, inserting after the comma after "Registrar" on the fifth line – and I hope I wrote this down correctly, but I'm sure Mr. Mason will correct me if I didn't – the following:

Which generally provide that personal information shall not be disclosed or sold for strictly commercial purposes without the consent of the individual involved.

Then it goes on to say "and also . . ." Is that correct, Mr. Mason?

MR. MASON: If the administration has any proposals to refine this, I'd be glad to hear them.

MS DAFOE: I'm just concerned about adopting the motion because I think the wording does need work. I'm not sure how that can be done, but the way I'm reading it as you've amended it, it seems that you're suggesting that you prescribe specific criteria which generally provide that this information isn't available when in fact the criteria that they're looking at now – the general theory is that the information isn't available except for the criteria listing when it is available. So to me it looks like you're saying: we want to list criteria saying that the information is not available when in fact it's the other way around in the FOIP Act. I'm not making a lot of sense, but I think basically the wording needs to be worked on on this motion.

THE CHAIR: Mr. Mason, any comment other than what you've already indicated, that you agree that the wording is perhaps not perfect?

MR. MASON: Well, you know, I'd sure like to have the administration have a little time to come back.

THE CHAIR: We'll hear from Mrs. Jablonski, and then I will provide my thoughts procedurally.

MRS. JABLONSKI: On this point, then, I would suggest that we table this amendment until we get a refinement of the wording from the department.

THE CHAIR: Well, the chair has a suggestion that we can vote on. If the substance of Mr. Mason's amendment passes with the imperfect wording, then we will direct the technical team to reword the recommendation and report back to us next week. If the recommendation does not have support in principle, it's a wasted exercise to have them reword it.

MR. MASON: It's a good idea, Mr. Chairman, and I think maybe the usual mechanism for that is a referral, and if the referral passes, then in principle people are willing to look at it further. If not, then it just dies.

THE CHAIR: Notwithstanding the imperfect wording of Mr. Mason's proposed amendment, does everybody understand the substance of what he's trying to do? I don't think there's any unclarity there.

Okay. Then we'll put it to a vote. I'm not going to reread it because we've agreed that that may not be the final wording, but I think we all understand the intent of the motion. Who's in favour of the amendment to recommendation 4 as proposed by Member Mason? Opposed? It's carried.

Recommendation 5 dealing also with commercial enterprise. Is there anything further from the technical team, Mr. Thackeray? I'm anticipating some debate here.

MR. THACKERAY: The only thing, Mr. Chairman, is that in the Information and Privacy Commissioner's submission he suggests that this recommendation may be premature and possibly inconsistent with the previous recommendation 4.

THE CHAIR: Just hold on. My clerk has reminded me of something very important, and I think she's right. I think the motion should read that

we direct the technical team to work on wording to incorporate the wording of Mr. Mason's recommendation with respect to amendment 4.

I think that should actually be the motion.

MR. MASON: To incorporate the intent?

THE CHAIR: Yes, and the wording is on the record. I don't think we need to restate it. Can I have you make that motion, Mr. Mason?

MR. MASON: Sure.

THE CHAIR: Thank you, Mr. Mason. This is just a technical amendment based on the motion that already passed, so I'm hoping to get unanimous consent on that. It's carried. Thank you.

Go on, Mr. Thackeray, and I apologize for interrupting.

MR. THACKERAY: That's quite all right.

The commissioner in his submission to the committee indicated that this may be a bit premature and inconsistent with recommendation 4. With the suggested intent of the amendment to number 4 from Mr. Mason that may preclude the necessity of going ahead with number 5, because we're trying to incorporate the idea of "commercial" and "consent" and basically "fair information practices" in the wording of recommendation 4 in the establishment of the criteria under the Traffic Safety Act.

THE CHAIR: So in your view is number 5 now redundant?

MR. THACKERAY: I believe that number 5 could certainly be considered redundant.

THE CHAIR: I think we'd better have the carrier of that motion speak on that point.

MR. LUKASZUK: I don't believe that it would be redundant, and particularly at this point we don't know what the wording of the motion will be. So for us to rule that motion 5 is redundant without knowing the wording of motion 4 would be irresponsible. Therefore, I will argue that we should proceed and vote on motion 5 and leave it as it stands right now.

THE CHAIR: Well, Mr. Lukaszuk, there is no motion on the floor. We're entertaining number 5 as written. There is no motion.

Is there comment or debate with respect to recommendation 5, which states that "private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection"?

MRS. JABLONSKI: Well, I must say with great respect for Mr. Lukaszuk and his intent here that I do feel, because we use the name "parking lot" in that recommendation, that it is discriminatory. So that does bother me, that we've singled them out among all commercial activities. That's a concern that I have.

THE CHAIR: Thank you.
Response, Mr. Lukaszuk.

MR. LUKASZUK: I was anticipating that stemming from Mrs. Jablonski's comment there would be an alternative motion, but since there isn't, I have no comments. Seems like my initial motion still stands.

THE CHAIR: Well, it's not a motion, Mr. Lukaszuk.

MR. LUKASZUK: My initial recommendation – am I correct? – still stands. I don't hear another motion.

THE CHAIR: There is no motion on the floor.
Ms DeLong.

MS DeLONG: Okay. Well, my understanding is that we are going to be coming back with some wording from Tom's department regarding number 4, so maybe after we've had a look at that, then we should look at number 5 at that point.

THE CHAIR: I want to remind the committee members that we have to have this report tabled when the Legislature reconvenes. How many more meetings are you anticipating?
Anything else?

MR. MASON: Well, Mr. Chairman, just on that point. I mean, there's no motion that's come forward to . . .

THE CHAIR: There is no motion yet.

MR. MASON: . . . rescind this one as yet, so fine. But it was really my intention in making the amendment to number 4 to find a way that we could broaden this and find out what the principle is behind it rather than we're just mad at the parking company, which everybody is. So I think Ms DeLong's point is well taken. You know, if we do want to come back to number 5, we should wait until

we've dealt with number 4. The wording will come back – it may not even pass; we don't know – and then based on that, it would be a good time to deal with number 5.

THE CHAIR: Anything further? Is anybody prepared to make a motion with respect to recommendation 5?

Number 6 has been dealt with.

Number 7? If there's nothing with number 7, I'm going to continue. Going once. Going twice.

Number 8? Sorry; number 8 isn't part of this. Is number 8 part of this group, Mr. Thackeray?

MR. THACKERAY: No. The next one, Mr. Chairman, is number 10.

THE CHAIR: Number 10. Anything? We've dealt with number 11, and there was an amendment carried. Number 12? Anything?

We're adjourned until 1:10 for lunch. Thank you.

[The committee adjourned from 12:25 p.m. to 1:12 p.m.]

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

I've been advised that it's Ms Dafoe's birthday today. Over the lunch hour I tried to FOIP the date of her birth, and I was unable to do so. Nonetheless, happy birthday.

MS DAFOE: Thank you very much.

THE CHAIR: The next group of recommendations is 13, 14, 16, and 54.

MRS. JABLONSKI: Mr. Chairman, I was wondering, before we move to the next group, if I could make a motion about the group that we were just discussing prior to lunch. I would like to move that we delete recommendation 5 from our recommendations as I feel that that's covered under recommendation 4.

THE CHAIR: Well, we've sort of passed on number 5. I'll require some direction from the group.

MRS. JABLONSKI: Okay.

THE CHAIR: Is there any support for going back to the second group of recommendations? I'm taking silence as a negative.

MRS. JABLONSKI: We always used to take it for a positive.

MR. LUKASZUK: Well, since it was already predetermined that once we come back with number 4, we will be dealing de facto with number 5 and since it appears to be a topic of interest to many members, why don't we go ahead with Mrs. Jablonski's recommendation, put it on the table, discuss it, and perhaps put the issue to rest once and for all?

THE CHAIR: Because I believe that that's impossible. Depending on what happens with recommendation 4, we may have to revisit it at some future point in time. That would be the chair's view of that, but I'm not married to that. I do take the position that it was dealt with, and there were no recommendations forthcoming when we were on it, so I think that window has closed. But if the members feel strongly about revisiting it at this time, I can be persuaded otherwise.

I guess I'll put it to Mrs. Jablonski: why is it now that you wish to revisit this issue as opposed to before lunch when we were at it as an

agenda item?

MRS. JABLONSKI: Because as I thought about it over lunch, I realized that I feel it's redundant, and I just wanted to get it off the table.

THE CHAIR: Any comment in support of or contrary to Mrs. Jablonski's redundancy concept?

Mr. Thackeray, the chair takes the view that until we know what's going to happen with the wording of number 4, this discussion is probably not redundant and might actually be premature. Do you have any view on that?

MR. THACKERAY: No.

MS CARLSON: I don't want to deal with it now. I want to wait until we see the wording of number 4.

THE CHAIR: So you're sort of agreeing with the chair.

MS CARLSON: As surprising as that is, yes.

THE CHAIR: The chair was hoping to get through this list today and have a final report for our rubber-stamping next week, but that is not going to happen, so I guess that everything is essentially tabled. Anything can probably be revisited. We're going to have to have at least two more meetings.

MR. MASON: Mr. Chairman, it certainly was my intention, in trying to amend number 4, to see what we could come up with that would give me maybe a different view of dealing with number 5, so that's why I wanted to deal with it as part of number 4. Can I just ask if the administration is going to be able to report to us on number 4 today, or will it be at the next meeting?

THE CHAIR: It will be at the next meeting.

So, no, you cannot go back to number 5, Mrs. Jablonski. That's the position of the chair, and it doesn't appear that anybody on the committee feels strongly against the chair's initial ruling.

MRS. JABLONSKI: Well, thank you for the consideration.

THE CHAIR: You're welcome.

If we could then go on to the next set of recommendations, which are 13, 14, 16, and 54. Ms Lynn-George, do you have comment?

MS LYNN-GEORGE: Just a brief summary of some of the comments on access to records.

Recommendation 13, on the manner of giving notice, received a comment from the Information and Privacy Commissioner, who noted that it was somewhat unclear whether the recommendation applied to section 17(2) or only to section 17(2)(b). That was indeed the intent of the recommendation, and some clarification may be needed there. Two other respondents supported the recommendation.

Recommendation 14, on harmonization with the Electronic Transactions Act, received several comments. The Information and Privacy Commissioner agreed with the recommendation. However, he was of the view that the section on the manner of giving notice should have some sort of reasonableness test along the lines of the Electronic Transactions Act, and the point of this is to ensure that information will be accessible and will be received by a recipient within a sufficient period of time for the recipient to respond to the notice. The Minister of Innovation and Science noted that the Electronic Transactions Act will allow public bodies to conduct

transactions electronically. He points out that the ETA has a reasonableness test, and he suggests that this should be noted in any future discussions. So there seems to be some difference of opinion there as to whether the recommendation makes it sufficiently clear that there is a reasonableness test intended.

Then there was a comment from a private individual to the effect that a request for review to the office of the commissioner should be accepted in electronic form and one expression of support from a health care body.

The recommendation on the exercise of rights by other persons received two comments. The Minister of Human Resources and Employment noted that the proposal has some significant implications for the manner in which personal information of children and youth is dealt with, and the minister requested that the ministries of Human Resources and Employment and Children's Services be involved in any discussion of amendments to this section. The recommendation did not actually propose amendments. It proposed a review of the definition and interpretation of the current language of the act. The Mental Health Board supported the recommendation.

There was one comment on recommendation 54, time limits for processing requests for school records. That was from the Calgary board of education, which asked the committee to reconsider the recommendation, but they did not add anything in addition to the comments that had been in their original submission.

1:20

THE CHAIR: Thank you, Ms Lynn-George.

Any questions regarding any of the submissions or Ms Lynn-George's comments? Anything to add, Mr. Thackeray, or any other members of the technical team? Do members have any comments before we go through these item by item?

Recommendation 13. Any comments, recommendations, motions?

MS DeLONG: I understand that it was just sort of a typographic error in that it was section 17(2)(b) that we were referring to rather than just 17(2). So I'd like to move that

section 17(2)(b) and section 32(4) be amended to require that public bodies give notice of the disclosure of third-party personal information or confidential business information, without specifying the manner of giving notice.

THE CHAIR: Before we debate, any questions to Ms DeLong on the wording of her motion? Any comments on the merits of the motion? If I understand the motion, Ms DeLong, you're inserting paragraph (b) after 17(2).

MS DeLONG: Yes. That's right.

THE CHAIR: Those in favour? Opposed? Did you vote, Ms Carlson? It's carried. Thank you.

Anything else with recommendation 13? Recommendation 14.

MRS. JABLONSKI: Just as a matter of clarification I'd like to have that amended. I move that recommendation 14 be amended by adding the following phrase after the word "act": such that a public body may provide notices under the FOIP Act by electronic means providing that the person to whom the notice is being given consents to the use of electronic means determined under section 8 of the Electronic Transactions Act.

THE CHAIR: Thank you.

Any questions to Mrs. Jablonski on the wording of her motion?

MS DAFOE: Sorry. Actually it's not a question about the wording.

I just wanted to make a couple of comments about the Electronic Transactions Act if I could. I might have missed my opportunity to do so before, so is this all right, Mr. Chairman?

THE CHAIR: Certainly.

