

Title: Friday, April 20, 2007 PIPA Review Committee

Date: 07/04/20

Time: 10:48 a.m.

[Mrs. Ady in the chair]

The Chair: Good morning. I'd like to say, before we begin – let's just get it on the record – go, Flames, go. I can see that there are some Edmonton Oilers fans in the room. Yes, there's hope in the city of Calgary once again.

Anyway, thank you all very much for attending today. I recognize what the sacrifice of Friday is after a long week in the Legislature, and I do appreciate all members for their diligence in showing up today and coming to help us as we continue the PIPA review. We've got a few housekeeping items that I would like to handle.

Before I start that, though, I'd like to thank my hon. co-chair for filling in so admirably for me at the last meeting. I just want you to know that I was stricken, I suffered, but I'm better. I do appreciate his being willing to fill in at the last minute.

Since we last met, also, obviously, we've had some major changes on the committee, so I'd like to personally welcome new members. I'm sure that George and you guys worked on that last time, so we won't review that. But, again, welcome to the new members.

First of all, I'd like to call the meeting to order. Can we start by introducing ourselves?

[The following committee members introduced themselves: Mrs. Ady, Ms Blakeman, Mr. Ducharme, Mr. Lund, Mr. MacDonald, Mr. Martin, Mr. McFarland, Mr. VanderBurg, and Mr. Webber]

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

[The following departmental support staff introduced themselves: Ms Lynas, Ms Lynn-George, and Ms Swanek]

[The following staff of the office of the Information and Privacy Commissioner introduced herself: Ms Denham]

The Chair: Thank you very much.

Now, the committee should have their meeting agenda with them as well as an oral presentations list and copies of the submissions made by the groups that we'll be hearing from today. We just have a few, as I said, housekeeping items to look at.

First of all, could we have a member move to adopt the agenda for today's meeting? Moved by Len Webber that the agenda for the April 20, 2007, meeting of the Select Special Personal Information Protection Act Review Committee be adopted as circulated. No seconds are required. All in favour? Any objections? That's carried. Thank you.

At our meeting last week the committee approved the list of stakeholders they wished to hear from. Six have been scheduled for today's meeting. Two have declined the committee's invitation for various reasons, and four have asked if they could appear during evening sessions. The committee was also discussing May 1 and 2 as possible evening meeting dates, and I'd like to get the committee's feedback on those dates now.

It should be noted that the remaining four groups could be accommodated in one evening sitting, approximately two hours. From my perspective I find that I can be available May 1 and not May 2, so I was hoping that the committee would feel warm towards the May 1 date. Anyone else had a chance to check their calendars to see if that would work for them?

Mr. VanderBurg: I'm not available then.

The Chair: You're not? Anyone else?

Mr. MacDonald: I'm not available.

Mr. Ducharme: I'm not available.

The Chair: How many are available on May 2? There are some that are still not available on May 2 as well. Maybe, then, we're going to have to come up with an alternate date. I'll ask Mrs. Sawchuk if she can come with an alternate suggestion that might be a little better for all of us.

Mr. VanderBurg: May 1 is a Tuesday?

The Chair: Yeah, it's a Tuesday.

Mr. Lund: There's a committee that day.

The Chair: Yes. I understood that.

Ms Blakeman: Which committee? Because there are no night sittings, the Tuesdays and Wednesdays are supposed to be open for committee meetings like this.

Mr. VanderBurg: Yeah, but we all have other meetings.

The Chair: Yeah. They're just having some conflict of committees. There are so many now, Laurie.

Okay. Any other suggestions?

Mrs. Sawchuk: The following week maybe?

The Chair: Could we look at the following week, the 8th or the 9th?

Mr. VanderBurg: How about the 30th?

The Chair: The 30th? Next week's 30th? Okay.

Ms Blakeman: Well, the one day we weren't to be meeting in the week was the Monday because that's cabinet policy, I understand, on your side, and we're already committed to meetings on our side.

The Chair: Okay. So Mondays are out.

Mr. VanderBurg: You want us to look at May 8, did you say?

The Chair: May 8 or 9. Can we look at those dates?

Ms Blakeman: Not the 8th.

The Chair: Not the 8th. How about May 9?

Ms Blakeman: Well, we might be in.

The Chair: Wednesday, May 9.

Ms Blakeman: I'm in.

The Chair: How many are dropping out on the May 9 date? Oh, excuse me. That's my AGM. I really think I probably should make it. So can we go to the 15th or the 16th?

Ms Blakeman: We're sitting evenings then.

The Chair: We're into evening sittings. Correct.

Ms Blakeman: The following week is constituency week, and the week following that is again night sittings. Now you're into June.

The Chair: So now we are having some difficult times.

An Hon. Member: December 23?

The Chair: Okay. December 23. Always a good suggestion. Yes, we're going to give up Christmas now.

An Hon. Member: Bring a turkey.

The Chair: Yeah, we could have a turkey dinner. Okay.

Mrs. Sawchuk: Thursday night?

The Chair: Is Thursday night open to anyone? I know that we are often heading back towards home that night, but we really only have just a few groups left. If we could wrap up the oral presentations, it would be great.

10:55

Ms Blakeman: That's a burden for the out-of-town folks.

The Chair: That's why I'm looking at the out-of-town folks right now. Would anybody be willing to look at the Thursday night?

Ms Blakeman: Which Thursday are we talking about here?

The Chair: The 3rd.

Mr. Martin: I'll be in Regina.

The Chair: You'll be in Regina?

Mr. VanderBurg: So how many people do we need here?

The Chair: We have four more left.

Mr. VanderBurg: No, no. How many people do we need sitting around here to hear? Maybe we should look at it that way.

The Chair: A split look? Okay. Let me go back. How many of the committee could make it on May 1? I can make it.

Mr. VanderBurg: That's a Tuesday.

An Hon. Member: What time?

The Chair: From 6:15 to 8:15. Could you? There are three. Any others that could?

Ms Blakeman: That's coming straight out of session. That's 15 minutes to get over here.

The Chair: Okay. I recognize that. We'll give you 20.

Ms Blakeman: I'm good for it.

The Chair: Yeah? And I've got one other: Barry. Would the committee agree to having those of us that can make it on May 1 attempt to go ahead and finish off the public presentations for May 1? Would that be okay? Okay. Well, I think maybe that's what we should do.

Ms Blakeman: How many people have we got on May 1?

The Chair: I think we've got four right now that I'm showing.

Mrs. Sawchuk: Five including you.

The Chair: Five including myself. A quorum requirement is a third. We could also have a script of the presentations sent to all other members so that they could hear and actually read. Is that okay? Are we feeling okay about that?

Mr. Martin: A little later?

The Chair: I'm open to that: 6:30, 7?

Mr. Martin: Seven.

The Chair: Let's go with 7, 7 to 9.

Some of these groups are having to travel from out of town. It is a night thing, so the earlier that we could go would probably, I think, be a little kinder towards them. So could we move it up to 6:30, Ray? Would that be okay with you?

Mr. Martin: Well, I'm supposed to be at a function at 5:30.

The Chair: Then we'll go with 7.

Okay. This is on May 1. Let me review because we've moved around a lot. We're going to go for May 1. We're going to at least hope that we do have a quorum. So those of you that can make it, please do. It will be at 7 o'clock, and then we hope that we can pick up Mr. Martin as well for the last four.

Now, just for your information the two groups that cannot make it are the Alberta Blue Cross and the Alberta Federation of Labour. They've declined the invitation to appear. We could get an explanation for that.

Is Hilary here? Hilary, could you please tell us what happened there?

Ms Lynas: The Alberta Federation of Labour was interested in appearing. However, they're preparing for a big convention in May and couldn't really spare the time to the staff to work on preparing a presentation right now. Blue Cross had similar reasons. They're also preparing for a big conference, and as they had put in a submission, they felt that that would convey their ideas adequately. But they did express appreciation for being invited.

The Chair: I'd remind the committee that we have had written submissions. So at this point in time does anybody want to say anything about those two that can't? Do they feel strongly – well, we'd have to wait quite a while.

Mr. MacDonald.

Mr. MacDonald: Yes. In light of the fact that we've had two organizations decline, I received a copy of a letter that was addressed to you on April 18 from an individual in Calgary requesting an opportunity to make an oral presentation.

The Chair: Could you tell me the name?

Mr. MacDonald: The name would be Anne Landry. This is a letter dated April 18, 2007, sent to you by courier.

The Chair: I don't know that I've seen that letter as well, Mr. MacDonald.

Mr. MacDonald: Okay. Well, I'll certainly give you a copy.

The Chair: If you could please give us a copy, we'll look into that. Sure.

Mr. MacDonald: If we could consider giving her time to make a presentation, I think that in light of the fact that we've only heard from one individual and many organizations, it would be appropriate.

The Chair: We'll look into that. I appreciate your raising it. Thank you.

Mr. MacDonald: Okay. Thanks.

Ms Blakeman: If that's another individual, I'd be interested in hearing from them because the others are a preponderance of organizations and associations.

The Chair: Okay.

Mr. VanderBurg: Could they make it up here at 3 today?

The Chair: Yeah. We'll give them a call to see if they can make it over.

Mr. VanderBurg: I'll drive 400 kilometres today for this meeting.

The Chair: As much as we love Edmonton, we don't want to get snowed in, with the weather changing as rapidly as it is these days.

Anyway, let me just recap. We are going to go ahead and hold the meeting on May 1 to listen to the rest. We will take into consideration this other individual. The time will be at 7 o'clock, okay?

Now I'd like to move on to the purpose of today's meeting, which is the oral presentations. We have first of all Mr. David Jones, who is representing the Anglican Diocese of Edmonton. Mr. Jones, are you present? Thank you. I see him in the back. Could you move up, please?

As you're moving up, I'll just kind of explain the process for you today so that we all have the same understanding. We have reserved 10 minutes for you to present the highlights from your submission to the committee, and your presentation will be followed by questions from the committee. I'll give you a one-minute warning so that you can finish and wrap up. Then, for the members, I'd like to give everyone an opportunity who wants to ask questions. I'll keep track of members who want to ask questions, and, time permitting, we can even do a second round.

Mr. Jones, welcome, and thank you for taking time to come here to present to the committee today.

Mr. Jones: Thank you. I am the chancellor of the Anglican Diocese of Edmonton, which is a voluntary position, and also chancellor of the ecclesiastical province of Rupert's Land, which is the 10 prairie and northern dioceses, which is also a voluntary position.