MS DAFOE: Thank you. I just wanted to point out that the ETA is intended to be an omnibus act, so generally it speaks to and affects all Alberta legislation unless there is an exception from it.

One of the underlying principles in the ETA is that it is consent based, so both parties to the transaction have to consent to having it done electronically. With a public body it has to be explicit consent. With a private individual it may be implied consent, depending on past history, that sort of thing.

The third thing I wanted to point out was that section 30 of the ETA may help address the commissioner's concern, because unless the two parties otherwise agree, it sets out when information is deemed to be sent and when information is deemed to be received, but it does contemplate the possibility that the sender and the receiver may otherwise agree to sending and receiving dates.

THE CHAIR: Thank you.

Any questions to Ms Dafoe? Any questions to Mrs. Jablonski on the merits of her motion?

Do you have anything to add, Mr. Thackeray?

MR. THACKERAY: No.

THE CHAIR: Okay. We'll put it to a vote then. The motion on the floor is that the following be inserted after "Electronic Transactions Act" in recommendation 14:

Such that a public body may provide notices under the FOIP Act by electronic means, providing that the person to whom the notice is being given consents to the use of electronic means as determined under section 8 of the Electronic Transactions Act.

All those in favour of the amended recommendation 14 as moved by Member Jablonski, please raise your hand. It's carried unanimously. Thank you.

Anything else with respect to recommendation 14? Recommendation 16. Going once. Going twice. Recommendation 54. Anything? Recommendations 16 and 54 stay.

The next bundle of recommendations deals with exceptions to the right of access. Ms Lynas, you look like you're eager to talk about this.

MS LYNAS: That's right. Thank you.

In this section the comments regarding recommendations 17 and 18 are fairly straightforward, so I was going to skip these and just start with recommendation 19. In this one there was a comment about recommendation 19 which recommends that a section that allows the routine release of information regarding admission to a health care facility be deleted. The Alberta Mental Health Board disagrees with deleting this section of the FOIP Act. The board says that public bodies such as schools should be protecting hospital admission information in the same way that custodians are required to protect it under the Health Information Act. However, the provision would actually increase privacy protection, as public bodies such as schools would not be able to disclose health care admission information routinely once the provision is deleted.

I'll also skip recommendation 21 and move on to recommendation 22, which is about amending the exception to disclosure regarding advice from officials. The amendment would limit the use of the advice from officials exception to information in a record that has been in existence for 10 years or more. The Minister of Alberta Community Development supports the recommendation and states that it would be a positive step in allowing access to records within

a shorter time frame. Parkland county disagrees with the recommendation as no rationale was provided for the change from 15 to 10 years. The Alberta Mental Health Board commented that it likely would not have any effect on their operations, and an individual disagreed with the recommendation, suggesting that there should be no time limit.

Recommendation 23 would add a discretionary exception to allow a public body to refuse to disclose information where disclosure could be harmful to the competitive ability of a public body conducting a commercial activity. The Alberta Construction Association supports the recommendation and suggests a further refinement to section 16(1) of the FOIP Act to protect private organizations who are conducting commercial activities. The association says that quality, safety, other management systems, and project financing capabilities all affect a company's competitive ability and should not be disclosed. These suggestions for expanding section 16 were included in the association's original submission.

The Information and Privacy Commissioner agrees in principle that a public body should have the discretion to withhold information if the disclosure could reasonably be expected to harm its competitive ability. However, he states that section 25(1)(c)(ii) of the FOIP Act already addresses this concern, so the amendment is not required. The commissioner maintains that for continued effectiveness and clarity within the FOIP Act, additional discretionary exceptions should only be added where there's a clear need to do so and that this may not be one of those circumstances. Two local public bodies indicated that they support the recommendation.

Recommendation 24 would amend section 29 to allow a public body to refuse to disclose information to an applicant that's readily available to the public or is available for purchase. The Alberta Mental Health Board supports the recommendation, but one individual disagreed, saying that the current section in the FOIP Act is open to abuse. The respondent indicated that when he made a FOIP request to a public body, he was refused the records using this section. However, the cost for obtaining the records would be \$1.70 per page for photocopying, which is higher than the 25 cents per page maximum fee permitted under the FOIP Act, so the individual felt that the public body was in effect denying access by making the information prohibitively expensive to purchase.

1:30

Recommendation 25 was supported by the Alberta Mental Health Board, and the Minister of Alberta Human Resources and Employment indicated that he supports the intention of the recommendation. We have received some additional information from the Workers' Compensation Board and Human Resources and Employment, and I gave Mrs. Sawchuk a copy of some information which would be an amended recommendation that the Workers' Compensation Board would like to see. Basically, it would change the place where the amendment is made from the Workers' Compensation Act to the Occupational Health and Safety Act. Also, disclosure would be under the direction of the minister instead of the directors of the Workers' Compensation Board.

Recommendation 55 is one of the recommendations not to change a provision, the one that allows the Information and Privacy Commissioner to direct a public body to disregard an access request. The Alberta Mental Health Board and Parkland county disagreed with the recommendation, stating that public bodies should be able to make the decision to refuse to process a request or to disregard a request, and then setting up that the head's decision could be appealed to the Information and Privacy Commissioner.

Recommendation 57 is another recommendation for no change. The Alberta Construction Association had suggested that more

protection be provided to business information in the custody of public bodies, and their comments are similar to the ones that we discussed under recommendation 23. The ministers of Alberta Infrastructure and Transportation also supported the recommendation not to amend the act, and the Alberta Mental Health Board and Parkland county also support the recommendation.

Recommendation 59 is another recommendation for no change, in response to submissions that were requested: the ability for a public body to refuse to disclose evaluative or opinion material compiled when universities are determining admission to undergraduate and graduate university programs. The University of Calgary disagreed with the recommendation and is of the opinion that the decision to admit a student to an academic program is no less critical than the decision to hire a new employee. The university submits that for the integrity of the admission process, admission references should be treated the same way as employment references under the law. An individual submitted that the FOIP Act should be amended so that students have the freedom to waive their rights to see evaluative or opinion material compiled related to the admission process. The person indicates that currently the letters of reference that are written under the FOIP Act are less likely to help the student who has requested that the letter be written. The Mental Health Board supported the recommendation.

Recommendation 62 was another recommendation not to change something in the act that would allow local government bodies to refuse to disclose information to an applicant if there could be harm to relations between a local government body and another entity. We had one recommendation in support of not making a change, and one disagreed.

The following recommendation is related to refusing to disclose information that would reveal information supplied in confidence by any local public body. The Alberta Association of Municipal Districts and Counties commented on recommendations 62 and 63 and said that the association's members believe there is a need for a discretionary provision that would allow local government bodies to refuse to disclose information to an applicant if there could be harm to relations between a local government body and other government entities and indicated that municipalities require this to protect their discussions with various provincial government departments.

Those are all the recommendations on right of access.

THE CHAIR: Thank you, Ms Lynas.

Any questions to Ms Lynas on the submissions received or on her comments?

I take it, then, that the committee is prepared to entertain the recommendations item by item.

Recommendation 17, dealing with non arm's-length business transactions. Any problems with the current wording? Recommendation 18. Recommendation 19. Recommendation 21, dealing with expert opinions containing health information.

Recommendation 22, dealing with advice from officials.

MRS. JABLONSKI: Mr. Chairman, after reviewing this recommendation, I have seen that it is inconsistent with other time periods in the act for cabinet confidences and local public body confidences, so I would ask that we delete this recommendation from our report.

THE CHAIR: I'll have you make a motion in a second.

Mr. Mason, your hand went up almost at the same time.

MR. MASON: Well, we can deal with this first, Mr. Chairman. I just wanted some clarification on how we could define advice from officials more closely.

THE CHAIR: Okay. Any other general comments before we entertain motions?

I take it, then, Mrs. Jablonski, your motion is that recommendation 22 be deleted.

MRS. JABLONSKI: Yes, not be included in the final report of the committee.

THE CHAIR: Thank you.

Any questions to Mrs. Jablonski on the succinct wording of her motion? Any questions or comments regarding the merits of her motion?

MS CARLSON: If I can just have clarification again on why you think it should be deleted.

MRS. JABLONSKI: Mr. Chair, I think it should be deleted because it's inconsistent with other parts in the act which hold 15 years as the appropriate time for public bodies and for cabinet confidences. So just as a matter of consistency in the act.

THE CHAIR: Mr. MacDonald, this, I believe, was your motion. You may wish to have something to say about this.

MS CARLSON: So, then, Mr. Chair, to Mrs. Jablonski: why wouldn't you just change it back to 15 years? Why do you think it needs to be gone?

THE CHAIR: It is 15 years currently. The recommendation changes it from 15 to 10.

MR. MASON: Well, Mr. Chairman, perhaps there are different time frames. I guess my preference would be to shorten the other ones as well. I can't recollect the advice we got on the time frames in other jurisdictions, but I think, you know, that if we're going to make it consistent, let's make it consistent at 10. Otherwise, I would keep the recommendation the way it is. It's just too long.

THE CHAIR: Thank you.

There's a motion on the floor to delete your motion, Mr. MacDonald. Did you want to speak to this?

MR. MacDONALD: No.

THE CHAIR: Okay. Is there any further debate or comment?

The motion put forward by Member Jablonski is that current recommendation 22 be deleted from the final report. All those in favour? Opposed? It's carried.

MR. MASON: What was the vote, Mr. Chairman?

THE CHAIR: Four to three.

Anything else with respect to recommendation 22? Recommendation 23.

1:40

MS DeLONG: This next one is that

a discretionary exception be added to the Act to allow a public body to refuse to disclose information where disclosure could be harmful to the competitive ability of a public body conducting a commercial activity.

The IPC has indicated that a new exception is unnecessary as section 25(1)(c)(ii) of the act already protects such information from disclosure. So it's just redundant.

THE CHAIR: Are you making a motion?

MS DeLONG: I recommend that we just delete it.

THE CHAIR: Thank you.

Any questions to Ms DeLong regarding the wording? I think it's fairly clear. She's moving that recommendation 23 be deleted. I think that's clear. Any questions or debate as to why? I'll put it to a vote. Ms DeLong has moved that

recommendation 23 from the interim report be deleted from the final report.

All those in favour, please raise your hands. Opposed? It's carried. Thank you.

Recommendation 24. Recommendation 25. Recommendation 55. Recommendation 57. Did you wish to make a motion, Mr. Thackeray?

MR. THACKERAY: No. I'm not an elected member, so I will not make a motion.

THE CHAIR: I'm being facetious. Did you want to speak to one of these?

MR. THACKERAY: Yes, Mr. Chairman, to number 25.

MS DeLONG: Sorry, I'll do it. I guess the situation is that it isn't actually the Workers' Compensation Act that's needed to be able to release this information. It's actually occupational health and safety, which comes under the Minister of Alberta Human Resources and Employment. Now, we all got a copy of this, but the way I want to amend it is slightly different from what they've suggested to us in that we just had another meeting where we had to change some legislation because it actually included the name of the ministry, and the ministers do change. Not that I know that there's anything coming; please do not take this to mean that. But what I would like to propose is that we amend it to read that the Occupational Health and Safety Act be amended to permit the minister responsible to publish only that information contained in an injury prevention register, to be comprised of employer names and their injury prevention performance information, as determined by the minister. It is understood that the register would include business information only, not personal information, and that the minister would define the indices, measurements, or standards and further circumscribe the publication.

THE CHAIR: Thank you, Ms DeLong.

I take it, Mr. Thackeray, that that is what you were going to promote.

MR. THACKERAY: Yes, Mr. Chairman.

THE CHAIR: Or at least bring to the attention of the membership.

MR. MASON: So the minister, whoever he or she may be at the time.

THE CHAIR: I haven't seen this before. I take it that this is a technical, housekeeping change. I do recall the deliberations regarding this motion, and they were to allow Workers' Comp to provide certain records. I take it that they are of the view that this wording would be more appropriate. Is that fair? *Hansard* does not record the nodding of heads.

MR. THACKERAY: Or the gnashing of teeth.

That is correct. This was brought forward. We just received the final information this morning on this proposed amendment, and this was from both Human Resources and Employment and the Workers'

Compensation Board.

THE CHAIR: Right. Okay. Any questions to Ms DeLong on her amended motion with respect to recommendation 25? Mr. MacDonald.

MR. MacDONALD: Yes, Mr. Chairman. I guess my question would be more directed to the chair, if you don't mind, than to Ms DeLong. We dealt earlier with the Traffic Safety Act in regard to FOIP. Is this an amendment that is subject to our review in the Occupational Health and Safety Act? I read it that we are to publish information. No one is seeking information. Is this within the mandate of this committee?

THE CHAIR: I believe it is. The chair has previously ruled that our mandate was to make recommendations on the FOIP Act or any consequential acts necessary to give meaning to freedom of information and protection of privacy principles and to that act. As I understand the meat of this recommendation, it's really to change the Workers' Compensation Act to the Occupational Health and Safety Act. I mean, it's a technical amendment. So the chair has previously ruled that the recommendation recommending an alteration to the Workers' Compensation Act was in order. So the chair has no problem accepting as in order Ms DeLong's recommendation that the Workers' Compensation Act be changed to the Occupational Health and Safety Act.