In 2005 I wrote to the then minister, Mr. Lund, about two

anomalies in the PIPA as to how it applies to certain churches. The anomalies are these. Churches are not treated as nonprofit organizations. Under the act 56(1)(b) defines a nonprofit organization to be only organizations that are incorporated under three specific acts, the Societies Act or the Agricultural Societies Act or registered as a nonprofit corporation under part 9 of the Companies Act, or that meet criteria that are set out in regulations. There have never been any regulations passed, so a church cannot fit the definition of a nonprofit organization.

If I could open a parenthesis, your definition of a nonprofit organization in the statute, in any event, is too narrow because there are other nonprofit corporations that are not incorporated under those three acts; for example, federally incorporated nonprofit corporations that are operating in Alberta and only in Alberta and not subject to the federal PIPEDA because of interprovincial trade and so on. So there needs, I think, to be some further thought about the list of the acts that are set out there.

The Anglican church in Alberta is incorporated by three different private acts. One was from the North-West Territories Council, Legislature, in 1891, which incorporated the diocese of Calgary. The diocese of Edmonton was hived off from that in 1914 and incorporated by an act of our Legislature. The diocese of Athabasca, which predates either of them, was unincorporated until 1914, when it was also incorporated by an act of our Legislature. The North-West Territories act is pulled in and treated as an Alberta act by the Alberta Act from 1905.

So we have three statutes, which are private acts, which incorporate the three dioceses and every one of their parishes and missions as separate corporations, but none of them is a nonprofit corporation. Not one of them is incorporated under this definition, and there are no regulations, which would be a way that you could deal with them. You could say that any Anglican entity incorporated pursuant to any one of those three acts could be dealt with under the regulations, but there are no regulations. We're now two years later, and there still are no regulations.

The second point is that not all churches are treated equally or identically by the PIPA. Section 71 of PIPA amends the Religious Societies' Land Act. The Religious Societies' Land Act is an umbrella act that allows for the holding of land and the incorporation by certain religious bodies, but it does not apply to any body that is incorporated by private acts. It doesn't apply to any Anglican entity, it wouldn't apply to any Roman Catholic entity – all of those are incorporated by private acts of Alberta or, possibly, federal acts – and it doesn't apply, I believe, to any Lutheran entity. So a very large part of the religious landscape of Alberta is not covered by the Religious Societies' Land Act, and the reference, therefore, in section 71 of PIPA to the Religious Societies' Land Act doesn't apply to any of those others.

11:05

Mr. Lund replied to my letter, saying that it should come here and that if we had any operational difficulties, he'd be glad to address them. I appreciate that. To date I don't think we have had any major operational difficulties, but I think that's what I would call a latent problem just about to happen. We don't know that the problems happen. I think most of the Anglican entities and the other two dioceses are probably offside in all events because they do not have privacy codes, nor do any of their parishes. It happens that Edmonton as a diocese and all the parishes have or are supposed to have one. It's my job to see that they do. My concern is that the existing practices probably do not comply totally with PIPA. The point is that nonprofit organizations are not required to comply with PIPA. It doesn't apply to PIPA except with respect to some

employee information, but the act as it's worded applies fully to the religious organizations that I've talked about.

One example where there could be a problem – nobody has raised it, but somebody just needs to complain, and then we have an issue – is that a parish will provide information to the diocese or to the national church. Do those require consent, and is it reasonable and so on?

Another difference is that under the Religious Societies' Land Act there is a requirement for a membership register of each church. The Lutheran church, which is not governed by that act, has a very crisp membership formula, so you can crisply determine who is a member of any Lutheran parish. But the Anglican polity doesn't have such a crispness about who's a member, nor, it's my understanding, does the Roman Catholic, and therefore the concept of what's a membership list is much vaguer in those large religious organizations.

I've provided you with copies of my correspondence to Mr. Lund and his reply to me. I think the treatment of churches under PIPA has to be rethought a little bit. Perhaps there has to be a better appreciation of the rather wide variety of how churches are incorporated and operate in Alberta and, as a corollary to that: who are nonprofit organizations? I don't think we're very crisp on who those are.

The Chair: Okay. Thank you, Mr. Jones.
Are there any questions by the committee?

Mr. VanderBurg: Rather than getting into the Societies Act or the Agricultural Societies Act, you know, that are defined under 56(1)(b)(i), do you have some suggestions under the act, some friendly wording that could be used?

Mr. Jones: I could think of some friendly wording. The vehicle for doing it would be under 56(1)(b)(ii), to require some regulations to be passed that would make it clear that churches that are incorporated by a private act of the Legislature of Alberta or federally are nonprofit organizations. That would solve the problem totally, from my point of view.

Mr. VanderBurg: Now to our legal staff here: can you give me some comments on that proposed wording? Would that meet the needs of both the act and the presenter?

Ms Lynas: Well, I'm not a lawyer, and we don't actually have a legal adviser with us today, but it's certainly an approach that could be looked at. Further on during this process we will be talking about this issue of nonprofits and whether changes need to be made by PIPA, and all of the options to make changes affecting churches would certainly be presented at that meeting.

Mr. VanderBurg: I guess where I'm going is I'm not saying that I want to get into the Societies Act. It's not under our obligation here to review this. I'm just trying to find a way to make this work because the suggestion is reasonable to me.

The Chair: Thank you, Mr. VanderBurg.

Mr. Jones: Could I, Madam Chair, follow up just very slightly?

The Chair: Yes.

Mr. Jones: The structure of the act is there. It's the fact that there hasn't been a regulation made, and there doesn't appear to have been a recognition that there's a wide variety of how churches are in fact

organized. If the committee were simply to say that that needs to be dealt with, I'm fully comfortable that the government would deal with that.

The Chair: Barry, please.

Mr. McFarland: Thank you. Mr. Jones, would you just repeat the suggested wording that you had thought might address the issue?

Mr. Jones: I did it right off the top of my head. You could either add to (b)(i): that is incorporated under the Societies Act or the Agricultural Societies Act or that is registered under part 9 of the Companies Act or that is a religious organization incorporated by a private act of the Legislature of Alberta or Canada. That would do it legislatively. Or you could use the same wording for a regulation under (ii). Either one would achieve the same result.

Mr. McFarland: I would think that that, in most part, could be the answer. I don't know if you're aware that under these same formats, particularly under part 9 of the Companies Act, is a church that's incorporated throughout Canada, who is also the largest commercial farming operation in Canada. To have an all-inclusive regulation would, in my mind, put a huge, competitive, farming corporation that's incorporated as a church at the same advantage that you would have. I think it's totally different.

For that very reason under the Religious Societies' Land Act, which, as I recall, also limited the holdings of any congregation to 320 acres of land, many years ago – I think it was about 1971 – everything was put aside because it was deemed to be an infringement on individual rights. If you look at that particular church, their own articles of incorporation, I think it would be very problematic because they don't even allow a woman to hold office. So unless you can separate that particular church out of all of these things – I think you have a good intention on behalf of the Anglican or the Catholic or any other church – I think those issues, in my mind, would have to be addressed.

Mr. Jones: Well, if I could respond. The Religious Societies' Land Act does have a 320-acre limitation. I can tell you that no Anglican diocese or parish in Alberta has anywhere near that amount of land. But I'm sensitive to what you say, and I'm also sensitive to the concern that commercial activities of a nonprofit organization should be covered by the act.

We've differentiated now between the different kinds of churches who can or cannot. I would be satisfied absolutely, totally, by a regulation being passed under (b)(ii) that applied only to the Anglican church that was incorporated, and I can give you a list of those three statutes that do it in about three minutes, but I don't think that would solve the Roman Catholic problem although I think they would probably be able to give you a schedule of acts as well. I think it's capable of being dealt with. I'm sensitive to your concern.

The Chair: Mr. McFarland, are you finished with that particular round of questioning? I mean, we can take this recommendation under advisement and check with Parliamentary Counsel and government services on it. It's definitely something that we should be paying attention to, so thanks for raising it.

Mr. Lund.

Mr. Lund: Well, thank you, and thank you very much for the presentation. You scared me now when you mentioned that the Lutherans aren't covered, or are exempted.

Just looking at a quick glance, it would seem to me that probably

through the regulations would be a way to address this. I'm not sure, of course, until we get legal counsel to look at it. I've always been nervous, though, when we start listing a whole host because by exception, not intentional, you can miss someone. I think that with the verbiage we'd have to be careful to try to make sure that we do capture the points you raised. That's why I appreciate your presentation so much. I'm sure it's an oversight. I can't see any reason why we wouldn't exempt all churches, and I think that we need to go down that road with the regulations rather than opening up the act and trying to do something there.

11:15

Mr. Jones: I would think the regulation route would be very satisfactory. It's just that regulation has never been made, so it needs to be made.

Mr. Lund: Yes. I appreciate that.

The Chair: Thank you.

Ms Blakeman, was it on this point? I have Mr. Martin in front of you on the list right at this point. Can it wait? Because you're after him.

Ms Blakeman: Not on Mr. Lund's point, no.

The Chair: We can return to the point if it's of interest to you.

Okay. Mr. Martin.

Mr. Martin: Thank you. Just to try to understand the reasons rather than how we're dealing with it. There's some discussion when you're talking about churches being treated as nonprofit, basically, I think is what you're suggesting. As I recollect, some people are saying that maybe nonprofits should be included. That, then, would not solve your problem, though. You're worried about a potential problem dealing with churches, and I want to understand what that is. If all of a sudden we came to, after much deliberation, saying that nonprofits should be covered – right? – and even if you were treated as a nonprofit, that would not solve your problem, I would think.

Mr. Jones: Mr. Martin, if the act were amended to take out the whole provision dealing with nonprofit organizations, then all nonprofit organizations, some of which are much larger than churches – little parishes, for example, are separate entities – that would be fine. That wouldn't bother me although the second point about the Religious Societies' Land Act should apply. I have no concern if the will of the Legislature or the committee recommending to the Legislature, say, delete the special provisions about nonprofit organizations and make PIPA apply to all nonprofit organizations no matter how big or small. Then the Anglican churches will comply.

Mr. Martin: Okay. Let me just follow up. I can understand partly that what you're saying is that different religious groups or churches are being treated differently, and that's unacceptable and unfair. That's another aspect too. So you're asking that to be cleaned up so that all religious organizations, if I could put it that way, are treated equally and the same. That's the other thing that you're asking for.

Mr. Jones: Yes. Section 71 of PIPA, dealing with the Religious Societies' Land Act, is a rather narrow point. But the point is that it added section 17.1 to the Religious Societies' Land Act, which provides somewhat broader rules for a church entity incorporated

under that act to be able to deal with membership lists. That's largely where the issue arises. If we put aside the nonprofit organization issue, that issue needs to be crisped up. If a nonprofit organization issue is dealt with, then the act doesn't apply, so there's no issue. But solving the one only doesn't quite solve the other.

Mr. Martin: Okay. So just one follow-up. There's a confusion about how you deal with your membership and how it relates to the act. That's the problem that you're saying that you could face down the way even though you haven't.

Mr. Jones: The confusion is that section 71 now, dealing with the Religious Societies' Land Act, allows churches incorporated by that to deal with and collect, use, and disclose membership lists that the act wouldn't otherwise permit, but because the Anglican entities are not incorporated under that act, they are caught by the general provisions.

Now, that may not be offensive. It may be that the committee says that every nonprofit organization, including churches, should be treated the same, in which case you would not only repeal section 56(1)(b), repeal the whole part of that part, but you'd also repeal section 17.1 of the Religious Societies' Land Act. If that's your model, you'd have solved both of my problems. We'd have to comply on the one, and we would be treated equally on the other.

Mr. Martin: Equal treatment is what you're after.

Mr. Jones: Basically, yes. But, also, for little parishes, which really aren't very sophisticated, to have a privacy officer and to have their own privacy code and to be fully aware of the act is a burden to them, and that's why the Legislature in its wisdom decided that nonprofit organizations wouldn't be subject to this at all. It's just that in structuring it, it missed the Anglican entities.

Mr. Martin: The problem is that there are nonprofits and then there are nonprofits.

The Chair: Thank you, Mr. Martin. So it clarified the issue for you?

Mr. Martin: Yeah.

The Chair: Thank you.

Ms Blakeman.

Ms Blakeman: Thank you. I think there are a couple of issues at play here. If it's possible, with the assistance, I'm assuming, that's granted to us from the staff members here, I'm wondering if we could charge them to do some research on behalf of the committee to find out how the other all-faith communities are dealt with in context here. I think what we're trying to do is acknowledge the situation that you and others are in, and we're trying to include you in rather than make you conform into what the legislation states now. So if we're going to try it, let's make sure that we're capturing everybody that's going to be affected by this, thus the research.

The second issue that will probably continue to come up with us as we talk to more not-for-profits is that we have an ongoing problem with definitions about not-for-profits in this country and tend to interchange between a not-for-profit, a charitable, and a voluntary organization. Traditionally we've fallen back on the Revenue Canada definition, which clearly is unsatisfactory for our purposes, increasingly. So we need to define who we want in, and I think that's where we could use the assistance of some support.

I'm interested in trying to help you. I would prefer to bring you in rather than make you conform, but I think that if we're going to do that, we need to be careful about how we do it for some of the reasons that have already been raised.

The Chair: I think that's a good suggestion, and I will ask the staff if they'll look at it.

Mr. McFarland, did you have a quick question?

Mr. McFarland: I do. Mr. Jones, your opinion. If you eliminated the one part in part 9 of the Companies Act which allows an organization to incorporate as a charitable, not-for-profit organization – and I think it goes on. You have to meet a criterion. One would be the promotion of religious – I forget the term that they use. Would that impact the Anglican church if that provision in the Companies Act were taken out?

Mr. Jones: No, because we're incorporated by a special private act, so that has no impact on us at all, but it would have an impact on a lot of other people. You'd be quite surprised at the impact of it, I think.

Mr. McFarland: Well, I'm thinking specifically, though, of the one requirement. I believe there are five objectives. That's the term that's used under part 9. I don't have an axe to grind. I'm just wondering if the one component that says that the reason we're going to allow you to incorporate as a charitable, not-for-profit organization is to promote your objective of religion. If that one singular little thing was taken out, how many organizations would that impact?

Mr. Jones: I don't have any crisp idea of that. I would think quite a large number. For example, there's an Anglican entity operating in the inner city that is not incorporated pursuant to the private act that generally incorporates us that is a society, and it's both religious and charitable. I think you would have trouble going that way. The whole concept of what's a charity is very problematic, very complicated, and it goes back for very many years to what's called the statute of Elizabeth I, about the definition of what's charitable.

I only came with a small request.

The Chair: And we recognize that.

Mr. Jones: But I think your issue is bigger, and there are principal issues that your committee needs to deal with.

The Chair: It seems to be, you know, the way we work.

Mr. Jones, we'd really like to thank you for taking time to come and present to the committee today and identify some maybe potentially important gaps that we need to look at as a committee. We have run out of time at this point, committee. I thank you for the time that you've taken and wish you the best. Thank you.

Mr. Jones: Thank you. I'd only say that if I can be of assistance to the committee or to the research staff – I don't have a comprehensive idea about how many other faiths are organized, but I have a bit of knowledge about some – I'd be glad to help.

The Chair: Duly noted and thank you again.

We are going to move on. I'm trying to keep us on the clock today because we have, as you know, several groups.

Is Ms Roberts in the room? She is here. She is representing the Canadian Bar Association, the Alberta section. I don't know if you

were in the room earlier, Ms Roberts, when I set out the process, but I'll just repeat it. We have allowed for 10 minutes of presentation, and I will give you a one-minute warning. Then we will open the floor up for questions from committee members, and again if time permits, we will hopefully be able to run through that list twice. For the committee members' information, I'm just taking questions as I see hands, and that's how I'm organizing your questions.

So, anyway, Ms Roberts.

11:25

Ms Roberts: Thank you. Just to explain why I'm here today and not somebody else from our organization, I'm co-chair of the south section of the Alberta privacy law section of the Canadian Bar Association, and we do appreciate the invitation to appear before your committee. Our section includes lawyers whose practice or area of interest includes privacy and access to information laws and who share an interest in the operation of PIPA and other privacy legislation. Interestingly, in southern Alberta our section membership is also open to nonlawyers who are chief privacy officers of their organizations. So we have a fairly broad range of views and experience in our section.

In the summer of 2006 a small committee of section members was struck to consider the questions posed by your committee and in response prepared a 10-page submission in which we specifically addressed the 13 questions, some in much more detail than others. I have an executive summary that's been passed out to you, and I'm going to highlight the main themes from that submission today.

My opening comment, though, which I trust will relieve the committee, is that our section believes that the regime established by PIPA works very well. As an example, the process for providing access to an individual's records is workable, and we feel that it's generally appropriate and seems to achieve a good balance between individual privacy rights and the business needs and the interests of the business communities that are responding to those requests.

We don't feel that any major revisions to PIPA are required although we have suggested and we note that others have suggested in their submissions some minor changes that we think might prove beneficial. I'm going to just briefly address a few specific drafting fixes which were dealt with in much more detail in our submission.

We think there are a few areas where the legislation could be clarified, and we suggested some specific fixes, with the goals of those fixes being, firstly, eliminating the difference in treatment given to the personal information of former employees as opposed to the personal information of current or prospective employees. We thought that there were a couple of sections in the legislation that could be addressed in that regard. We don't see any valid distinction or reason for the differences and would recommend that all employees receive the same consistent treatment. We have, as I said, suggested a couple of different approaches and have also included some specific language in our submission for the committee's consideration.

Number two. Ensure that collections, uses, and disclosures of personal information that do not under the act legally require consent also do not legally require that notice be given to that person. There are some sections in the act, specifically sections 14, 17, and 20, where the current wording could suggest that even where personal information may be legitimately collected, used, or disclosed without consent, there is a possibility that that person might still need to be notified of that collection, use, or disclosure, and we think that should be addressed. We have again given some specific language in our submission to address that.

Number three. Generally speaking, we thought that the processes established by the act for the commissioner to conduct investigations

and review decisions are appropriate. However, we thought that there was one technical issue that could be addressed. We would ask the committee to consider clarifying that except in the certain listed circumstances, the person making a complaint to the commissioner should be required to prove their allegations.

Now, section 51 sets out the burden of proof for inquiries into certain decisions of an organization, and I would suggest that in those situations that burden of proof does make sense.

However, PIPA is silent as to the burden of proof in other contested issues. In each one of those cases, therefore, burden of proof decisions have to be made at the outset. We would prefer a consistent and clear statement as to the burden of proof in line with principles of natural justice. The approach that we have suggested, that the burden of proof be on the complainant but for the exceptions already set out in the act, could also alleviate the current problem that organizations have in investing significant time and resources defending themselves even when the complainant's claims appear quite unsupported. Again, we propose specific language in our submission to address this perceived weakness.

We also focused on certain broader policy issues, including, number one, adding a further exception for refusing access. Following B.C.'s lead, we feel that Alberta should allow organizations to refuse access to personal information where the information is the subject of a solicitor's lien or other security interest. For your information solicitor's liens are a legal remedy whereby a lawyer may keep control over the information and file of a client to be used as security against unpaid legal bills. An amendment would provide some protection for solicitors holding a client file against payment of delinquent client accounts. We have again provided specific language in our submission that could be considered when drafting this new exception that would be set out in section 24.

Number two, we'd love to encourage harmonization, and we would encourage continued discussions with the federal and B.C. governments and other provincial governments with a view towards harmonizing private-sector privacy legislation. It is the view of this section that Alberta's PIPA is best-in-class legislation and that many of its provisions, particularly, I would suggest, the business transaction exemption in section 22, are preferable to those in other statutes.

Number three, transmission of information outside of Canada. The section did not feel that changes to the act in this regard were necessary. Although the act doesn't deal explicitly with protection and security concerns for personal information sent outside Canada, we feel that these concerns are effectively addressed since the act does clearly stipulate that all organizations are responsible for the conduct of their agents to whom such information is disclosed irrespective of where those agents are located. In fact, I think it's the experience of most lawyers involved in negotiating agreements with third parties and in drafting the privacy language in those agreements, including third parties outside of Canada, that the contractual provisions in this regard are widely accepted.