Anything arising from that? Anything arising from the substance of the proposal and the motion on the floor? Then we'll put it to a vote. Member DeLong has moved that recommendation 25 of the interim report be amended to read that

the Occupational Health and Safety Act be amended to permit the minister responsible for that act to publish only that information contained in an injury prevention register, to be comprised of employer names and their injury prevention performance information, as determined by the minister. It is understood that the register would include business information only, not personal information, and that the minister would define the indices, measurements or standards and further circumscribe the publication.

Is that correct, Ms DeLong?

MS DeLONG: That's correct.

THE CHAIR: All those in favour of that motion, please raise your hands. Opposed? There's no abstaining in committees. I'm not sure that Mr. Mason voted.

MR. MASON: I just bought a painting.

THE CHAIR: Again. All those in favour, please raise your hands. Opposed? It's carried.

Okay. Where were we? Recommendation 25. Recommendation 55. Anything? Recommendation 57. Recommendation 59. Recommendation 62. Recommendation 63. I take it the committee has no recommendations with respect to any of those aforementioned recommendations in the interim report?

MR. MASON: Sorry, Mr. Chairman. Just want to put on the record number 57. I won't try to delete this recommendation, because it would require the substitution of an alternative one, and we've debated it. Just to confirm once again, I believe that if you wish to do business with the government, you should be willing to have your contract made public. I think that it's, you know, a question of accountability and transparency. So I don't support this one, but I will not propose to redebate the question.

THE CHAIR: The chair notes your comment.

Before we leave this group of recommendations from the interim report, is there anything that needs to be readdressed? Mr. MacDonald.

MR. MacDONALD: Yes, Mr. Chairman. Thank you. I would just like to say on the record that I very much agree with Mr. Mason. If you are going to deal with the government, then certainly the taxpayers have every right to expect that those dealings at some time be made public.

Thank you.

1:50

THE CHAIR: The chair also notes Mr. MacDonald's comments. Anything further?

Okay. The next bundle of recommendations deals with fees, and they're specifically 26, 27, and 28. Ms Lynas, you look like you are prepared to tell us what the stakeholders had to say about the interim report and its discussion on fees.

MS LYNAS: That's correct.

THE CHAIR: Thank you.

MS LYNAS: Recommendation 26 says that "fees for services referred to in section 93(1) of the Act be revised as needed to more accurately reflect current costs." Six local public bodies support the recommendation, but it's fairly clear that four believe that the recommendation means that costs would be increased to reflect the actual costs of processing FOIP requests by public bodies to help them recover expenditures by the public bodies. The Information and Privacy Commissioner agrees that it may be necessary at times to review the fee schedule within the act. However, access to information programs cannot and should not be operated on a cost recovery basis.

The commissioner is of the view that individuals should bear some of the cost of an access request through the payment of fees as it encourages the wise use of government resources. However, the fees should never become prohibitive and result in the right of access being limited to only a select few. The commissioner believes that the principles of transparency and accountability would be eroded if access fees are permitted to reach a cost recovery level. The commissioner recommends that the committee revise the recommendation to ensure that any future review of the fee schedule will not be based on a cost recovery model but will take a more balanced approach recognizing that although applicants may contribute towards the cost of an access request, the majority of the costs should be borne by public bodies.

Two individuals said that the access fees represent a form of rationing of information and should be limited or eliminated altogether.

On recommendation 27 – that's the one to add a new provision to the regulation setting out the criteria for waiving fees consistent with commissioner's order 96-002 – three local public bodies supported the recommendation. The Information and Privacy Commissioner does not agree with the recommendation, and he states that the fee waiver criteria in this order were not intended to be an exhaustive list but something that should evolve on a case-by-case basis. He indicates that setting the criteria in the regulation may unduly limit the discretion of both the commissioner and public bodies and could also require frequent amendments to the act and regulations to reflect new considerations that may arise during reviews of fee waiver requests. The commissioner states, however, that if the committee decides to proceed to put fee waiver criteria in the regulation, additional considerations identified in a particular adjudication order should be added, and he also recommends that the amendment indicate that the list of criteria is not intended to be

exhaustive. This would still retain some criteria and flexibility for public bodies and the commissioner when reviewing fee waiver requests.

The Minister of Human Resources and Employment submits that adding the criteria to the regulation is not necessary given the need for flexibility by applicants and public bodies.

Recommendation 28 was to clarify section 93 to make it clear that fee waiver requests must be made in writing and also to say that the decision of the head must be communicated in writing within 30 days of receiving the request for a fee waiver. Three local public bodies wrote to indicate they supported the recommendation.

That's the end of the fees comments.

THE CHAIR: Thank you, Ms Lynas.

Any questions regarding the submissions that were received? Did I see your hand, Mr. Mason? Go ahead.

MR. MASON: Just to the commissioner. It really seems that this bit here is at variance with some of the advice, maybe, that we discussed at the time. Are you not concerned that the fee waiver should be put on some sort of systematic basis, that there should be some equity across jurisdictions, and that similar principles ought to be followed when making these decisions?

MR. ENNIS: Well, if I can clarify some of the previous advice on this, without being cute about it, the role that I've had on this committee and the technical committee has been to give my best advice to the committee as someone who works in this field. The commissioner has reserved his ability to speak on his views on the committee's activities, and this is an expression of the commissioner's views, which is not really to say that we're at odds. The criteria that were established in 96-002 – as the number would indicate, that was only the second inquiry held under this act, and it's been seven years now that we've been at this – were not meant to be an exhaustive list but to be an illustrative list. What the commissioner is asking for here is that the list not be nailed out as a code, that if it is set out as a code in the act, the committee be aware that it may require amendment from time to time if decisions affect that code, and also that if it is to be a code, there should be the addition of some new factors that were introduced by Justice McMahon in his role as an adjudicator on a recent adjudication. He brought in a couple of new factors to be considered when public bodies are waiving fees.

So the commissioner is saying that 96-002 is not a complete statement, that if it is to be taken as a complete statement, then it should be at least rounded off with the additional factors introduced by the adjudicator – and that was in a case held just in the past spring – but his preference would be that it not be codified within the act, rather that it be left as a matter where the commissioner would have some flexibility.

THE CHAIR: A comment, Mr. Mason?

MR. MASON: Well, Mr. Chairman, maybe a proposal for an amendment.

THE CHAIR: Well, let's just see if there are any other general questions to Ms Lynas on her presentation, and then we'll deal with these sequentially, as we've been doing. Anything else with regard to the submissions that were received regarding fees? Okay.

Then the chair will entertain and accept motions with respect to recommendation 26.

MR. MacDONALD: Twenty-seven; right?

THE CHAIR: No; 26 comes before 27. Are there any motions with

respect to 26?

MS DeLONG: I'll make a recommendation for 26. There were concerns that if we left this motion as it is, some of the fees would become unaffordable. Essentially, what we need to do is say something to the effect that it, you know, reflect costs but not give the impression that it's supposed to cover the entire cost. So what I propose is that we amend it to read that

the fees for services referred to in section 93(1) of the act be revised as needed to more accurately reflect the current costs of those services for which an applicant may presently be charged so that there continues to be a reasonable sharing of costs by the applicant and the public body.

THE CHAIR: Thank you. Before we debate the motion, any questions to Ms DeLong on the wording of her motion? Any debate concerning the merits of the motion?

MR. MacDONALD: Mr. Chairman, could Ms DeLong please read that motion again from "reflect the current costs" onward, please, if you don't mind.

MS DeLONG: "Reflect the current costs of those services for which an applicant may presently be charged so that there continues to be a reasonable sharing of costs by the applicant and the public body."

2:00

MR. MacDONALD: Thanks.

THE CHAIR: Any questions concerning the merits of Ms DeLong's motion to amend recommendation 26? That being the case, we'll put it to a vote.

MR. MacDONALD: Well, Mr. Chairman, if I could, please.

THE CHAIR: I asked if there was deliberation or debate. Do you have something to say?

MR. MacDONALD: I expressed an interest in debate.

THE CHAIR: Now is your opportunity, Mr. MacDonald.

MR. MacDONALD: Okay. I have a question for Ms DeLong. Do you think that the spirit and intent of the original FOIP Act was to recover costs associated with a file, was it to present information to the public, or was it a means of the public holding their government accountable?

THE CHAIR: Do you wish to answer that, Ms DeLong? You're under no real obligation.

MS DeLONG: Would you like a speech on the meaning of the FOIP Act?

MR. MacDONALD: I would certainly listen intently. Yes, please.

MS DeLONG: Well, I'd like to stick to the actual topic we're discussing here, which is whether or not fees should totally cover the cost of all access to information. I don't believe that they should. I think that there should be a small deterrent so that we don't have frivolous claims or frivolous requests, but I don't believe that fees should cover the entire cost.

MR. MacDONALD: Mr. Chairman, I believe this would be best directed to Mr. Ennis. Do you have any idea, for the record, how many frivolous or vexatious files or applications there are under

freedom of information?

MR. ENNIS: No. We would have no way of knowing that. Of course, that would depend on definitions and someone's application of those definitions. The commissioner has viewed a series of requests that have been made to the town of Ponoka as being frivolous and vexatious. That's the only case that I can recall on record where the commissioner has used his judgment on such files. The determination of whether a request is frivolous or vexatious is a serious measure, and it's not one that we see very often.

MR. MacDONALD: Okay. Thank you.

THE CHAIR: A supplemental, Mr. MacDonald, or anything arising?

MR. MacDONALD: No. It's just evident to this member of the committee that certainly it's not an issue as outlined by the hon. Member for Calgary-Bow.

THE CHAIR: Fair enough.

Any further deliberation on Ms DeLong's motion?

MR. MASON: Could we hear it again, please?

THE CHAIR: Well, I will reread it before we vote.

Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. Ms DeLong's motion to me sounded fairly reasonable because she used the words "a reasonable sharing of costs." Those words in themselves explain the motion on sharing of cost by the word "reasonable." So I would think there would be some consent by both parties that are sharing the cost, to the point where it's reasonable.

Thanks.

THE CHAIR: Thank you.

MR. MacDONALD: Again, for the benefit of all committee members, Mr. Chairman, it would be my strong view that the whole idea of FOIP is not to share costs. The whole idea of FOIP is that it is a means by which the citizens can hold their government accountable. There's no sense here of reasonable sharing of costs. It is a means for citizens. Regardless of whether they're interested in a particular issue or are members of the Official Opposition or are an environmental group, it doesn't matter. A government has to be held accountable. This is the first responsibility of this act. To charge fees and high fees is just wrong. It's against the spirit and the intent of the act, in my view.

THE CHAIR: Your views on this issue are well known, Mr. MacDonald.

MRS. JABLONSKI: We have already debated this issue extensively. I don't think that we should be charging high fees. However, we should be charging appropriate fees. I do remember from our previous discussion – and I know that it's in our *Hansard* somewhere; I can't put my finger on it right now – that it was quoted, I think by our support group, that when Ontario introduced a fee, the number of requests for simple information went down a significant amount, so I think that there is some value to this.

THE CHAIR: Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I'm not trying to get into a debate, but with your permission I wanted to add one little bit, and

it's going to be with a debate tone to Mr. MacDonald. That's just to divide up the fees and the way they're structured, and of course nothing is for nothing. We all know that. However, the way this government happens to be structured is that you have the option to pay separately on a cost sharing, and if information is available, it has a fixed number attached to it. Whether it is blended in through the overall taxes of the citizens or else it's lowered on that level and reintroduced at a level that you have an opportunity or option to bring forward to you at your own will – so I think that the latter, according to Ms DeLong's motion, is much better and it's much more clear.

MR. MacDONALD: Yeah, that was clear.

MR. MASON: Can I have the motion reread so that I can understand some of the debate?

THE CHAIR: Yes. The current recommendation 26 reads “that the fees for services referred to in section 93(1) of the Act be revised as needed to more accurately reflect current costs.” The amended recommendation 26 would read that the fees for services referred to in section 93(1) of the act be revised as needed to more accurately reflect the current costs of those services for which an applicant may presently be charged so that there continues to be a reasonable sharing of costs by the applicant and the public body.

MR. MASON: Then can I just ask: how does that change this?

THE CHAIR: The floor belongs to Ms DeLong.

MS DeLONG: There was concern that our recommendation would be interpreted to mean that the applicant would have to cover the total cost. Okay? In other words, the fees would be covering the total costs. I don't think that we intended that that would be the effect, so that's why we've added this.

MR. MASON: Okay. Then another question for the administration, Mr. Chairman. So the intention is to reinforce here the concept that it's not the full costs going to the applicant.

MS DeLONG: That's right. Exactly.

MR. MASON: Okay. So we may have disagreed with the first motion, but this is a way of making sure that it's not worse.

To the administration: would the administration interpret this, if this were the policy in the act, that if information can be provided in electronic form at a very, very low cost, the fees would be very low as a consequence?

MR. THACKERAY: My interpretation of this recommendation is exactly that, that the fee schedule as allowed for under section 93(1) would be revised from time to time to accurately reflect current costs of those media.

MR. MASON: Right. Not spreading the costs over the whole system, not having a cross subsidization of that.

MR. THACKERAY: And I think that the recommended amendment puts the fence around it.

MR. MASON: Okay. Thank you. Does the commissioner's office agree with that?