Number four, confusion about the application of the act to nonprofit organizations. This is kind of following, I guess, on Mr. Jones' submission, but I guess we've taken a different tack. In our submission we requested further guidance from the Legislature as to what is meant by "in connection with any commercial activity." Section 56(3) provides that nonprofit organizations are subject to PIPA obligations only to the extent that their collection, use, or disclosure of personal information is in connection with any commercial activity. So the legislation as currently written seems to mean that employees of an NPO whose employment is in connection with commercial activities of that organization are afforded the protection under PIPA, whereas those employees of the same organization whose job function deals only with noncommercial

activities have no such protection. Now, we didn't provide specific direction as to how to deal with this ambiguity, assuming that a number of organizations in the nonprofit sector would have more practical experience in this regard and would make their own submissions.

Finally, we looked at mandatory notification in the event of a security breach, and after quite a bit of discussion it was felt that rather than require mandatory notification, it may be preferable at this relatively early stage to monitor the experience of other jurisdictions which do have such mandatory notice requirements – for example, California – and then revisit the issue at some future date. In fact, it's the experience of several members of the committee that organizations have to date generally exhibited common sense in evaluating the need for notice and have in instances where sensitive personal information has been involved in a breach provided the appropriate notice in any event.

I would also mention that the Alberta OIPC has been very helpful in assisting organizations when they're contemplating notification and preparing the notification, making sure that it gets out in an appropriate manner, and the affected individuals have for the most part responded favourably.

Thank you. I would be happy to answer any questions you might have.

11:35

The Chair: Thank you. Are there any questions by the committee?

Mr. VanderBurg: I will make a comment that the reason why we haven't got any questions is that you're pretty all inclusive here. You've brought out some issues, and you've brought out some very good suggestions. I thank you and the previous presenter for doing that, for making our job much easier. Well done.

Ms Roberts: Thank you.

Mr. Martin: Just a couple of quick questions on the one where it says that no changes are necessary with respect. You're probably right: there's probably not a lot we can do about it. But everybody gets a little paranoid with the PATRIOT Act and these sorts of things. I'm not sure how we can handle that here. I have no doubt that that information gets around, but there's probably not a lot we can do about it.

Ms Roberts: I mean, we do recognize the concern. Actually, the national section of the CBA has addressed the same issue in the PIPEDA review, and there have been suggestions that, you know, maybe the best solution is requiring very strict contractual provisions in any agreements where you're dealing with somebody outside of Canada. That makes sense to us as well. But our practical experience is that most private-sector companies are in fact negotiating those kinds of provisions, and that may be the best protection.

Mr. Martin: Probably the only protection.

The only other question that I have is more in the longer brief that you gave us. I'm not sure that I'm reading it right or not. We talk about the problem that probably the complaints you get the most are how information – there may be a little line or something that stores or where they're asking for information. Then it gets out to other groups. Now, in the one you say that most situations "requiring notification is as likely to defeat a legitimate purpose."

Mr. VanderBurg: What page is that?

The Chair: It's in the longer brief that they sent us.

Mr. Martin: It's in the longer one under question 5, "Are the provisions dealing with the exceptions to consent for the collection, use and disclosure," right at the bottom of the second paragraph. I think this is one of the bigger concerns that we see people complaining about, and there may a little note in the end that this information could be used for other purposes. But almost every store now tries to get personal information, and then somehow somebody else gets it and the rest of it. Are you suggesting that that's okay and that that's a legitimate purpose of business, or am I misreading that?

Ms Roberts: I think all we're getting at is that the legislation right now says that in sections 14, 17, and 20, which deal kind of respectively with collection, use, and disclosure, personal information can be collected, used, and disclosed without consent in these specific situations. For example, section 14 says: "An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable." Section 14(d), for example, says, "the collection of the information is reasonable for the purposes of an investigation or a legal proceeding."

It talks about no requirement for consent, but we think that there's a possibility that somebody could construe the current language as meaning that in that situation you still need to notify. Now, we don't think that's what intended because, clearly, there's not a requirement for consent in these specific situations, but is there a requirement to still provide notice? We don't think that's the case when, for example, the information is being collected for purposes of an investigation. It just wouldn't make sense if you're collecting information for purposes of an investigation, yet you still have to notify the individual. We think that's not what was intended by the legislation, so that's why our fix is a pretty simple one. We're just saying: in those specific situations let's clarify that we don't need consent, and we don't need notice. But, again, it's just with respect to those enumerated situations.

We're not opening up those exceptions at all. We're not trying to give companies another loophole at all. We're just saying: let's make it very clear that in those specific sections you're not requiring consent; oh, and by the way, you're also not requiring that those parties be given notice.

The Chair: Thank you.
Mr. MacDonald.

Mr. MacDonald: Yes. Thank you, Madam Chair. You referred to this legislation, I believe, as it currently exists as the best of class. It would be my view that organizations have a significant advantage over individuals in this act simply because of the financial resources that they have. Do you think that there is an equal balance in this act between organizations and individuals?

Ms Roberts: I think it would be the opinion of most of the members of our section that there is an equal balancing. You know, I understand your comment that organizations have more resources, but I can tell you from my own experience that when any individual customer or employee makes an access request, considerable resources are expended by organizations in responding to that request. I'm not so sure that without this legislation there would be that effort or resources given. So I really do think, you know, that the legislation attempts to and does a pretty good job of trying to achieve that balance.

Organizations are taking the privacy obligations very seriously. I think that I can definitely speak for at least in-house counsel, who make up a large portion of our section, that companies have

expended a lot of time and resources in understanding the legislation and attempting to deal with the legislation, and in many cases have changed practices to do that.

The Chair: One more?

Mr. MacDonald: Yes, if you don't mind, please. Now, you talked, I believe, about further discussions to harmonize legislation between ourselves and British Columbia and, specifically, the role of the Privacy Commissioner in both provinces. In my view it's quite different. How would you suggest to us, if you could elaborate, that we should harmonize our law to British Columbia's? Have you got any ideas for us?

Ms Roberts: Our section was relatively involved in the drafting of the legislation, and I know that B.C. was also involved at the same time. There are some differences. I think that most people in our section feel that Alberta's approach has worked well for Alberta. The real problem, I think, is for organizations with operations in more than one province, in Alberta and B.C. and then often throughout the rest of the country.

The more consistency we have in the provisions, the better. We haven't dealt specifically with any of the differences. I can tell you that almost everyone who works with Alberta and B.C. legislation is relatively comfortable that the inconsistencies aren't insurmountable, but there are many more difficulties when you're looking at the differences between Alberta legislation and the federal or Quebec legislation. B.C.: we don't have big issues with them. There are some differences, and all I can say is that generally the more harmonization we have in legislation, the better.

11:45

The Chair: Mr. MacDonald, quick question, if you could, on your last because I still have one more.

Mr. MacDonald: Yes. It's more of a comment. It's just the fact that my research indicates that the British Columbia office of the information and privacy commission has issued orders that refute decisions that have been made here by the same office, the Alberta office of the Information and Privacy Commissioner. So there's a lot of work to be done.

Thank you.

Ms Roberts: There is work to be done, but I think that continued dialogue is very helpful, and we hope it continues. I guess that was the main thrust of our comment in that regard.

The Chair: Okay. We have time for one more question. Mr. Ducharme.

Mr. Ducharme: Thank you, Chair. I also would like to express my appreciation for the well-drafted document you presented here to the committee.

I guess it's more of a comment rather than a question, and that is regarding the harmonization with the trade industry labour movement agreement that's taken place. I'm certain that it's something this committee will have to flag to the Department of IIR, that they over the next couple of years would be working in terms of harmonizing all of our business transactions. So that would probably get caught in that aspect, as well as this committee working forward.

The Chair: I think he's referring to the TILMA agreement. Would that be accurate, Mr. Ducharme?

Mr. Ducharme: Correct.

The Chair: So, anyway, thank you very much, Ms Roberts. A very tight presentation, very well laid out. We appreciate you coming to present to the committee.

Committee members, in just a moment Mrs. Sawchuk is going to pass around to you the actual letter that Mr. MacDonald was referring to earlier. I have not seen this letter myself, although I see that it's come in two days ago. It's from an Anne Landry. What I would like to do is discuss right before we break for lunch whether the committee is open to the idea of having her come to present on the 1st of the month when we finish the other presentations. So I lay that out in front of the committee. This is an individual. She's written quite an extensive letter with quite a few issues that she sees as problems. So does the committee have some warmth towards having her also join the list?

Mr. VanderBurg: Can you give us five minutes to read eight pages?

The Chair: Okay. If you can do it in three, I'd be happy to let you do that. So maybe take a quick scan of it.

Has the committee had long enough to scan the document so that we can at least discuss what we want to do with this piece of information? Is everybody kind of there, got their ideas? I'll start with George.

Mr. VanderBurg: You know, I haven't read it all, but I see that Alberta Justice has been involved and that there have been some allegations that the office of the Information and Privacy Commissioner did not do some things. I don't know what value this is going to add, but I'm just wondering if we're going to get in the middle of something that maybe we shouldn't be in. I'd really like our legal people to have some time to review this before I say yes or no because the last thing I want to do is have people use this body to interfere in some legal proceedings that may or may not be happening. So I'd like some legal advice.

The Chair: Do we have any advice from our perm staff, or would you like to wait until we finish discussion?

An Hon. Member: They're not lawyers.

The Chair: That's true.

Ms Lynas: Elizabeth may be able to say whether there is a concluded case in front of the commissioner.

Ms Denham: There is a concluded case at this point. I can't say as to what other legal proceedings are going on right now, but there is a concluded case before the Privacy Commissioner.

The Chair: Any other committee members?

Mr. Lund: Well, on a quick scan it looks to me like this is a personal grievance, and I would suggest that this committee was not set up to deal with personal grievances. I think that if there's something we can learn from what she has written, great; we need to look at it. But there are likely many more of these out there, and I really don't think that we should be another appeal body.

Mr. MacDonald: Well, certainly, we're only hearing from one other individual. We're hearing from organizations, but I believe that Mr.

Buteau this afternoon is going to be representing the general public of the province.

I don't think this is a review of this matter. It's this woman's personal experience with how this legislation has worked to date, and I think we should provide 25 minutes to her and hear directly from her.

Ms Blakeman: I agree that certainly at the beginning of this document it does appear to be a personal grievance, but it also appears that that's been dealt with by the Privacy Commissioner.

My concern is that we're trying to balance this legislation. We have some excellent presentations coming before us and that are available in the submissions book, but they are primarily from organizations and associations. We haven't heard what it's like for an individual to try and get at the information. We're aware of the onus on the organizations to provide access and how onerous that can be for them. I'm trying to determine how hard it is for an individual to get at this stuff. So far we've got two individuals that we could hear from, so I'd prefer to hear from them.

I take the point about it looking like a personal grievance, but if it's concluded, then she's not going to gain anything from any decision that this committee makes. I'm interested in the information about what she went through.

11:55

Mr. Martin: It would be inappropriate for us to go through the case. It's nothing to do with us. If she has some things that she wants to talk about specifically to what we're doing, then it might make some sense, but I think it would have to be clear that it's not a matter of going through a grievance that we can't do anything about, nor should we. If because of her experience she says, "This should be changed" or "This should be changed to make it appropriate," then I have no objection. But if it's just to go through a personal grievance, you know, there's nothing we can do about it, and it's not within our mandate.

The Chair: Well, my feeling also is that we have to look at what the scope of this review is. I have no difficulty with hearing from individuals that want to tell us how this has affected them, but obviously there is a Privacy Commissioner there, and it's not our role to decide whether his decisions are right or wrong, you know. To listen to individuals as to how the legislation is affecting them I think has merit.

I did notice in her letter, as well, that she is asking to be able to appear in Calgary. Now, this committee made the decision early on, because of the expense of recording and all of those issues, that we would meet in Edmonton but allow everyone to make written submissions. We took the decision at that time – and I know there are some new committee members – that we would not be travelling across the province. So although I note that, I would welcome her to come and present, but it would probably have to stay within those established rules as that was the decision by the committee.

As far as I can see, I see no real difficulty as long as she has no difficulty staying within that criteria when she presents to the committee. As your chair, when any individuals present, I'm going to be looking for them to stay within those boundaries: that we're not about to change decisions made by the Privacy Commissioner, nor are we here for grievances; we are here to hear how the act has affected them.

So if I see no negative head-shaking, can I basically see a raise of hands of those who are prepared to let her present here in Edmonton based on that criteria?

Mr. McFarland: I don't know how a presentation will be made

without getting back into a lot of detail about what caused it in the first place. If that's going to be the case and if this has been decided upon one way or the other, I also think it's fair to hear the other side of the story. It may be one thing that somebody feels their privacy information has been abused or destroyed or whatever. I can't read this thing that quickly, but it sounds to me like there are also issues of employment standards and other things that I don't even know what their outcome has been. In fairness, with two parties being involved, if we're going to hear from one, I would rather hear from both. But I don't think that's possible, and I would be much more comfortable if she gave us a written submission.

The Chair: Okay. I think we've had some discussion about this issue, so I'll call the question. All those in favour of having Ms Landry present to the committee, based on the conversation, can I see a show of hands? Those opposed? Well, being that we've made decisions in the past on Mr. Buteau, which is, I think, in the same, if you will, circumstance, I'm going to vote in favour of her actually coming and presenting to the committee. I think I break the tie. I appreciate the discussion.

We will be having lunch now, so we will break. Thank you.

[The committee adjourned from noon to 12:59 p.m.]

The Chair: Committee members, if I can call you back to attention. We're just within a minute of our time frame. Thank you for regathering. Just to note that Mr. McFarland is no longer with us, so we'll kind of put that into *Hansard*. I know he was introduced earlier, but he will not be joining us this afternoon.

I have had the clerk pass around to you a document that Allan Buteau – and, Mr. Buteau, did I pronounce your name correctly?

Mr. Buteau: You did this time. Thank you.

The Chair: Thank you. I'm not a quick learner, but once I get there . . .

So, Mr. Buteau, we would thank you for coming to present to the committee today. You've probably heard the explanation, but let me make it again just for clarification. We've allowed 10 minutes for you to present. We'll give you a one-minute warning, and then we'll open it up, of course, for committee members to ask questions.

Before I begin, Mr. Buteau, I have had an opportunity to read your material that you presented earlier. I just wanted to make sure that you understood that the purpose of this committee is to look at the act and to see what changes might need to be made in the act, so we would ask that you keep your comments to that specifically. We're happy to have an individual come and talk about how the act has worked for them, but if I could just ask you again to make sure that your comments are regarding – I know you have other issues with other things, but that's not the scope of this committee.

We'll turn the time over to you. Thank you.

Mr. Buteau: Okay. Thank you, committee, for allowing me to appear as an individual. I had a lot of discussion with your clerk. She's done a terrific job in trying to keep me focused and trying to keep me in line with what's going on and the purpose of this committee.

I presented to you a bunch of information just as reference material to help you understand the difficulties for an individual to go through such a process. It is a very cumbersome process. You know, Albertans don't want to have to do this. Sometimes you feel that you have to, or sometimes you get caught in a situation where you are involved in privacy inquiries and everything else. I've had

a lot of work with the people from PIPA in Calgary on an informal basis. I've been involved not only in the inquiry that I've put before you, but I've been involved with them with regard to information fraud. They did an excellent job of handling that case. Very, very good reporting back and forth to me, very strong recommendations for the organization, and very in-depth investigating, and I have to thank them for that.

My problem with the act is how it relates mainly to self-regulatory organizations. It's very vague. In the beginning I wrote to both our Justice minister and Mr. Ty Lund, who then was the minister for government services. He kind of gave me a breakdown of how self-regulatory organizations have been treated in Alberta.

When the FOIP Act came into place, an all-party committee basically said: okay, what we're going to do is that we'll exempt the Law Society from FOIP. The rest of Canada treated it, basically, differently. They grabbed the law societies and brought them into FOIP, and they were treated under the FOIP Act.

In 2002 the committee met again and recognized that, hey, the law societies are going to fall under PIPA, so there's no sense concerning them in FOIP. That is my understanding of how things went along the way. Now they are. The act in its wisdom has added a provision in there for self-regulatory organizations to basically mould the act to work for them, to make what is known as a personal information code that would just govern their activities and how they handle information and make it work for them. I thought that was an excellent idea. I would really like to see it.

I see that they have appeared here. I have read their submissions, and a lot of what they're saying is: we want harmonization with B.C. But if you look at what B.C. did, you will see that what B.C. did is that they took not only FOIP but PIPA and incorporated it right into their own Legal Profession Act, right through their code of conduct: everything. It's all in there. You know, they've added it to every aspect. What I've seen from the Law Society of Alberta is more of: yes, we want to participate; we want to give you suggestions that affect everybody else but not us. As an individual who's had to deal with them through their process, it's a process that it's very hard to get information from.

My background, just so you know, with dealing with self-regulatory organizations was that I received a letter one day that said, "I am copying everything in my file to so-and-so," from the Law Society to a lawyer. I asked a question. I said: "Oh, can I see exactly what you copied? I've given you information that I don't really want her to have." He said, "No." That was in May 2005.

At the end of the day, we went through this humongous, expensive inquiry – and it was expensive on me as well to go through – only to find out that the Privacy Commissioner said: "Oh, sorry. I can't deal with conduct files. It's outside of my jurisdiction." There is a provision in the act that says at section 36 that any organization can make a preliminary request. They can go to the commissioner and say: "Let's look at my situation here. Please, can you give me an advance ruling on a couple of things?" It would have saved both the organization and the public and the Alberta taxpayers an awful lot of money if they had done that. That's one of the things that I'd really like to impress upon you: to try and enforce the PIPA organization to try and really emphasize that this provision is here. They are there to help us. Okay?

I own an organization. I have a business. Okay? I'm also a private individual. I also belong to two volunteer organizations. One is a federal organization that cannot be considered nonprofit under the rules of the Legislature. The other is an Edmonton-based volunteer organization that is basically totally volunteer, totally nonprofit. Now, we're just new. We haven't got our government distinction made yet. But I've been in communication with the

federal Privacy Commissioner. I'm taking on the role as information officer for both of these organizations, and we have voluntarily complied. We just made the decision ourselves.

It wasn't that difficult. We went on the Internet. We pulled up some good privacy policies. We pulled up some good stuff. It's all there. It's real easy to get to, and I can help anybody who wants to do it, because it's there. It's really easy to find out the basics of privacy protection. Most of it is very logical. If you don't want somebody to have access to your information, we shouldn't be giving it out to somebody else, you know, unless under the circumstances it's provided for under the act.

I saw the commissioner's submission where he would like to encompass all nonprofit organizations under the act, and I think it's very good because it protects the people who use the organization as well as the people who are within the organization. It protects both sides. I as a volunteer don't want to be facing a lawsuit or something because I let out somebody's personal information and caused some damage. By encompassing them into the act, I believe that we can do so and provide a volunteer with some added protection as well as some added education.

It's the education part where PIPA has lacked to date. A lot of time, a lot of money, and a lot of effort has been spent on educating organizations, but not a lot of money or a lot of time has been spent on educating Albertans. I read through the minutes, and I see in the minutes where everybody said: well, we did this big advertising campaign. I never saw that ad. I found out that this inquiry was going to happen by reading the act and getting to learn the act myself. That was the only way that I found out. I never even found out that regulatory organizations were accountable under PIPA until the Law Society introduced that to me.

The Chair: I'm just indicating that you have one minute left.

Mr. Buteau: They were the ones that indicated to me that they were accountable. There was not a lot of public education. I knew as a business owner one year prior to. My lawyer sent me a letter that said: this is what you have to do to become accountable under PIPA. We took those steps. It was a very painless process. I like what the commissioner has said in the past. He said that you can limit your liability by limiting the amount of information you collect and for how long you decide to retain it. The longer you have it, the worse chance you have of a breach.

Thank you.

1:10

The Chair: Well, thank you very much. That was very nice and very clear, maybe because it was individual to individual.

Now I open the floor for questions from the committee. Do any of the committee members have any questions? Mr. MacDonald.

Mr. MacDonald: Yes. Mr. Buteau, I appreciate your time. If you only had three recommendations to make to us to improve PIPA for Albertans, what would they be?

Mr. Buteau: The first recommendation that I would make is that I would recommend that when it comes to the judiciary process or at the end of the day under section 50, there be a provision for the applicant to have the final submission. Now, without getting into any details, the problem is that the applicant is the complainant, and the rules of the courts and natural justice usually apply that the applicant, or the one bringing the complaint, has the final say before it gets adjudicated. That would be one of the things I'd like to see in there. I'd like to see an avenue so that you could rebut the

organization's rebuttal, so to speak, if that makes any sense to this committee. That's the way the courts would handle any case. Otherwise, you could put in a rebuttal submission anything you wanted, and if the commissioner accepted it as being fact, you could certainly lose your entire argument based on what was in that rebuttal statement.