MR. ENNIS: Yes, we concur with that view. It is conceivable that costs may go up in some areas; it may go down in some areas.

Now, the public bodies who responded to this recommendation seemed to take comfort that there was only one way the costs were going to go – at least the portion shared by applicants was going to go up. I'm not sure that would always be the case. In some areas technology runs against that and has made costs of information provision less than what they used to be.

MR. MASON: If some institution, say, some public body tries to charge people the same price for receiving information in electronic form as if they had to photocopy a thousand pages of documentation, do you have the authority to make sure that that gets corrected?

2:10

MR. ENNIS: The authority to investigate and try to settle the matter by order if the person concerned brings it to the commissioner, yes.

MR. MASON: Okay.

THE CHAIR: Anything arising out of that exchange?

MRS. JABLONSKI: Mr. Chair, I would like the opportunity to clarify my comment. I have now found the reference in *Hansard* thanks to our good secretary. On June 25, when we debated the pros and cons of a fee structure, the fact that I was referring to is:

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

Thank you.

THE CHAIR: The chair notes those comments.

Anything further? Are we ready for the vote?

The motion as put forward by Member DeLong regarding current recommendation 26 is that the word “the” be added before “current costs” and that the following be added after “current costs”:

of those services for which an applicant may presently be charged so that there continues to be a reasonable sharing of costs by the applicant and the public body.

All those in favour of that motion, please raise your hand. All those opposed? It carries. Thank you.

Recommendation 27.

MR. MASON: Mr. Chairman, I'll move that 27 be amended. Delete everything after the words “setting out” and then say: guidelines which encourage consistency in the application of fee waivers between various jurisdictions. So it would say, then, that section 93 of the act be amended to refer to a new provision in the regulations setting out “guidelines,” rather than “criteria,” which encourage consistency in the application of fee waivers between jurisdictions.

THE CHAIR: Any questions to Mr. Mason on the wording of his motion to amend recommendation 27? Mr. MacDonald.

MR. MacDONALD: Yes. Mr. Mason, in light of the Information and Privacy Commissioner's recommendations further down the page in regard to fee waivers in the public interest and in light of the fact that you want to eliminate the criteria for the waiving of fees consistent with the commissioner's order 96-002 – as I understand it, that was written in 1996. I see further down here where the McMahon decision, adjudication order 2, May 24 – that's 2002 for sure.

MR. MASON: That's a Star Trek adjudication.

MR. MacDONALD: Yeah, that's a real Trekkie date, that one; isn't it? But in light of that, perhaps do you not feel that we could bring the act or the whole issue of fee waivers in the public interest up to

speed if we were just simply to delete “the Commissioner’s Order 96-002” and bring it up to date with the adjudication order 2 from Justice McMahon? Do you think that would not be a better way?

MR. MASON: Well, the way I’m reading this is that we would have to have all three in there. Is that correct? If we were going to do it that way, we’d have to put not just the first order but the second order and then the adjudication order, and then it’s going to change from there; right?

MR. ENNIS: The whole body of the jurisprudence out there now is that you’ve got 96-002 plus Justice McMahon’s adjudication and . . .

MR. MASON: So, Mr. MacDonald, I think those things are implied in this in an attempt to encourage consistency. I think it would have been more helpful if some of the feedback had come back saying: if you want to do this, here’s a way of doing it. I don’t want to get into the thing where you say, “Okay; this order plus this order plus this order” all in the body of the amendment, you know. So I’m trying to do it in, I guess, a broader way.

MRS. JABLONSKI: Mr. Chair, it’s obvious as we discuss this that it becomes quite complicated. I read the submission by the Information and Privacy Commissioner as saying that this recommendation unduly limits the discretion of his office and of other public bodies in waiving fees and it could also create a requirement to frequently update these regulations. So I would be arguing that we just delete 27.

THE CHAIR: Thank you.
Mr. MacDonald.

MR. MacDONALD: Yes. In light of the comments from the Member for Red Deer-North and the Member for Edmonton-Highlands I would like to bring to their attention further on what the commissioner has to say. The commissioner recommends that the amendment be drafted in a manner that reflects the additional fee waiver considerations identified in adjudication order 2 on May 24, 2002. So, yeah, in light of what you’re saying, I think it would be more reflective of the Information and Privacy Commissioner’s wishes if we were to change the criteria from 96-002 to the decision that was rendered on the 24th of May.

MRS. JABLONSKI: Just for the record the Information and Privacy Commissioner did not agree with this recommendation. In the second paragraph of his submission he does state that if the committee decides to proceed with this amendment to the FOIP Act, we should then make the considerations that Mr. MacDonald is talking about. So he gives us a choice of proceeding or not proceeding.

MR. MASON: Well, Mr. Chairman, you know, if you look at what the people in the field are saying about this recommendation and overall since, they are very supportive of it. The David Thompson health region and the Alberta Mental Health Board strongly support the recommendation. Parkland county agrees with it because it would formally establish criteria for determining fee waiver denials and approvals. So I think people out there are looking for a little more certainty. I think that that was the intention, and I think it’s desirable, but I think the amendment will still accomplish that; I do. But if it fails, then Mr. MacDonald is welcome to make an amendment along the lines suggested by the commissioner, and I’d be happy to support that at that time.

THE CHAIR: Okay. Anything further?

We’ll put it to a vote. The current recommendation 27 of the interim report reads that section 93 of FOIP be amended to refer to a new provision in the regulation setting out criteria for the waiving of fees consistent with the commissioner’s order in decision 96-002. The motion as put forward by Member Mason would amend that to read that

section 93 of FOIP be amended to refer to a new provision in the regulation setting out guidelines which encourage consistency in the application of fee waivers between jurisdictions.

All those in favour of Mr. Mason’s motion, please raise their hand. Opposed? It’s defeated.

Are there any further motions with respect to recommendation 27?

MR. MacDONALD: Yes. Mr. Chairman, in light of what the commissioner has to say, if you could have patience with me, please – in the original motion here after the words “regulation setting out” I would like to eliminate “criteria” through to the end of “96-002.”

THE CHAIR: I’m sorry. Where are you making your insertion?

MR. MacDONALD: Mr. Chairman, I’ll read the whole thing.

THE CHAIR: Thank you.

MR. MacDONALD: “That section 93 of the Act be amended to refer to a new provision in the Regulation setting out . . .” Delete everything after “setting out” to the end of the sentence, “with the Commissioner’s Order 96-002,” and replace it with: that section 93 of the act be amended to refer to a new provision in the regulation setting out amendments that reflect the additional fee waiver considerations identified in adjudication order 2, May 24, 2002, by Justice McMahon.

Thank you.

2:20

THE CHAIR: I’m sorry; I didn’t get all that. Can you please reread that for me?

MR. MacDONALD: I hope so. From the start, Mr. Chairman?

THE CHAIR: Please. From the start.

MR. MacDONALD: It would read that section 93 of the act be amended to refer to a new provision in the regulation setting out the amendments to be drafted in a manner that reflects the additional fee waiver considerations identified in adjudication order 2, May 24, 2002, by Justice McMahon.

THE CHAIR: Thank you.

Any questions to Mr. MacDonald on the wording of his proposed amendment to recommendation 27?

MS DAFOE: Just a request for clarification. You didn’t want to make reference to the criteria set out in 96-002 then, just to the . . .

MR. MacDONALD: Just to the recent, yes.

THE CHAIR: Mr. MacDonald’s motion is limited to order 2, as I heard it.

MR. MacDONALD: Exactly.

THE CHAIR: Okay. Any other questions on the wording, just on the wording?

MRS. JABLONSKI: I see that Mr. MacDonald is following a subsequent recommendation of the commissioner, so I would ask

him why he would not include the complete recommendation of the commissioner.

THE CHAIR: That's on the merits, Mrs. Jablonski.

Any questions to Mr. MacDonald on the wording of his motion just so everybody understands it?

Okay. I'm sorry, Mrs. Jablonski. Now you can ask your questions on the merits.

MRS. JABLONSKI: Okay. I just wondered why he didn't include in the wording the second part of the commissioner's recommendation, which is that any amendment confirm that the list of criteria is not intended to be exhaustive, why he only included part of what the commissioner recommended?

MR. MacDONALD: Well, I would like to see the act brought up to speed, so to speak. That's the purpose of this. We have dealt with the governance and guidelines under 96-002 for a number of years. This is the most current consideration in regard to fee waivers. So why not go with that?

MS DeLONG: I have a question. I'm not familiar with this order 2, and I don't know whether it's in addition to 96-002 or whether it stands on its own, by itself, or whether it refers back to this 96-002.

MR. MacDONALD: Mr. Chairman, I believe it would stand on its own.

THE CHAIR: That's my understanding.

Did you have something you wanted to add, Ms Dafoe or Mr. Ennis?

MS DAFOE: I have a copy of the order here if you would like to see it.

THE CHAIR: Maybe we should take a five-minute break. Is that agreeable to the members?

HON. MEMBERS: Yes.

THE CHAIR: We'll reconvene at exactly 2:30.

[The committee adjourned from 2:24 p.m. to 2:34 p.m.]

THE CHAIR: Could we go back on the record, please. Following the brief adjournment I'm assuming that the members who were interested in reading Justice McMahon's decision in adjudication order 2 have had an opportunity to at least peruse the decision. The debate was left with respect to Mr. MacDonald's motion to amend recommendation 27, essentially to delete "Commissioner's Order 96-002" and replace it for the reasons in Justice McMahon's adjudication order 2 of May 24, 2002. Is there further discussion or deliberation with respect to this motion? Mrs. Jablonski.

MRS. JABLONSKI: Thank you. Now that I've had time to consider this further, I just think that by changing it this way, we narrow the discretion of our commissioner and of other public bodies, and I just feel that that's not giving them enough discretion in these fee waivers.

THE CHAIR: Thank you.

Anything further with respect to this matter before we put it to a vote? Anything to close, Mr. MacDonald? I don't usually give you that opportunity, but given that there was a break . . .

MR. MacDONALD: No. That's fine, Mr. Chairman. Thank you.

THE CHAIR: So the motion as put forward by Member MacDonald is that recommendation 27 of the interim report be changed to read that

section 93 of the act be amended to refer to a new provision in the regulation setting out an amendment to accept the additional fee waiver requirements as set out in adjudication order No. 2 as set out by Justice McMahon in his decision of May 24, 2002.

All those in favour of that motion, please raise your hand. Opposed? It's a tie. The chair rules against Mr. MacDonald's motion. It's defeated.

Is there anything further with respect to 27? Any further motions?

MRS. JABLONSKI: I move that we remove this recommendation from the final report of the committee.

THE CHAIR: Mrs. Jablonski has moved that recommendation 27 be deleted from the final report. Any deliberation regarding the merits of that motion?

MS CARLSON: I'd like to know why.

MRS. JABLONSKI: I think that the way it stands now, the act allows discretion by public bodies and by our commissioner, and I don't think we've had any real concerns with that discretion they use. I think that both the public bodies and the commissioner use it fairly, so I think you're just adding something that isn't necessary. That's why I moved to delete it from the report.

THE CHAIR: A supplemental?

MR. MacDONALD: Mr. Chairman, I have a question for the legal representative from the commissioner's office, and that would be: what are the implications . . .

THE CHAIR: Just for clarification our legal counsel is actually from Alberta Justice, not from the commissioner's office.

MR. MacDONALD: Oh, heavens.

THE CHAIR: Ms Dafoe is legal counsel, and she's from Alberta Justice.

MR. MacDONALD: Well, I have a question for Mr. Ennis.

MR. ENNIS: Just for the record, Mr. Chairman, I am not now nor have I ever been a lawyer.

THE CHAIR: The chair takes note of that.

MR. MacDONALD: Okay. I have a question for Mr. Ennis. If this is to be withdrawn, what further guidelines would the commissioner's office be under in regard to order 96-002 or adjudication order No. 2 from the McMahon decision?

MR. ENNIS: Well, if I can take that from the ground up, 96-002, while an early order, has been a particularly robust one. It's been very durable, and it tends to be the starting position for public bodies when they're considering fee waivers and of course is the starting position for the commissioner. The commissioner is not bound by his own precedents however. That's, I'm told, one of the distinctions between a commissioner and a judge. So the commissioner can reinvent his perception of issues and can look at 96-002 as simply a starting point or perhaps not even an appropriate starting point. He might start somewhere else in looking at an issue.

The advice that comes out of adjudication order No. 2, dealing with consideration of an access request or a fee waiver request from a member of the Assembly and from the press, is simply additional

to 96-002. It doesn't cross or negate any of the 13 original criteria set out in 96-002.

So by my count we now have about 15 things to think about when looking at a fee waiver request, and not all 15 will ever apply to any given case. Even in adjudication order No. 2 the adjudicator, a judge acting as adjudicator, found that some of the original 13 didn't apply to that particular situation, and he added an additional two.

How many factors can there be? I think the commissioner is asking that that list be kept open, that he have the ability to discover factors of fairness on fee waiver as he sees individual cases rather than be codified on the issue.

MR. MacDONALD: Thank you.

2:40

THE CHAIR: Anything supplemental? Anything arising from that? Any further questions regarding the motion to delete recommendation 27? We could put it to a vote. All those in favour of deleting recommendation 27, please raise your hands. Opposed? It's a tie. The chair casts its vote in favour. Recommendation 27 shall be deleted.