I believe that in a lot of cases that's what happened to me. I lost my argument through ignorance of the act, ignorance of the law, and ignorance of the process. But at the same time I recognized that the commissioner's decision – I went and got a legal opinion, and I want the committee to keep that in mind – is still only an adjudicative position. I know that he's asking for more power, but it is still only an adjudicative decision. When I got a legal opinion on everything, they said: "Don't bother with the expense. If somebody has a problem with this, it wouldn't stand up very well because there is so much case law against some sort of decisions that have come across. It'll be the rule of the court at the end of the day that will have to make the final decision." I just ask that the process be curved to cater to make that process a little bit more friendly.

The Chair: Thank you.

Are you done, Mr. MacDonald?

Mr. MacDonald: No. If there are no other members . . .

The Chair: There are. I have a speakers' list.

Mr. MacDonald: Okay. Can I get back on the list, please?

The Chair: Go ahead and finish.

Mr. MacDonald: Could you summarize the top three factors or issues that are causing PIPA not to be effective for you as an individual and an Albertan?

Mr. Buteau: They're discretionary provisions. If you walk through the process, if you read some of the orders where discretionary provisions have been used across Canada, they can be very, very easily abused. An example of that is that if you enter into a self-regulatory organization's conduct review process – okay? – you're the one providing the information. You're two combatants. The member belongs to their organization. They have an obligation, what they call a fair information-sharing obligation, but they also have the availability to use PIPA to say: we are collecting this information under a legal proceeding or under an investigation, and therefore we can exempt you from seeing what we've collected, we can exempt you from seeing what we're presenting to our panels, and we can exempt you from seeing the evidence that we make our decision upon.

I have a real problem with that because, again, they're only an adjudicative body. At the end of the day it is the rules of the court, and it is the court that has the last avenue and the last say as to how the adjudicative decision was made. But how can you rebut a decision if you don't know? The other problem is that we all have a right to ensure that our information is correct and accurate. How do you know that the information that they're relying upon for you is accurate and correct if you are not provided with access to it?

The other problem I have is that organizations use and gather your personal information without your knowledge and consent to use in other investigations, and you're not made aware of it. The recommendations that I think I've put in and my major thing was that if you feel that strongly that you need that information to use it to proceed with the legal investigation or legal proceedings, then at the

end of the day if that's your only reason for withholding it, then once the legal proceedings are done and you've made your adjudicative decision, release it, and then give it to me. Then at least I have the opportunity to say that it was used accurately, and then I can have whatever legal recourse is available to me to be able to take it to the next level. And that's not in PIPA. It's just a blanket thing. I've given it to you in many forms here exactly the way they treat it.

The Chair: Mr. Ducharme.

Mr. Ducharme: Thank you. Thank you very much for your presentation. In your opening remarks you made reference that the government has done a poor job as far as educating individual Albertans. I guess it's probably no different than lots of legislation that gets passed in the Legislature. When people decide to get involved in regard to a certain item, it's because it has affected them personally, and then they decide to start digging into the laws of the land. Have you got recommendations as to how the information could be better sent out in terms of educating Albertans in regard to this piece of legislation?

Mr. Buteau: Yeah. In my comment it's more the public, not just as an individual, because the public needs to be made aware. They are being made aware; it's just coming to light. I've seen what's happened here this morning, where you've got more and more individuals wanting to come forward now, and it's late in the game. You know, we cut off public submissions in October of last year, and the public is only now finding out. We have things that have brought this to light: the HomeSense scandal with so many credit cards, information affecting thousands of Albertans, you know. The commissioner was involved in that there. It's only the press that really gets the information out to us.

Some of the other things that have come up is when you start to see some of these decisions and some of the things that the commissioner has done under the Health Act. He's really, really pressing and trying. He's exposing a lot of problems. So the public is becoming educated. The problem is that this act existed for how many years before anybody even knew it existed. I read the initial submissions. I know that a lot of the people in the initial committee didn't even know what PIPA was about. They had to come and give you an education. You had to educate yourselves to be able to sit on this committee. I see that as a problem.

The Chair: I have about five minutes left, committee members. Mr. MacDonald would like to return to the list, but I'll ask the other committee members if they have any questions as well. No? Then, Mr. MacDonald, please.

Mr. MacDonald: Thank you. In light of what Mr. Ducharme has said, is PIPA currently protecting your rights of personal information and personal employee information in this province? Yes or no?

Mr. Buteau: As far as the personal employee information is concerned, I like the provisions that are in there. I employ them. I educate my workers through that when I do my consulting work. I work in the oilfield as a consultant, and I educate the people that I work with that don't have access to it or would not have known this. I've been trying to spread the word as much as possible because I like some of the protection that is there.

When people are told point-blank, "No, you can't have this because it's against the law for you to have it, and I won't give it to you," or you tell them that they have to cover this information and that they have to keep some of their investigation information

private and confidential, then it starts to spread the word that people understand the need for personal information protection.

1:20

The Chair: Well, thank you. You know, we always talk about educating the public. I think you're right. The public doesn't really become aware, no matter how hard we try to educate, until it's an issue for them. Then the interest level changes. I thank you for bringing your own personal experiences to our table today to try and improve the act. I really feel that that's what you've been trying to do today, and I just want to thank you for taking the time to come and present to this committee. We really appreciate it. Thank you very much.

Mr. Buteau: I thank the committee. Again, I've given you lots of information to consider in quite a sizable presentation, and I'd like to tell you that if there are any questions, if anybody wants to talk to me or would like me to come to another meeting and elaborate or have Karen send me something through e-mail for an explanation, then I would be very, very willing to comment further.

The Chair: Well, we appreciate your willingness to help us. Thank you very much.

Do we have Mr. Dahms here? He is representing the Edmonton Federation of Community Leagues. We'd like to thank you for accepting the committee's invitation to appear, even though your organization did not make a submission in response to the PIPA review discussion guide. I'll just set out the same process that I've been setting out for others this morning. We allow for a 10-minute presentation. I'll give you the one-minute warning, and then the committee members will be allowed to of course ask questions.

Go ahead.

Mr. Dahms: Well, thank you. First of all, thank you for the opportunity. Those of you who live in Edmonton, if you don't belong to your community league, call us, and we'll tell you whom to call. It's my commercial message.

I guess just taking up a little bit on your conversation as it just wound down with the last presenter, the real meat and potatoes of any kind of movement to do what PIPA tries to do is to get it on the street and get it to work. I guess I'll just start by saying: here's a way you can help.

We as an umbrella organization try and have our 150-member community leagues be successful. That's our job. There are a myriad of things that we work on, everything from trying to help a treasurer figure out, really, how to be a treasurer to dealing with planning and development issues – and on and on and on it goes – in the face of communities saying: we're having a hard time getting volunteers; gee, maybe we should just kind of go into a hiatus for a bit, and hopefully some more people will come to the table. So the message there from communities in our experience, certainly the community league movement – and I think it's resident in sports and arts and other sectors as well – is that we've got lots of people willing to spend their time to give back to their community.

There are lots and lots of things, issues, considerations that they need to deal with. The typical way is: when it's in my face, I'll deal with it; when it's not, I've got other things in my face that I'll deal with. So what we would really like to be able to do is to help communities figure out what things they need to do relative to, you know, a piece of legislation like this. Really, the question is: how do we make it real in our community? How do we do that? So I'm delighted to tell you that in dealing with folks in the community league movement, in any event – we're not big on theory; we're not

big on justification. We're big on: how do we do this? What kind of form do I need? When people sign up, what are they supposed to do? What am I supposed to tell them? What's it supposed to look like? Give me a form, and I'm happy. So give me the real ticket here in terms of what we need to do.

I've gone through the website, and there's lots of good information there, but it's a little bit short because the one piece that would be great to add is: do you have people who I could hook up with the community league at a board meeting, and they would come and say: here are the three things you need to do for sure, and here are six other things that you could do if these things are a big deal. So that would really be helpful because, again, it's the form; it's the how-to.

You know, this is a community membership card, and we pump out 50,000 of these a year, and people buy them. So we put a little thing on our card. I don't know if I can read it. The fine print is so fine I practically can't read it. It says: information collected is solely for league purposes; it's never sold or released for commercial purposes. That's our PIPA statement, right? So what's on here? This a community league that sells it. So if you're living in Highlands, you buy this membership card when you join your community league.

So we ask for the names of the adults, the address, the postal code, the phone numbers, the e-mail addresses. We ask for the names of your kids, when they were born, and whether they are male or female. Why do we need to know that? Well, because it gives us a bit of an inventory. We've got lots of kids. Demographic data is one thing, but when we know that all our members have kids between the ages of 6 and 12, it tells us that we should be doing some stuff for kids between the ages of 6 and 12. Then we ask, you know: what kind of membership, and are you interested in volunteering? All that kind of good stuff. So there's not a huge amount of data on here, but nonetheless we felt a responsibility to put our fancy statement on here that says: this is for community purposes. That's about as sophisticated as we've gotten so far.

Another interesting thing that we find is that we encourage citizens to phone our office. If you'd like to join your community league, but you don't know who to call, call our office, and we'll hook you up. So what information do we provide to a caller who says, "Well, I need a contact in our community"? Well, what we do by default, common sense, is say: here's the membership person, and this is their first name and their phone number. So we release that amount of information assuming that if you agree to be the membership co-ordinator for your community league, people are going to call you, right? But we don't give out anything other than those two pieces of information: first name and phone number. Are we being right or wrong? We don't know, but it's what we do.

It's interesting how communities evolve their own practices. I was at a community league general meeting, and the protocol was that there was no list. But you need to know who's there – right? – because you need to verify quorum, and are you a member and the rest of it. But there's no list. What this community had elected to do is: you fill out a little piece of paper, and you put it in the box. Because a list meant that if I had a list of names and phone numbers, personal information is accessible and available for someone else to see who signs in on that list. And I'm going: is that a little over the top or no? Don't know. But that's what they had decided to do. That was their interpretation of protecting private information.

I think, again, it's a matter of what's reasonable, what makes sense to do. Again, I think there is a bit of a gap between: this is the intent of the legislation and this is what we're wanting to provide for. Often in cases it's the 2 per cent of circumstances or people, maybe, who will push that to the limit. The other 98 per cent don't

care except when there's a problem. It's just like the bylaws for any organization. You never look at them unless you're in the glue about something, and then they hopefully will help determine how you proceed if you're in the glue.

Again, I guess just to sort of wrap up, one thing that would really be helpful is if there was a way to provide some resource and help that would be sort of directly from the people who know, who can translate the intent and the theory and the reasoning behind the legislation into: well, you don't really need to go that far, but you should go this far, and here are things that you really should do, and here are things that you could do, and here's how you would do it. Otherwise, it's people like me who have to figure that out, and it's not my field of expertise, right? So, you know, it would be really helpful if that resource was there.

Interestingly, I would say that about 60 per cent of our community league leaders are Internet hooked up and computer savvy. Then there are those who say: ain't got a computer, never had one, don't want one. You know, we can't say, "Well, go to the web and get it all off the web" because it's like: I'm not going to do that because I don't have a computer. So we need to look at other ways. Again, my experience is that across the table is always the best because then people can ask questions and clarify. No matter what, you know, experience suggests that when you leave the room and everybody goes home, what you think everybody understood, that they got the same message, it never happens. You know, it's one of these things, again, that we can never overcommunicate. If it's important – if it's important – then I think we should take the time and try and do the best job we can.

1:30

I'll just add that recently there are concerns about, you know, identity theft and all the kinds of things in the world that we live in that become more and more possible. These kinds of matters become more and more important to people. So what I hope to avoid is the circumstance where a leadership group in a community league who've agreed to spend their time and volunteer get beat up by one of the community league members because they did something wrong. It's like: "We didn't know. Nobody told us." "Well, it's your responsibility to know." "It's my responsibility to know about insurance and gaming reports." I mean, you know the list, right? "So come and give me a break." "No. I'm going to come get you."

That'd be it.

The Chair: Thank you very much. As a person who spent a lot of time with community associations I completely relate to what you're saying.

We do have some questions.

Ms Blakeman: Actually, it was sort of a point of information. The people from Edmonton know what community leagues are, but I know that they don't necessarily exist in other communities. Does everybody understand what he's representing? Yes? Okay. We're good. Great.

Thank you for coming, Russ. I'm glad we were able to organize that. Your input is very interesting.

If I'm hearing you correctly, it's really about capacity and resources. You're working with volunteers who don't have a lot of capacity to take on a huge amount of stuff, but they need some very clear resources set out for them. You put it quite well when you said: these are the three things I have to know, and these are the six things that maybe would be nice, and that it needs to come from the expert so that your volunteers don't find themselves in trouble.

Mr. Dahms: Right. Exactly.

Ms Blakeman: Okay. Good. Thanks.

Mr. Dahms: I guess I'll add that the vast majority of these organizations don't have staff, so everything gets done by volunteers, which I think is a pretty key element to keep in mind.

The Chair: We call it the same 10 people.

Mr. Dahms: The STP. Exactly.

The Chair: Mr. Lund.

Mr. Lund: Well, thank you very much. Thanks for the presentation, Russ. You made a comment that you're not the expert, but by the quality of your presentation I suspect that you are a lot closer to an expert than some people who claim they are.

I would be interested to know, because I think you probably know an awful lot about this act, what issues you would like to see this committee address apart from the communications. I couldn't agree more with you that the last thing we want to see is that a piece of legislation gets a volunteer in trouble and that there was no malice or anything connected to it, but simply because they didn't follow the letter of the law. What would you see in PIPA that you would like to see us change?

Mr. Dahms: Well, I'm not so sure that there's anything from really a content point of view. You know, I'd asked a number of community folks that question, and really there wasn't anything that came back. Now, it doesn't mean there isn't, but from what I've heard, there doesn't seem to be anything that's making people crazy in terms of the content. I think it's more about the implementation and trying to, you know, take the parts we want to do something with and make it work.

Mr. Lund: Well, I guess a follow-up to that, Madam Chair. It is quite complicated. I've got to admit that. There must be something that you would suggest to us to make it more user friendly.

Mr. Dahms: What could be I think very useful is if you were able to take kind of elements and translate them into – and it's been done in part on the website – a summary, maybe, for not-for-profits to say: here are the parts of this that apply directly to your organization or an organization, and here's how or here's why. Because there are many parts to the personal information part of this. So to explain that when as an organization you are collecting information about your members or about, you know, others, here are your fundamental responsibilities and here's what you need to do in order to exercise your responsibility, that would be helpful, I think.

Mr. Lund: Well, thank you. That is helpful.

Mr. Martin: Just to follow up quickly. I know what you're driving at because I've been at a number of community meetings lately and people are feeling overwhelmed. It's the same group of people trying to do more and more and more, and we're starting to lose them. A lot of the younger people still aren't coming. Have you found, because there is now some, you know, publicity about PIPA, that there has been a fairly big concern about: what is our obligation here within the community group? Has it sort of been because of that, the tendency for people to back off and say: "Look. I don't want to do this. I don't have the time. It's too complicated. I don't want to get in trouble"?

Mr. Dahms: Well, I'm not so sure that that's emerged yet. I guess what I would really like to see is: let's get ahead of the curve before communities start coming forward saying "You know, we need help, and we need it tomorrow," if we can get out there and help folks figure out what they need to do and what their responsibilities are and find an easy way to help them just do what they need to do, whether it's a policy or a practice or whatever that may be.

You know, together with the risk here the insurance liability risk is another one that people are very concerned about. You tie them together and it's like: "I don't even want to be a board member. Get me out of here."

Mr. Martin: I guess about the only thing you're saying is to get something out that's simple and straightforward. "Here are the obligations." They can come to the meeting; it's not that onerous. "These are the things you have to do." Then that would solve the problem.

Mr. Dahms: Yeah. If you could identify a couple of people who would be willing to do kind of a road show, as it were, or a little workshop, an hour and a half or something, we'd be happy to help set it all up, you know, pick a couple of dates. It's something that we'd probably want to repeat over the course of a spring and a fall and a spring and a fall because people change. It may be something we do twice a year for five years, and it's a standing kind of thing. People do come and go, and there are those communities where it takes a while. They're scrapping with all other kinds of problems, so this one is the last one they're going to deal with, and it may be a couple of years before they get to it.

Ms Blakeman: I just wondered, given what we've heard today: do you know if the community leagues are not-for-profits? Are the community leagues that you're representing conforming under this act as not-for-profits?

Mr. Dahms: Oh, probably not.

Ms Blakeman: Okay. How do the community leagues that you deal with define commercial activity? The not-for-profits really only come into play here when they're engaged in commercial activity; in other words, running an activity that could be competing with a commercial enterprise. Do you know when that comes into play? For example, you're running a skating school. There could be a private entity that is running a skating school, in which case you're competing with them. That becomes a commercial activity for which you're charging a fee. You're so-called making money.

Mr. Dahms: Right. There aren't many of those. Part of the confusion is: so where does this really apply?

Ms Blakeman: Yeah. That's the trick.

Mr. Dahms: That's part of it because the interpretation is that we as an organization have a responsibility to guard with due care and diligence information about our members. That's what the interpretation is, and that's our interpretation too. We're not giving out information about the community president. I got a call from the police department the other day. The lady asked me for contact information for all the community presidents in the new southwest district because they were going to, you know, tell everybody what's going on. I said to her: "I'm not going to send you the names of the presidents and e-mail addresses. I'm not going to do it. I'll send you generic mailing addresses for all the communities, but I ain't

sending you e-mail addresses. I'm not going to do it, right or wrong."

You know, these people provide this information. Now, what should we be doing to take good care to provide this information to the right people? I don't want a community president coming back to me saying: "You gave my e-mail address out to the police department. Guess what? I've been trying to stay away from those guys." You know, it's a funny place. It really is. So it's all the interpretation.

The Chair: Yeah. It's much like when I want to contact a parent council chair within a school. They always have to call her to see if . . .

Mr. Dahms: Exactly.

The Chair: It's like there's something in the middle now between us and information. It's a good point.

Hugh MacDonald I have next on my list.

Mr. MacDonald: Yes. Sir, have you seen or are you familiar with this document?

Mr. Dahms: I haven't seen the guide, no.

Mr. MacDonald: Okay. Thanks.

The Chair: That was the question?

Mr. MacDonald: Yes.

The Chair: Okay.

Mr. Martin: That was a good question.

The Chair: That was a good question.

You know, I can in my mind, I suppose, picture this idea of one or two days of training, but I'm trying to picture it in High Level and out in Rocky Mountain House and those places.

Mr. Dahms: Because you've got a provincial concern, absolutely.

1:40

The Chair: Yeah. That's what I thought of immediately. It's one thing in the larger cities to organize, but I'm wondering about, you know, as we spread across the province and are sensitive to that. [interjection] Mr. Lund says that he really doesn't have any information in his constituency, so it wouldn't be a problem.

Ms Denham: I just want to echo the importance of education and what you said because yesterday one of our investigators went to Bragg Creek and did a presentation to administrators with not-for-profit organizations. All of the questions were about: what is a commercial activity, what isn't, and what are our fundamental responsibilities? The presentation was very well received.

Mr. Dahms: Well, that's good. Yeah, it's good to hear.

The Chair: Well, thank you very much for taking time and coming to present to the committee. I found it very interesting and some good issues.

Mr. Dahms: You're very welcome.

I'd offer a suggestion. Through the Tourism, Parks, Recreation and Culture department, with all of the field staff that are in that area who have connections throughout communities, there may be some ways to talk with those folks and see if they might be able to come up with some ideas because, again, they connect with the community. It's a thought in terms of a way, maybe, to try and kind of get some information out. So efforts that you would be able to undertake would be greatly appreciated by all, I'm sure.

Ms Blakeman: I think we could add to that the lottery foundations, you know, CFEP, CIP, Wild Rose, AFA, Sport, Recreation, Parks & Wildlife Foundation. All of those deal with NGOs in the province. So another way of getting information out to them is through those.

The Chair: Yeah. Interesting. Some good ideas. Well, thank you very much.

Mr. Dahms: Excellent. Well, thank you for the opportunity.

The Chair: You bet. Thank you.