Yes?

MR. MASON: Mr. Chairman, on a point of order I'd like some clarification about the rules in the event of a tie. The rules that I'm accustomed to have a tie vote failing, and I think that tie votes have failed in this committee before now. I'm not aware of the rule that allows the chair to cast a deciding vote.

THE CHAIR: Well, the rules of the committee, as I understand it, are not that a tie vote fails. It's that the chair or the Speaker in the House casts the deciding vote. But it is an important procedural issue, and Mrs. Sawchuk is going to get *Beauchesne* or whatever she needs to do to cast determination on this point. I guess the committee can stand adjourned until she returns. Thank you.

Mr. MacDonald, do you have a comment before we adjourn?

MR. MacDONALD: Yes, I do, Mr. Chairman, if you could bear with me for a moment. In light of what Mr. Mason has brought up – I will confirm it – I believe you were well within your rights to cast the deciding vote.

THE CHAIR: I appreciate your support. Nonetheless, we'll wait for Mrs. Sawchuk to return.

MR. MacDONALD: Okay.

THE CHAIR: Thank you. We're adjourned.

[The committee adjourned from 2:42 p.m. to 2:44 p.m.]

THE CHAIR: If we could go back on the record, please. The committee clerk with great haste has provided the guide for committees of the Alberta Legislative Assembly. I read on page 22 under the chapter Powers and Responsibilities of the Chair, Casting Vote of the Chair:

The Chair of a Committee may vote on any motion before the Committee only when there is an equality of votes. In exercising a casting vote, the Chair should be guided by the same principles as the Speaker of the House (Standing Order 11 and *Beauchesne's* 6th Edition, citation 310(4)).

MR. MASON: I thank the chair for that elucidation.

THE CHAIR: Thank you.

Now, does that conclude the recommendation with respect to

fees?

Recommendation 28. Going once. Going twice.

MRS. JABLONSKI: Mr. Chair, please. I have to reassemble my papers since our adjournment.

THE CHAIR: I would have thought you would have used the adjournment as an opportunity to reassemble your papers, but go ahead.

MRS. JABLONSKI: Thank you. I now have them in order.

THE CHAIR: Are there any deliberations or motions with respect to interim report recommendation 28? Okay. That being the case, if we could go on to the next bundle of recommendations which deal with protection of privacy, recommendations 32, 33, 35, and 37. Ms Lynas, please go ahead.

MS LYNAS: I'll skip directly to recommendation 32, which would "allow personal information to be disclosed for the purpose of a common or integrated program or service to organizations that are subject to other privacy legislation." This would apply in a situation where several organizations such as government, school, perhaps RCMP are working together to provide a service to clients.

The Minister of Alberta Human Resources and Employment strongly supports the inclusion of this recommendation and suggests that the input of the Information and Privacy Commissioner's office be sought when drafting this provision. The commissioner does not agree with the broad scope of the recommendation and thinks it will not only expand the ability of a public body to disclose personal information under section 40 but will also seriously undermine the privacy protections currently in the legislation. The commissioner indicates that the recommendation effectively could expand disclosures under section 42 to a vast number of entities such as foreign companies or foreign governments and that the recommendation does not require that the other privacy legislation contain a specific level of privacy protection regarding those organizations' subsequent use and disclosure of the information. The commissioner states that the recommendation could undermine many of the protections in place under section 40 and put public bodies, instead of the Legislature, in the position of determining the circumstances under which personal information may be disclosed. Two local public bodies supported the recommendation.

Moving to number 33, it concerns allowing for the routine use and disclosure of business contact information, so an individual's business address, business telephone and fax numbers, e-mail address, and other business contact information. Two local public bodies supported the recommendation. The commissioner stated that the amendment could be made under part 1 of the act under section 17 or part 2 under section 39 and section 40. The commissioner is not opposed to the routine use and disclosure of business contact information in most situations, but it should be limited to situations where the information would only reveal a business relationship with a public body or reveal that a business relationship with a public body is being contemplated. A public body should not be permitted to routinely use and disclose this type of information if it reveals additional information about the person. The commissioner recommends that the committee consider revising the recommendation to ensure that any amendment under section 17 be addressed under section 17(5) and not under 17(2). The commissioner strongly recommends that any amendment to sections 39 and 40 regarding the routine use and disclosure of business information also safeguard against inappropriate use and disclosure.

Under recommendation 35 the Alberta Minister of Community Development requests that guidelines be issued around this

recommendation, since it requires a decision by the head when disclosing personal information. The Mental Health Board strongly supports the recommendation, as it would increase consistency with the Health Information Act. However, we feel that there really isn't a comparable provision in that piece of legislation. Parkland county supports the recommendation, and the Information Commissioner is opposed to the recommendation. Though he agrees that the purpose of making a request may be a relevant factor in some cases, the recommendation is overly broad. He is of the opinion that the recommendation would have the effect of granting a public body unlimited discretion to determine the purpose for which personal information may be disclosed and may lead to inconsistent decisions among public bodies and uncertainty by the public as to the level of protection that their personal information will receive. The commissioner states that if the Legislature believes that there are certain purposes for which personal information should be disclosed, they should be identified within the act and that this would lead to greater transparency and accountability to the public and would provide the public with more certainty under the circumstances under which their personal information will be disclosed.

2:50

Moving on to recommendation 37, this is the one that recommends that the Municipal Government Act be amended to protect the name and mailing address of property owners from routine disclosure under section 307 of the Municipal Government Act. One individual forwarded copies of correspondence illustrating his difficulty in accessing property assessment information from the city of Calgary. The reply from the city said that the records he requested were not available from the FOIP Act. It is correct; there is a paramouncy for certain records that are subject to the Municipal Government Act, and this has been determined in an Information and Privacy Commissioner order.

The Alberta Association of Municipal Districts and Counties is concerned that an amendment to the Municipal Government Act could result in increased workload and significant change in practice for some local governments and the subsequent imposition of additional FOIP-related costs for municipalities. Parkland county strongly supports the recommendation, believing that the name and address should not be on the assessment roll, and the Alberta Mental Health Board supports the recommendation.

One individual stated that in some cases public bodies that control pieces of personal information may be in conflict of interest with regard to sharing information with the public, and this may be the case when a municipality is in the position of controlling the information that a property owner needs to determine the fairness of his assessment and therefore his tax liability.

Those are the comments on privacy.

THE CHAIR: Thank you, Ms Lynas.

Any questions to Ms Lynas regarding the submissions that were received on our interim report?

Okay. Then we can go through these sequentially, dealing first of all with recommendation 32.

MS DeLONG: Regarding 32 there is a possibility that we should delete this recommendation, but before we look at actually getting rid of it altogether, what I would like to ask is: if we were to amend it – maybe I should go back a little bit.

Right now the situation that we're in is that the last time FOIP was amended, essentially we got as far into this as this: the act was amended to allow personal information to be disclosed for the purpose of a common or integrated program or service. So that's already been done. The actual amendment that we're putting through right now is the last part of this sentence, which is "to

organizations that are subject to other privacy legislation." Now, that's the part that the Privacy Commissioner does not like. What I'm going to ask is: if we were to change that so that it read "to organizations that are subject to other Canadian privacy legislation" – I'd just like to get an opinion from Mr. Ennis on making that change.

MR. ENNIS: Thank you, Ms DeLong. The effect of the change would be to take away one of the concerns that the commissioner expressed in his submission, which is that the information could too easily be passed to foreign entities governed by privacy legislation in other countries that may or may not stack up with the standards we have in Canada. So the addition of the word "Canadian" and the resulting fence that that establishes is certainly in the direction that the commissioner was concerned about, but the commissioner's concern goes beyond that in that it is not really clear what entities would be receiving this information and whether the legislation that they would be subject to would be on par with the protection accorded citizens by Alberta's legislation.

The current process that's in place for this kind of transfer of information – not that these are terribly common, but when programs of this nature happen, there tends to be very formal memoranda of agreement, memoranda of understanding in place as to how information will be used in the other jurisdiction. The effect of this recommendation would be to allow public bodies under the FOIP Act to disclose information without the consent of persons to organizations under other jurisdictions such as federal departments, private companies governed by PIPEDA possibly, private companies governed by private-sector legislation coming to Alberta. Examples currently would be banks, airlines, certain transportation companies, any company operating interprovincially. In the future that might be any company operating in Alberta. The commissioner is concerned that this prerogative to public bodies to transfer information this way runs against the containment philosophy that is usually associated with protection of privacy.

MS DeLONG: So if we were to add "Canadian," that doesn't cover it. What if we were to change it to "other Canadian government privacy legislation"? For instance, right now in terms of records for maintenance does that flow freely across Canada, or is FOIP always sort of in the middle there?

MR. ENNIS: I don't know what agreements are in place on maintenance. There are, of course, international conventions and protocols on the application of maintenance orders across various countries, and Alberta is a signatory to those. So there are treaties in place governing the transfer of maintenance information, and that would be of course supported by the FOIP Act. The FOIP Act recognizes the power of treaties.

I think the concern that I'm seeing in some of the submissions from public bodies is the ability to interact with the RCMP, and one of the counties that responded here I believe took comfort from the recommendation that they would have an ability to deal more effectively with the RCMP. Now, the RCMP, as we saw before, are under a federal privacy act, and one of the effects of this recommendation might be to make it easier to provide information to the RCMP where the RCMP are part of a common or integrated program or service.

That may be the business case behind Human Resources and Employment's interest in this recommendation, but I would defer to those working inside the government to give a little more insight on what the business case is in this particular matter.

THE CHAIR: Mr. Thackeray, did you have anything to add to that, following that invitation to those working inside government?

MR. THACKERAY: Mr. Chairman, it's my recollection that the Department of Human Resources and Employment was one of the groups within government that strongly supported this recommendation coming to the committee in the first instance. Part of the reason behind their support is that both Human Resources and Employment and Children's Services, who use the same freedom of information and protection of privacy office for support, are involved in a number of common or integrated programs or services within the province of Alberta.

Currently the restrictions on sharing information without consent are limited to those that are currently covered under the Alberta Freedom of Information and Protection of Privacy Act. If the suggested amendment were to go through either as is or even with the insertion of the word "Canadian," that wouldn't necessarily assist Human Resources and Employment/Children's Services because in Alberta currently there are no private-sector companies that are involved in providing common or integrated programs or services that are subject to any privacy legislation. The only way that they would be brought in is if they were a contractor of the department, and then they would be defined as an employee under the act.

That's about it.

3:00

THE CHAIR: Any further questions or any clarification on anything that's been stated?

MRS. JABLONSKI: Well, I have a comment. This group of recommendations that we are dealing with now is under the subsection Protection of Privacy, and I think that's one of the primary goals of the FOIP legislation. I have a concern that in the Information and Privacy Commissioner's submission he doesn't agree with this recommendation, that he figures it's too broad. In his concluding paragraph he states that expanding provisions of section 40(1)(i) will undermine many of the protections in place under section 40 and put public bodies instead of the Legislature in the position of determining the circumstances under which personal information be disclosed. I have concern about taking away these protections, so I would be in agreement with the commissioner, and I would conclude from his remarks that it would be better just to delete this recommendation from the report.

THE CHAIR: Before we entertain motions, are there any further comments or questions for the staff?

I take it, then, that your motion, Mrs. Jablonski, is to delete recommendation 32 from the interim report?

MRS. JABLONSKI: Yes. My motion would be to delete recommendation 32 from the final report.

THE CHAIR: Thank you. Any questions? I think that what is being proposed is fairly clear. Any deliberations, debate, or questions regarding the merits of that motion?

Okay. We'll put it to a vote. Mrs. Jablonski has moved that recommendation 32 in the interim report be deleted.

All those in favour, please raise your hands. It's carried unanimously. Thank you.

The chair mistakenly glossed over recommendation 30, on which there were submissions received. Is there any need for deliberations or motions with respect to recommendation 30?

That being the case, we'll go to recommendation 33. Recommendation 35. Recommendation 37.

Thank you. That concludes the bundle of recommendations regarding protection of privacy or at least the bundle on which submissions were made.

The next group deals with the independent review, and those are

recommendations 40, 41, 65, and 66. Ms Carlson, was your hand up?

MS CARLSON: No.

MS LYNAS: Generally there was support for these recommendations concerning the Information and Privacy Commissioner's powers and processes. I really don't have any more to say on that.

THE CHAIR: Okay. Apparently everyone is happy with our recommendations 40, 41, 65, and 66. Do any of the members wish to revisit any of those recommendations? Going once. Going twice.

Okay. The final bundle of recommendations deals with the administration of the act, and those are recommendations 43, 44, 46, and 47.

MS LYNAS: I'll mention on recommendation 43 about the directory. It would amend the structure of the requirement to document personal information banks, which are inventories of personal information held by public bodies. Two local public bodies disagreed with the recommendation, saying that they felt it may create more work for public bodies. The Alberta Mental Health Board supported the recommendations. There was a comment also from Enmax about it. However, we believe that they seem to feel that there's a need to create a list of all the personal information in their custody, and that's not really the case. We feel that they may have misunderstood the recommendation.

I had no comments on the other three recommendations in this section.

THE CHAIR: Any questions? Does anybody have any motions or need to deliberate further on recommendations 43, 44, 46, or 47?

The following recommendations in our interim report received no comment in the public submissions, and I'm going to read them into the record. Unless anybody has of their own volition the need to readdress them, we'll just have an omnibus motion that they be retained as written. Those are recommendations 3, 8, 9, 15, 20, 29, 31, 34, 36, 38, 39, 42, 45, 50, 51, 52, 53, 56, 58, 60, 61, and 64. Do any of the members feel the need to revisit any of those recommendations? We don't need a motion, because we moved that certain ones be amended, and for the ones that don't get moved, the status quo retains.

MRS. JABLONSKI: I'd like to ask a question about number 43 just for personal clarification reasons, if that's possible, please.

THE CHAIR: Yes.

MRS. JABLONSKI: Under Administration of the Act, number 43, Directory, I see that the David Thompson health region is concerned because they don't have a sophisticated records management program. They question the utility of committing limited resources to developing and maintaining a directory of personal information banks. Could somebody just comment to me on why this is important, why we need this information from these bodies?

MS LYNAS: Well, the purpose of listing the personal information banks is so that the public, when they approach a public body, can have some idea of whether they may have files about them. It's meant to be a general description of a series of files. So there may be a file which is about complaints made on service offered by the hospital, and it may be ones that they file by name. An individual may want to know that they've got a complaint file, that they've got patient files that contain personal information, that they have

employee files and various other kinds of things. In the case of government departments it's not always really transparent what kind of files they may have for their activities. Their whole spread of activities may not be known. So it's meant to provide assistance to the public in determining what kinds of files are available. It's meant to be just a brief description to say: we have these kinds of files, this is the kind of information, and this is why we have them.

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

MR. ENNIS: In addition to what Ms Lynas has referenced here, one of the things in our experience that we've seen is that the existence of a statement in a directory, although not often referred to by applicants, does have the effect of limiting what can develop within a public body; that is, if employees in a public body want to generate a database, they'd better be prepared to put it in the directory and officially tell the public the database exists. So it does have the effect of sanctioning official databases and preventing people from developing unofficial databases.

THE CHAIR: Does that help, Mrs. Jablonski?

MRS. JABLONSKI: Yes. May I have a supplemental?

THE CHAIR: You certainly may.

MRS. JABLONSKI: Are regional health authorities required to have these databases now, or is it a choice that they have? If this goes through, will the choice be no longer there and they'll be forced to have these directories?

3:10

MS LYNAS: The requirement is already there in the act. What the amendment did was make the requirement the same for local public bodies and government public bodies, that used to be different. It will just make it the same for everybody. They've always had to compile it. Local public bodies had to have it available on-site, and for government it had to be published in the directory. The change is that now it'll be the same for everybody. Every public body creates it, they maintain it on-site, they keep it up to date, and it's available for the public if they want to ask to see it.

MRS. JABLONSKI: Thank you.

THE CHAIR: Anything further? Mr. MacDonald.

MR. MacDONALD: Yes, Mr. Chairman. If we could also go back to the independent review, recommendation 41. I have a question for the representative from the commissioner's office. If this recommendation, which I for one do not like, were to go forward, is that the end of the road as far as the ability to ask for an inquiry into a matter, or could one then go to a judicial review?

MR. ENNIS: In answer to the question, decisions taken by the commissioner in his role as commissioner are subject to judicial review. This would be that type of decision. So if the commissioner were to refuse to conduct an inquiry after considering all the relevant circumstances in a request for review and if the commissioner were to conclude that he did not want to have an inquiry or would refuse to conduct one, the person on the receiving end of that decision would have the ability to apply to the Court of Queen's Bench on judicial review.

MR. MacDONALD: Thank you very much.

THE CHAIR: Anything arising or anything further?

MRS. JABLONSKI: Just a note from that question. Court always takes time and money, and I'm just curious if there is an in-between stage. Once the commissioner rules that he won't conduct the inquiry, then the only other alternative for a person who feels that they haven't been judged fairly is to go to court. There is no appeal that is timely and wouldn't be so costly.

MR. ENNIS: That's true. In looking at the legal line, there is no right of appeal on a commissioner's decision in any respect now, but people have the ability to take the commissioner to judicial review to have his decision examined for its reasonableness or jurisdiction or whatever. I think the gist of your question is that right now the court process can be expensive and that's the only stop, and yes, that is true.

THE CHAIR: Anything further?

MRS. JABLONSKI: No. Thank you.

THE CHAIR: Anyone else? Mr. Mason, you look like you have something on your mind.

MR. MASON: Just trying to catch up, Mr. Chairman. Is there an amendment on the floor?

THE CHAIR: No.

MR. MASON: Okay. Has the committee considered Mr. Rempel's recommendation that if the commissioner does refuse to conduct an inquiry, he shall spell out the reasons for the refusal?

THE CHAIR: We've dealt with all of the recommendations, but for clarification's sake I'm allowing the members to ask any further questions that they might have.

MR. MASON: Okay. So is it the time to make an amendment now to number 41?

THE CHAIR: No. We've dealt with that. We're finished.

MS CARLSON: With regard to recommendation 41, if he wants to make an amendment now, why are you disallowing that?

THE CHAIR: Well, I don't know that I am disallowing it. I mean, we've dealt with it.

MR. MASON: We were just asking questions on the very matter; correct?

THE CHAIR: I thought we went through the entire list. Did we not?

MR. MASON: Well, if I may, Mr. Chairman, I would move that we amend number 41.

THE CHAIR: Just hold on. Hold on one second. Recommendation 41 deals with independent review. Did we not complete that and move on to the administration of the act? Has anybody been paying attention? We're dealing with the administration of the act, Mr. Mason.

MR. MASON: Okay.

THE CHAIR: Ms Carlson.

MS CARLSON: Yes. I want to go back and revisit something that I don't believe I actually voted on. Mrs. Jablonski wanted to reopen

the discussion on item 5, under Records and Information to which the Act Applies. After having some time to think about that this afternoon, I concur with her, and I'd like to have a vote today on that one.

THE CHAIR: Well, I believe that procedurally we've dealt with number 5, as we've also dealt with number 41. As soon as we get through this list – and I think we're through – we're going to go off the record and discuss what happens next in terms of whether or not we can combine what are the last two phases of this process into one meeting or if we're going to require two days. The chair takes the position that number 5 and number 41 have been dealt with, and there were no motions at the appropriate time.

MR. LUKASZUK: Mr. Chair, you know, I was rather quiet today, and you may be aware of the saying: I prefer to be quiet unless I can improve the silence. But now I will make a few comments. It's abundantly obvious that one member of this committee at a time wants to bring my recommendation 5 up for discussion. Every time it comes up, we somehow don't seem to be successful to put this issue on the table. However, I don't imagine that the members are going through the motion of bringing up recommendation 5 just for the sake of the exercise, so perhaps there is some merit in discussing recommendation 5. Member Jablonski brought a motion forward to amend or delete recommendation 5. Now we have Member Carlson asking to have a vote on this motion. I concurred with Madam Jablonski that perhaps it is a good idea to at least put this discussion on the table. How long are we going to be skirting that issue?

THE CHAIR: Well, we have an agenda, and we went through the recommendations sequentially. Now, I don't feel strongly about this, and momentarily I'm going to put it to a vote if we're going to address this at this point, but I will state that procedurally as chair it makes chairing a meeting exceedingly difficult when members don't make their motions on an item when that item is on the floor and then revisit it. I mean, theoretically we could be here forever because somebody might decide they want to take another look at number 3 and then somebody else might have said that they want to take another look at number 12. So that's why we deal with this in some sort of procedural sense that's meaningful, where the numbers come up and if nobody says anything, then we go to the next number.

That being said, who wishes to readdress number 5 at this time? It's carried.

Who wishes to readdress number 41 at this time? I'm sorry. Was that not the number that you wanted to take another look at, Mr. Mason?

MR. MASON: Yeah.

THE CHAIR: I'm prepared to stay here all day for procedural fairness.

MR. MASON: Mr. Chairman, I think that I may have some responsibility for this mess. I was trying to, you know, deal with the thing more broadly. I didn't realize that it would take so much time and so on. I'm prepared to have a look at number 41 when it comes back, but if people feel that they want to deal with number 5 now . . .

THE CHAIR: Well, it's on the table. Who wants to deal with number 41 today? Nobody.

Does anybody else have anything that they want to revisit? Mr. MacDonald, do you want to take another look at fees?

MR. MacDONALD: No. I know whenever I'm sowing seed on

rocky ground, Mr. Chairman. After we deal with number 5, I have some questions regarding the new issues as outlined on page 28.

Thank you.

THE CHAIR: Okay. Mrs. Jablonski, any other items we should revisit?

MRS. JABLONSKI: No, Mr. Chair, but I'd like to tell you why I think it's a good idea to address number 5 at this point.

THE CHAIR: It's irrelevant. We're going to readdress it. Thank you.

Okay. We are back on number 5. Recommendation 5 currently reads: "That private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection." Are there any questions to the technical team regarding any of the submissions that were made with respect to recommendation 5? Any general discussion? Mr. Lukaszuk.

3:20

MR. LUKASZUK: Thank you. It seems to be a contentious topic; nonetheless famous or infamous. I made a number of comments relevant to this issue during the second-to-last meeting, when this issue was actually the subject of debate. But as you are aware, Mr. Chair, since that time I had the ability, with you and through you, to meet with the president and CEO of Imperial Parking Canada Corporation, Mr. Charles Huntzinger, who met with yourself and with Mr. Tom Thackeray in a brief meeting where they were afforded by you the opportunity to state their case, present us with a thorough package outlining the parking company's case, and subsequently, I understand, provide you with written correspondence.

Having reviewed the materials that Imperial Parking has provided us with and having reviewed some additional materials that were provided to me today by Mr. Tom Thackeray, that being a signed contract between Imperial Parking and Her Majesty the Queen in Right of the Province of Alberta, I have some additional comments that I want to make that perhaps will contribute to the ability of members of this committee to make up their minds on the issue of recommendation 5. I am making a reference right now, Mr. Chairman, to a contract that was signed on the 1st day of July, 2002, between Her Majesty the Queen in Right of the Province of Alberta and Imperial Parking Canada Corporation, in the contract referred to as the contractor. If I can take you to section 6(c) of this particular contract, the agreement between the parking company and the province is that "information obtained from the Minister shall not be used by the Contractor for the purpose of establishing a database."

This resonates, actually, quite well during this meeting because I know that the Alberta Law Society has brought forward a concern that there is a potential that some bodies may be establishing duplicate databases, and I know that just a few minutes ago we were discussing that issue as well with health care facilities. We know that according to this contract the parking companies have agreed not to set up duplicate databases as one of the contractual agreements for us, being the government, to release that information to them.

Well, during the meeting with the CEO of Imperial Parking – I imagine, Mr. Chairman, you heard exactly what I have heard, and I think Mr. Thackeray would corroborate on the record – the CEO indicated that contrary to what they have agreed, they actually store the information for up to six years in their computers for one main reason, which is the stated reason by the CEO: tracking repeat offenders. The company apparently has a policy of only towing offenders who don't pay for parking more than once, so in order to track repeat offenders, they have to retain that information on their

private database, which, I would suggest, may be in contravention of this agreement.

Second of all, I imagine they would also be keeping that information for as long as possible so they don't have to purchase that information twice in case that person parks twice on their parking lot and does not pay; however, that is my speculation. I do know for a fact, by way of obtaining that information from the CEO, that they do keep information for up to six years for tracking reoffenders.

Now, if this company purchases in excess of \$512,000 worth of information at a cost of \$11 per unit over six years, that's some extensive database. As a matter of fact, their database could be as accurate as that held by the government of Alberta, so I will leave it to the members to conclude whether they are in contravention of the very contract which allows them to obtain the information to begin with and how that plays out with the issue of protection of privacy.

A further comment that I can make now but I couldn't have made prior to this meeting, when this issue was on the table, is that it is not my intent or position to comment on business practices of any company in this province. That's not our job. That's not what this committee has been struck to do. Our job is to make sure that the information that is being released under any act of this province, particularly FOIP, is used properly and in a manner that is spelled out by appropriate legislation. However, recent events in Calgary which were quite widely publicized in the local media over there lead me to believe that there were some alleged cases of misuse of the information that was released to the parking companies, and as a result of this, I understand that within the last three days a company by the name of Gateway Collections has been suspended from its ability to collect unpaid parking fees for Imperial Parking because of their alleged inappropriate use of this information, which the company purchases. So that's another piece of information that I think the members should have available to them when in position to vote.

My concern also lies in my questioning whether parking companies are indeed proper custodians of such important information. I think all members of this committee would agree that the information that Alberta registries store is an important piece of information which should be protected with utmost care and attention. As I'm sure you will corroborate, Mr. Chair – and I'm sure Mr. Thackeray would do that as well – the CEO referred to that information as not very important in the meeting that we had with him, and even in the package that he provided to all members of this committee, he argues that the information that they purchase from the Alberta government is not really important and sensitive and is not as important as health records and that it is readily available information, probably through telephone books. I would disagree with that, because many Albertans have the choice of having that information removed from telephone books but don't have the equal ability of having it removed from Alberta registries unless they choose not to drive a vehicle. So to argue that this information is not important is not appropriate.

Lastly, I want to mention that it became abundantly obvious to me through the dozens and dozens of phone calls, e-mails, and letters I have received that Albertans don't believe that this is the intended use of the information that they have in good faith released to the government of Alberta for the purposes of registering their vehicle.

The alternatives that this particular parking company provided to us that they would have to use in order to carry on business, some of which may not be acceptable to Albertans, I will leave to the parking companies and case law, which exists on files. Whether they are allowed to tow or not or use any other methods and to discuss their potential recourse to our recommendations: that's not something that we are charged here with. Nonetheless, I strongly believe that no matter what the rewording of recommendation 4 may be, there are

ample reasons to indeed set out private parking companies as a separate entity, and they need not be on a level playing field with other potential purchasers of this information as they have exhibited their inability to be proper and good custodians of that information.

I thank you.

THE CHAIR: Thank you.

Ms Carlson.

MS CARLSON: Thank you. As a FOIP committee member I did not get an invitation to meet with Imperial Parking like yourself and Mr. Lukaszuk and Mr. Thackeray did, and I'm wondering if as the chair you could explain how that happened.

THE CHAIR: Absolutely. The parking companies contacted me and requested a meeting. I accepted their invitation to a meeting and invited them to lobby any other members of the committee that they chose to lobby.

MS CARLSON: So in making this decision today, some people have more information than others as committee members.

THE CHAIR: I can't speculate as to why Imperial Parking chose to lobby certain members and not other members. I can tell you that I received an invitation. Well, I guess the chronology of this was that they wanted to appear before the committee, and the chair's position on that request was twofold: number one, I would put it on the agenda for today and let the committee decide; two, it was my position that they ought not be able to present to the committee given that they chose not to present in the first instance. When they received that advice, they asked for a private meeting with myself, which I accepted. I'm not sure if I invited Mr. Lukaszuk or if they invited Mr. Lukaszuk and the meetings were arranged for the same time. I know that I invited Mr. Thackeray. Did they contact you, Mr. Lukaszuk, or did I contact you?

3:30

MR. LUKASZUK: I believe I may have been CCed on a correspondence advising of the meeting.

THE CHAIR: I believe that's the case. I believe that Mr. Lukaszuk and myself were concurrently invited to a meeting. It was arranged for the same time and place. I invited Mr. Thackeray.

MS CARLSON: Mr. Chairman, it seems to me that when you take a look at how all-party committees are handled, particularly if you were inviting other parties, you should have extended the invitation to other committee members.

THE CHAIR: I did extend it to you today, and you voted not to hear them.

MS CARLSON: No, no. That's quite different than a previously arranged meeting where you chose who was invited and who wasn't.

THE CHAIR: The only person that I invited was Mr. Thackeray.

MS CARLSON: Which then should also have been extended to include other committee members. That is a proper process and that is open and transparent, not two sets of meetings that are happening.

THE CHAIR: You can take that up with whatever media source you find advisable.

MR. MASON: Mr. Chairman, not to belabour the point, but I believe

you argued that the committee as a whole shouldn't hear Imperial Parking when they requested to be heard, so I am little bit surprised to hear that you've chosen to meet with them on a separate thing. I just want to indicate that that's a concern for me as well.

THE CHAIR: Well, I meet with any interested party on almost any given topic, and the fact that they chose to meet with me and not other members is not my determination.

MS CARLSON: But it is clearly your determination whether or not you extend invitations to other people as the chair of the committee, and that was out of order.

THE CHAIR: Well, I'm sure you will raise that when the House reconvenes, Ms Carlson.

I didn't invite any members to the meeting. The only person that I invited was Mr. Thackeray.

MR. LUKASZUK: Honestly, without trying to sound sarcastic, if it is of any consolation to the members of the opposition and government who were not invited to the meeting, you must trust me on the fact that the presentation in itself has significantly strengthened my belief in the merit of my motion and weakened the private parking company stand, probably not only in my eyes but perhaps even for those who also attended the meeting. That may not be a consolation.

THE CHAIR: Ms Carlson, since I've been persuaded to reopen everything that's already been decided, if you wish to revisit the motion as to whether or not we as a committee hear from Imperial Parking, I am granting that liberty.

MS CARLSON: No. Thank you.

THE CHAIR: You'd rather just make hay about it.

MS CARLSON: Now, come on. I would expect, given your legal background and the respect that one should show the chair of a committee, that you would conduct yourself with a little more decorum, Mr. Chair.

THE CHAIR: Thank you. I take it you are not taking my invitation to readdress the issue of whether or not the committee hears from Imperial Parking.

MS CARLSON: No. Thank you.

MRS. JABLONSKI: Coming back to the issue of recommendation 5, I am probably a person in Red Deer that would be awarded, if there was an award, for having the most paid-up parking tickets in the city. They are usually city parking tickets because I park right in front of my office when I can't find another parking space, and parking is a big issue in Red Deer, as I'm sure it is in other jurisdictions. However, I receive the ticket, and on my ticket I have the option of paying within seven days. If I pay within seven days, I get a reduction of \$10. I go into the city and I pay my ticket. I talk with the people that are there, and it's a very pleasant experience, so really I don't mind paying my tickets. The city loves me.

However, with these parking companies, I find that the way they treat people is intolerable and unacceptable. I think that may be part of the reason why we're extremely concerned about the way they conduct themselves, especially with the collection agencies that threaten and harass and torture people when they haven't paid their \$35 ticket. So I certainly understand the intent of this recommendation, and I know that my constituents do not want their

personal information released to anyone without their consent, especially to a company that treats them in such a way. However, if you were to give them a choice of receiving a parking ticket that must be paid within a certain amount of time or having their car towed away, I would guess that they would choose the ticket. So from this, I would conclude that when given the choice, they would prefer to pay a ticket rather than having their car towed and that we need to review this further under the amendment that was made with recommendation 4.

THE CHAIR: Mr. Lukaszuk and then Mr. Mason.

MR. LUKASZUK: Thank you. In response to Mme Jablonski's comments I appreciate her sentiments and I agree that many Albertans would prefer to pay a ticket than to have their vehicle towed. I would also suggest that by far the majority of Albertans are well intended, and they do not maliciously not pay for parking. Very often it's a case where one shows up at a parking lot a couple of minutes late. The meter or ticket has expired, and one ends up with a parking ticket and then because of the fact that the amount of the fine is relatively trivial forgets to pay the ticket or even doesn't find the ticket for one reason or another and ends up, consequently, having a collection agency.

Now, the issue of towing is an issue that I cannot speak on with authority. I know that the private company in question has provided some case law, extremely selective case law, indicating that they do have the legal authority to tow vehicles, but I'm sure you do know, Mr. Chairman, that significant case law is on the books indicating otherwise. The parking companies' ability to tow vehicles is something that should be decided by courts and on many occasions has been, some in favour of parking companies and many against.

THE CHAIR: Mr. Mason.

MR. MASON: Well, thank you, Mr. Chairman. I guess this is maybe partly beside the point but deals with some of the members' concerns about the practice of parking companies. When I was first elected a city councillor in Edmonton, I raised the question of this and had our law branch review it, and in fact I think there's a very, very open question whether or not the implied contract that the company relies upon is legally enforceable. Most people, however, don't know that, and when they receive the ticket, they either believe that it's a bona fide ticket issued by the city and pay it or when they're subject to collection procedures, then they pay it at that point. So I think the company recovers probably some very significant revenues that way.

I think people are legitimately concerned about the use of their information. When you register your vehicle and when you have a driver's licence, you provide information to the government or its agents for very specific purposes to license your vehicle. I think that most people don't realize how readily available that information is made. You know, I'm very sympathetic to Mr. Lukaszuk's motion or the thing that's previously been passed. I hope that we can, when recommendation 4 comes back with wording from the administration, look at broadening the principle along the lines that Mr. Lukaszuk has identified for this particular sector. So, in that sense, I'm not prepared at this time to vote to change recommendation 5.

THE CHAIR: Thank you.

Any further deliberation or debate? There is no motion on the floor. Are there any further comments?

3:40

MR. LUKASZUK: Mr. Chair, the last thing I really want to do is

deliberate on this issue one more time in the next meeting. I think enough has been said. The *Hansard* probably is filled with comments on the parking motion. Therefore, I will put a motion on the table, and my motion is that irrelevant of the wording, which may be amending motion 4, motion 5 remain as is and be retained in the final copy of the report.

THE CHAIR: I have some concerns with the wording of that motion. Does anyone else have any questions? It has nothing to do with the merits. I'd hate to tie this committee's hands.

MR. ENNIS: Just on the wording. Was that regardless of the content of motion 4?

MR. LUKASZUK: Independent of motion 4 motion 5 remain as currently in *Hansard* and be staid for the purposes of the final report.

THE CHAIR: Well, first of all, hear me out on this. That motion is out of order because currently we're entertaining motions with respect to recommendation 5. Now, if there are no recommendations or motions with respect to recommendation 5, then the chair will entertain your motion. Was that clear?

MR. LUKASZUK: Say it again.

THE CHAIR: Currently we're deliberating as to whether or not we should put forward on the floor any amendments to recommendation 5. Your motion was not an amendment to recommendation 5, so it is out of order only inasmuch as its untimeliness. So we'll deal with what we're dealing with, and if there are no motions with respect to recommendation 5, then we'll come back to your motion.

MR. LUKASZUK: I agree with you, Mr. Chairman.

THE CHAIR: So are there any motions with respect to recommendation 5?

MR. MASON: Other than that one?

THE CHAIR: Well, that's not a recommendation to 5. That's a recommendation to carve 5 in stone, which we will deal with if there are no further recommendations.

Mrs. Jablonski, I think I saw your hand.

MRS. JABLONSKI: I'm still a little bit confused. Mr. Lukaszuk didn't make a motion?

THE CHAIR: He made a motion that I ruled out of order inasmuch as its untimeliness, but we will come back to it.

MRS. JABLONSKI: Okay. Thank you.

THE CHAIR: Are there any motions with respect to recommendation 5 on the interim report, which says "that private parking lot companies not be allowed access to the motor vehicle registry database for the purpose of debt collection"? Is everybody satisfied with that wording? Going once. Going twice. Gone.

Mr. Lukaszuk has – and I didn't get the wording – a motion that we not revisit this at our next meeting. Any questions to him on his motion?

MRS. JABLONSKI: I would like to ask Mr. Lukaszuk if he doesn't find that this is discriminatory and takes away a level playing field for a private company rather than making it something that would involve all parking lot companies, not just private ones.

MR. LUKASZUK: I would have no objections whatsoever to a level playing field if you, Mme Jablonski, could point out to me another company that Albertans have as much objection to having their information released to as a private parking company. I would also challenge you to provide me with any other bulk purchaser of information from Alberta Registries who has been identified as in the practice of perhaps misusing or in breach of a contract on as frequent a basis as private parking companies. I believe that just by virtue of their use of the information, by virtue of the fact that I suggest to you that they're in breach of the contractual agreement with the province, and by virtue of the fact that Albertans simply are appalled by this practice that we're selling this information to that industry, that sets them out into a different category, and we need not to bulk them with any other companies that may wish to access that information.

MRS. JABLONSKI: I don't have that information available to me right at this time. I know that people are appalled by the actions of this company. I have no disagreement with that whatsoever. However, I still think that the alternative to this is worse, so we have to choose the lesser of two evils in a sense.

Just for an example, I'm rushing from a meeting that I was at – perhaps it was a day care meeting – and I have young children with me and I was over by 10 or 15 minutes in my parking because it was totally unexpected that it would go that long. I'm dragging two kids with me. I get to my car, and it's got this boot on it, and I can't move my car. Ask me if I would prefer a ticket or a boot or towing, and I would tell you that I would prefer the ticket.

MR. LUKASZUK: As I indicated, we're not in position here to discuss business practices of any company, what they would or would not do as a result of this motion. I suggest to you that they would not take the alternatives that you suggest they would because of the case law that currently exists on the books. I am not prepared right now to give you hundreds of cases, but right of the top of my mind, in Alberta Attorney General versus Simpson, 1973, AJ 78, the Alberta district court clearly ruled that towing is not an option available for a private landlord. Tag and Tow versus Parker, another Alberta Provincial Court civil case from Calgary in 1996, cleared the fact that towing is not an option for those companies, and I'm sure there is plenty of other case law on the books that supports that towing perhaps ought not to be the option taken by parking companies. I have given you a much easier alternative that those companies could take and still carry on in the business that they do carry on and provide the service that they do provide. It's simply by manning their parking lots. Will that increase the parking cost? Perhaps by a few cents per parker per hour, perhaps not.

THE CHAIR: Anything arising out of that exchange, which has really very little to do with the motion that's on the floor?

The motion on the floor – and the chair will comment on it momentarily – is that

irrespective of any recommendation with respect to number 4 and any subsequent wording recommendation 5 not be revisited.

I find it an odd motion. I will put it to a vote, but it is a meaningless motion because this committee has the ability to revisit any of its motions. So we can vote to cast something in stone, and next week if we decide to revisit casting in stone, it becomes uncast. Nonetheless, the motion is on the floor. All those in favour, please raise your hand. Opposed? It's carried.

Okay. I believe that concludes the business for the day. Have we dealt with all the recommendations, Mr. Thackeray?

Mr. MacDonald, you had something else you wanted to raise?

MR. MacDONALD: Yes, indeed, Mr. Chairman. New issues.

THE CHAIR: Sorry?

MR. MacDONALD: The new issues that we have before us on page 28 of our guide in regard to the recommendation from the Health Sciences Association of Alberta.

THE CHAIR: Yes. Go ahead. The floor is yours, Mr. MacDonald.

MR. MacDONALD: Okay. Thank you, Mr. Chairman. Of course, the recent decision by the Alberta Labour Relations Board requiring Economic Development Edmonton to provide home contact information of employees to the United Food & Commercial Workers' Union has been noted publicly in the newspapers. I see here where the Health Sciences Association requests that this committee re-examine the act, particularly section 17(2). The association believes that bargaining agents should be entitled to the name, the home address, and the telephone number in addition to the list that is there in section 17(2)(e).

Now, as I understand it here, the Health Sciences Association is contemplating in their next collective agreement that there be a clause added stating the home address, employment status, increment level, and seniority date of the employees. I think it would certainly allow that organization to represent their members better and perhaps reduce administrative costs, and I would urge the committee at this time, Mr. Chairman . . . [interjections]

3:50

THE CHAIR: Could we have some order here, please. In courtesy to Mr. MacDonald, I think he deserves the courtesy of this committee.

MR. MacDONALD: Thank you, Mr. Chairman.

In light of that, I think that we should have a discussion and see if there's any direction from the members as to whether or not we should have an amendment to consider this request.

Thank you.

THE CHAIR: Are there any questions from anybody who was able to hear Mr. MacDonald?

MR. MASON: Well, I certainly admire Mr. MacDonald's willingness to face a lost cause. I happen to agree entirely with him, and in fact I think it's fundamental information that unions must have in order to be able to assist working people in the province. From my perspective this is an important concern that has been raised by the Health Sciences Association, and I would certainly be prepared to support this direction.

THE CHAIR: Thank you.

Any further comment regarding Mr. MacDonald's comments? There is no motion as of yet. Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. I wish to put on the record my support for what I expect to be a motion from Mr. MacDonald.

THE CHAIR: Did I see your hand, Mrs. Jablonski?

MRS. JABLONSKI: Are you ready to get to the motion?

THE CHAIR: Before you do that, Mr. Ennis has a comment.

MR. ENNIS: Mr. Chairman, this might be helpful in the interest of time for the committee. I did have the occasion a couple of days ago to give Ms Ballermann a call – she's the president of the

organization who made the submission – and indicate to her that her interpretation or the interpretation that she wishes to see, regardless of which section she wishes amended, is the interpretation that our office has had for years. That employers who are public bodies – and after all, those are the only employers that we're looking at under the FOIP Act – are able to provide contact information to official bargaining agents without the consent of the individuals involved has been the position of our office from the earliest days.

The thread on that is basically that collective agreements in Alberta are arrived at under enactments of Alberta, and logically bargaining agents have a responsibility for contacting individuals, even after those individuals may no longer be employees of the organization, for a short period after they are no longer employees. Logically, then, employers should have the ability to provide information to the bargaining agent. That is not to say, though, that the FOIP Act requires employers to do that. It simply facilitates that. There is no obstacle in the FOIP Act to the provision of information by an employer who is a public body to a bargaining agent. Now, that information would be limited to simple contact information, which is usually home address and home telephone number, and the other things that the bargaining agent needs to properly represent the employee in some kind of a dispute with the employer.

So from our perspective this is kind of a nonproblem. I did say to Ms Ballermann that the commissioner's office didn't see a need for this amendment and certainly would not want to see section 17, which is a fundamental section, one of the sections at the heart of the act, rocked over this problem since it's not considered to be a problem in any cases that we've seen.

The case that Mr. MacDonald referenced in the beginning of his remarks is a case that's gone through the Labour Relations Board to Court of Queen's Bench, and I believe it's still there or going to Court of Appeal. Court of Queen's Bench has pronounced, and it may be going to Court of Appeal. That issue is being fought out under the Labour Relations Code, not on FOIP considerations.

4:00

THE CHAIR: Thank you, Mr. Ennis.

Does that change your view, Mr. MacDonald?

MR. MacDONALD: No. But in light of the hour, Mr. Chairman, is it possible to table this issue and deal with it at our next meeting, which I believe is going to come up on the 30th or the 31st?

THE CHAIR: I am of the view that we are within a very short distance of completing our analysis of the interim report, and I would really like to get through it today. I suspect that this may be the last item.

MR. MacDONALD: Well, then, fine. I would like now, Mr. Chairman, to present a motion, please, to the committee.

THE CHAIR: What recommendation are you on, Mr. MacDonald?

MR. MacDONALD: Submission 30 on page 28, the new issues.

THE CHAIR: Yes. Go ahead.

MR. MacDONALD: It would read that in addition to the list in section 17(2)(e) we would add that bargaining agents should be entitled to the name, home address, and telephone numbers of those respective public bodies.

THE CHAIR: Can you say that again, Mr. MacDonald? I got most of it, but I missed part of it. Can you repeat that, please?

MR. MacDONALD: That the bargaining agent should be entitled to the name, home address, and telephone numbers of all the employees.

THE CHAIR: Okay. Any question to Mr. MacDonald on the wording of his motion before we debate the merits?

Okay. On the merits.

MRS. JABLONSKI: I just need a clarification. Does this mean that if I were in some kind of contract dispute with my employer, my name and address and telephone number can be given out to somebody who is involved in that? The only reason I ask that to be clarified is because then I'm afraid I could be harassed. Do I misunderstand this?

MR. MacDONALD: Well, your name, address, and home telephone number – for instance, let's say you were a radiologist working for the Health Sciences Association and you were part of a collective agreement. Their bargaining agent would have access to be able to contact you to represent your interests. They would be able to get your home phone number and home address, yes, from the public body, your employer, whether it be the Cross Cancer Institute or whatever location you were at.

MS CARLSON: If you're already a union member.

THE CHAIR: Perhaps you could make your comments through the chair, Ms Carlson.

MR. LUKASZUK: Mr. MacDonald, if you are already a union member, why would the union not have your information to begin with? You're paying dues. Wouldn't they have that information on you as an employee?

THE CHAIR: The chair recognizes Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. People entering into new employment become automatically members of the union, and that's the system. Whether people personally agree with that or not, that's the law in this province and every other province in the country. So you become a member of the union. You may not have been one of the members at the time the union was organized, but you're hired later on. The union then requires that information to know who its members are, and the only place to get it is from the employer.

MS DeLONG: You mean people don't have a choice? They have to join the union?

MR. MASON: Yeah.

MRS. JABLONSKI: This is of great concern to me. It would seem to me that if I were paying \$40 or \$50 a month for union fees, the union would at least have my name and address. If they don't have my name and address, they should make it their business to have my name and address as a member of the union but not at the time of bargaining, because then I see that as harassment.

MS CARLSON: So, for clarification, when you become a new employee of a union shop, it isn't like you're giving union information – that you then send your personal data to the union. That doesn't happen. All that happens is that you become a part of the database of the shop, of the employer, and the employer collects the union dues and passes them on. If the employer chooses not to share that new employee's name, address, and phone number, the union never gets it. They get the fees but not the data.

MR. MASON: They can't check on the fees either.

MS CARLSON: Yeah. They can't check on the fees.

MR. LUKASZUK: That's news to me. I was not aware of the fact that a union would not have a database consisting of names and addresses of its members. However, wouldn't that then be incumbent upon the union and the employee? If you become a member of any union or a club or anything, it's incumbent upon you as an employee to make that information available to the union so that they can represent your interest. Why should it be the onus of the employer to provide that information to the union and continuously adjust it? Wouldn't it be in the best interest of the employee to provide that to his or her union?

THE CHAIR: The motion was put forward by Mr. MacDonald, but it appears that the question is being addressed to either Mr. Mason or to Ms Carlson. Does anybody want to answer that? Nobody is obliged to. Mr. Ennis wants to.

MR. ENNIS: Mr. Chairman, just one point of clarification, and I will defer to members here who have considerable experience with this subject. I have very little. The impact of the interpretation that we have would also go to employees who choose not to be members of unions but are still subject to the right to be represented by the union. There will be people who for reasons of personal conscience or whatever choose not to become members of a union. Nevertheless, there is a duty to represent that falls upon the union. To execute that duty to represent, the union has to know how to contact those individuals.

THE CHAIR: Okay. Anything further? If not, we'll go to Mr. MacDonald to close. Anything further, Mr. MacDonald?

MR. MacDONALD: Yes, Mr. Chairman. In regard to the Health Sciences Association I am not that familiar with their collective agreements, but in other collective agreements in the health care sector dues are routinely collected and then passed on to the appropriate union. So in my view it wouldn't necessarily be that at all times would the union or the organization, in this case an association, have the up-to-date addresses of each member. In light of the Labour Relations Board's ruling with EDE – and as I understand, they are under the auspices of FOIP – I would urge all members of this committee to support this motion.

Thank you.

THE CHAIR: Thank you. Anything further?

MRS. JABLONSKI: Out of the interests of protection of privacy I would urge people not to support this motion.

THE CHAIR: Anything further? Okay. The motion as put forward by Member MacDonald is that recommendation 30 be amended to add the following: that

in addition to the list prescribed in 17(2) the bargaining agents be entitled to the names, home addresses, and telephone numbers of all employees in the bargaining unit.

Correct?

MR. THACKERAY: Just as a point of clarification, Mr. Chairman, you made reference to recommendation 30, and this is a new recommendation.

THE CHAIR: Thank you. I guess it falls within recommendation 30 but is a new issue. Thank you.

MR. THACKERAY: No, no. The number 30 refers to the number of the submission in the second round.

THE CHAIR: Thank you. The chair stands corrected. It's not recommendation 30; it's number 30 under new issues. Any questions on that? Everybody understands that; right?

Okay. All in favour of Mr. MacDonald's motion, raise your hand. Opposed? It's a tie. The chair casts its vote against. Mr. MacDonald, the motion is defeated.

Anything further? Thank you.

Now, Mr. Thackeray, we are basically done the business of the committee. There's recommendation 4, that requires some fine-tuning. Is it conceivable that we can do this in one day? We're going to have to have a break at some point, because at some point we have to actually approve the final document in physical form. I take it that it's practically impracticable for this to be done in one day; is it not?

MR. THACKERAY: Not necessarily, Mr. Chairman.

THE CHAIR: You can do almost everything now except for one little matter.

MR. THACKERAY: Yeah. I think we would be in a position to deliver to the secretary by 9 o'clock on Tuesday morning a draft final report for the committee's review. The only thing that would be up for discussion would be recommendation 4. The narrative around it probably wouldn't change much. It's the substance of the recommendation that we are to go back to and see if we can work on. So if we were able to have a draft final report delivered to members first thing Tuesday morning, nine-ish, would it be reasonable to expect that the members would be able to peruse the report and discuss it on Thursday, the 31st?

THE CHAIR: Well, the only thing that will be new to the members is the narrative.

MR. THACKERAY: That's correct.

THE CHAIR: The members should all be aware of the recommendations that were not altered today and those that were altered. They will know what they are. So the only thing that will

really require any in-depth scrutiny is the narrative, which is of less importance in my view than the actual recommendations. So from the chair's perspective that's doable, but I'm certainly interested in hearing how the other members feel.

MS CARLSON: It works for me.

MR. THACKERAY: Mr. Chairman, the total first draft of the final report is about 54 pages. That includes appendices with lists of who made submissions, et cetera.

THE CHAIR: Okay. So we should be able to finalize this committee next Thursday.

MS DeLONG: Will we still be able to accomplish what we have to in the next meeting if we also discuss at the next meeting access to records, the Canadian Association of Petroleum Producers regarding item 22?

THE CHAIR: Have we not covered that?

MS DeLONG: No. We were just on the Health Sciences one. We're over on the next page here.

THE CHAIR: Is this a new item?

MS DeLONG: Yes, one that we didn't cover. There's also the other one there, access to records, that we didn't cover.

THE CHAIR: Did you wish to discuss this matter?

MS DeLONG: Yeah, but can we do it next time and still get everything done?

THE CHAIR: Can we go off for two minutes, please? Thanks.

[The committee met off the record from 4:08 p.m. to 4:11 p.m.]

THE CHAIR: Could we have order here, please. The last agenda item is discussion for deliberation regarding the final report. We've had an in camera discussion regarding this, and it's agreed that the committee will reconvene at 10 o'clock next Thursday, October 31, in this room and deal with any remaining issues, including those that were dealt with in sort of expedient fashion and those which may have been missed. If any members have items or recommendations that they want revisited, can they please contact my office not later than noon on Tuesday, October 29, and those matters will be put on the agenda. Concurrent to that, I understand that a sort of final report will be put together in draft form at the same time and distributed to the members, and hopefully with very, very minor modification we'll be able to approve that report at the next meeting. Does the chair properly understand the agreement that was reached in camera?

SOME HON. MEMBERS: Agreed.

THE CHAIR: Okay. Could I have a motion to adjourn until 10 a.m. October 31? Mr. Mason. Anybody opposed? It's carried. I'll see you next Thursday.

[The committee adjourned at 4:13 p.m.]