Committee, at this point in time we've been doing our work so well that we actually have a little bit of a lag here now. We're looking to see if we can get either of the last two presenters to come right away, but I'll know in about 14 seconds if that's possible. [interjection] Okay. Well, we can't get a hold of either of them, so we have about 15-minutes here. Would you like to just call a break?

Mr. VanderBurg: Well, at the end of our presentations today are we going to make some suggestions on what we've heard, what we're going to do with it, or are we just going to listen to these? What's going to be the process, and when are we going to do that? I'm just wondering if we could start in here.

The Chair: Yeah. I mean, it would be lovely. Well, we haven't heard the last two presentations. I don't know if, perhaps, it's generic enough in nature right now that we could start to make some decision, and then if something changes in the next two presentations, we could adjust after. Basically, the committee will be meeting again. Like I said, we've got one more. Once we hear from all groups, then we wanted the committee to review the information presented at a later meeting. That was what we had planned.

Mr. VanderBurg: I guess what I'm hearing are some good suggestions to direct staff to say, you know, find us some more information. You know what? Every one of the presentations we've had has brought forward good suggestions. So could we start on that list of things to do?

The Chair: I find myself in agreement. I don't see any reason why we couldn't at this point in time if we had some ideas of committees and some things we'd like to direct staff to do and to begin to work on. I think that's a great idea. Does anyone on the committee have that?

Mr. Lund: Well, I would like to see us put our thinking caps on and get the staff too. Also, in light of the last presentation I know that I'm hearing more and more from the volunteers out in the constituency. They're getting scared to be on boards; they're getting scared to be a director because of the legislation that we've got. So I'm wondering if there isn't some way that we can enshrine some protection for these people. It's so easy to give out some name or address or do something with no malice intended yet put the board and the individual at great risk. I don't know how you do that. To prove that there was no malice intended I guess would be one way.

The Chair: Well, maybe we could direct staff to come back to the committee with some ideas and at least show us if there are some things that could be created or placed in the act. Because I have the same feeling.

I've got staff wanting to respond, please.

Ms Lynas: Can I just mention that there is provision in the act right now which does provide protection of organizations from legal action. What it does is that when an individual is acting in good faith but, you know, does something in error, there is protection for them. If they do something maliciously and wilfully, there would be penalties against them.

Mr. Lund: Thank you for that. It could very well be that if we did a better job of educating the people, then, in fact, they would get some comfort out of that. But what I'm hearing is that they have great difficulty with it.

Ms Lynas: Right. And we could certainly bring back at a future meeting and explain what is already in the act for discussion of whether that's adequate.

The Chair: What section is that in the act? Could you tell us? Do you know?

Ms Lynas: Section 57.

Mr. Martin: Well, I don't know if this is in what he was saying – and I think it's the flip side – that people are feeling overwhelmed out there. It really is hard to get volunteers in the community groups and the rest of it. There is that worry out there. They don't know all the intricacies of section 57 and the rest of it. How do we get that information? Is that part of our role, you know, for groups like community associations? That's what he's talking about. Give us some simple things so that we understand what our role is. Is there a directive or a bulletin that could go out to the nonprofits that you're dealing with with the commercialization or whatever we decide to do with them down the way, certainly for groups like community groups? I guess, how do we do the public education that this isn't going to be overwhelming? We're going to lose a lot of volunteers, a lot of groups.

The Chair: We don't want to scare the few good men off.

Ms Blakeman: Well, I think it's within the mandate of the committee to make recommendations aside from specific recommendations about changes to the legislation, but certainly the implementation of the legislation is equally important to what's actually written in the legal document. So I think we're well within our rights as a committee to make formal recommendations about resource material being developed by the appropriate support agency, whether that's the FOIP commissioner or whoever.

I think that's a recurring theme that I'm hearing, that people don't know if it applies to them, particularly in the not-for-profit sector. I don't know that PIPA was the right place to put the NGO sector. I wonder if it shouldn't have fallen under one of the other pieces of protection of information legislation that had come before this, because constantly putting the NGO sector in as the flip side of the coin of the business sector doesn't work. They're not the same thing, and they don't work the same way, and we're hearing why.

Anyway, I think we should make a recommendation. I'm happy to make a motion regarding that, that the appropriate agency should be asked to prepare resource documents to be used by the NGO

sector that helps them with some simple definitions of who is covered by the legislation, with specific examples. It's hard to tell from this legislation who's actually covered. So let's get some specific examples of where they're covered and things like the definition of commercial activity and something like a simple checklist that they can use to figure out where their organization falls.

The Chair: So I'm assuming that we have a motion on the floor at this point in time. Do we have the wording on that motion? Laurie, would you like to repeat it?

1:50

Ms Blakeman: That the committee make a recommendation that the appropriate agency develop resource materials for the NGO sector, particularly covering definitions of which not-for-profits the legislation applies to, with real-life examples, if I can put it that way, and also around what's considered commercial activities, with real-life examples, and, further, that additional resource material be developed.

Mr. Martin: Can I suggest that maybe the two of you get together . . .

The Chair: . . . and come up with the wording.

Ms Blakeman: Sorry. I'll write it out.

The Chair: So at this point in time, then, do I have a seconder on this motion? Would anyone like to speak to it first?

Mr. VanderBurg: Just to help out, Chair, we have *Hansard* recording this. You know, staff are just not going to do something, and then it's not going to come back here. I'm saying that I think they've heard the comments, and they're constructive comments. I think that we should give staff a while to digest that and bring something back to the committee that we can further act upon. I don't know if we really need a formal motion. I think, you know, the directive of Member Blakeman here: all of us agree that there needs to be some clarification. Where do we go from here? I'm not sure, but I'm sure that staff have lots of good ideas. They work with this all the time.

The Chair: Okay. But we do have a motion on the floor. So, Ms Blakeman, would you be content if we withdrew the motion at this time based on this idea of having staff go and come back with some details or some recommendations around this area for us? You could always reintroduce your motion later.

Ms Blakeman: Sure.

The Chair: Would that be all right? Okay.

So consent? Is everybody in favour of having staff go and look? I see a lot of hands. I'd say that passes. Thank you very much.

Mr. Lund: Just building on what Ms Blakeman said, because she included more than just what was contained in her proposed motion, I think it would be important to also incorporate it because the one thing that I did hear her say was whether in fact it should be in PIPA, what's governing some of this. That was something that twiggged my interest because it could very well be that we need to do some investigation. It could be that it really doesn't belong in here.

The Chair: That was on my list as well.

Mr. Lund: I think that perhaps if the exemption was broad enough that it covered, then we don't have something to worry about, but the relationship between the Freedom of Information and Protection of Privacy Act and this act I think we'd better explore, make sure that what we exempt in here is not trapped over there.

The Chair: Okay. So, again, if we could have staff go and look at that and report back to the committee, we'd appreciate that.

Ms Lynas: Just one thing I could say is that it is difficult for the nonprofit organizations to understand what part of their activities is covered, if at all. One of the first publications our office put out to explain things to people as an information sheet was for nonprofit organizations. It does have some examples of what is a commercial activity and what might not be. One of the reasons why there aren't a lot of guidance documents like the gentleman was talking about, examples of forms and wording, is because they don't have to comply with the act. They do not need to have these kinds of statements on for noncommercial activities, so it's one of these things that in our office we haven't put these things out because, then, that would create an impression that they have to comply. There are a lot of organizations that are complying voluntarily, putting statements, having privacy practices, but they aren't actually required to under the act.

Ms Blakeman: But increasingly and partly under pressure from government NGOs are engaging in commercial activity to fund their primary activities. So they may be running a charitable youth recreation group, but they're out there selling chocolates. So increasingly NGOs are involved in commercial activity, in which case they are captured by the act.

The Chair: And probably always have participated.
I have a speakers list forming. I've got Ray, and then I've got Ty.

Mr. Martin: Well, I mean, that's the one problem: what's commercialization? But the statement that you made would be a very valuable one to go out to them: don't worry about it. That's what, you know, he was saying. They just don't know, so they take it that maybe all these things are involved and that they need to be concerned about all of them, so even that would be a very important statement to get out to them.

Mr. Lund: Well, I'm still a little bit concerned. We want to make sure that under the Freedom of Information and Protection of Privacy Act, because there are some things in there that you're not allowed to disclose as well, not just the commercial – I would hope that the committee at the end of the day will use some common sense on this commercialization. A group out selling chocolates to raise funds for whatever could be deemed to be commercial because they're competing with the local chocolate seller, but let's not go down that road because I think some common sense has to be in this.

Quite frankly, things like the pie cops and the server cops and those that were out there caused us huge problems. Those are the kinds of things that drive away volunteers. They are afraid they're going to get caught when they're doing little things to help their community and all of a sudden they get captured in as being commercial. So I would hope that we use some common sense when we write this.

Ms Blakeman: Just to rebut. I agree. I don't want to overlegislate anybody. But it's not our choice in a lot of cases around the commercialization. I can think of a quick example in my riding

where we had a seniors' residence that offered a snack program, but it was for sale, and they got brought up with a complaint from a local restaurant who said: that seniors' residence is competing with me on a commercial venture. So the issue I'm trying to make here, Ty, is that it's not about our definition. It's about what that sector out there is going to decide is commercialization, and that's not always in our hands.

Mr. Lund: Yeah. I really appreciate that, and I appreciate those comments. But the fact is that we write the legislation. So let's not get scared, and let's not back our volunteers and those folks into a corner that causes them huge problems. What they're trying to do is for the good of the people. It's not for an individual owner.

Ms Blakeman: I think we're saying the same thing.

Mr. Lund: Absolutely.

The Chair: I think our point is taken. I think the staff has a pretty good idea.

Was there anything else that the committee heard this morning that they would direct to staff?

Mr. VanderBurg: Well, in the first presentation from Mr. Jones, I think, he had some very constructive suggestions and some good wording in simple regulation that could clear up the issue for the people he represented and maybe even a broader group.

So I would like, again not by motion, just to ask staff to take that information under consideration and see if that could be incorporated into some of the revisions that we plan on doing. I thought it was a very simple approach and made some sense.

The Chair: Okay. Thank you.

Mr. Martin: Well, the other that I don't understand – I suppose I should have been reading for weeks before this meeting.

Mr. Webber: You mean you didn't?

Mr. Martin: Did you?

The whole self-regulatory, where they fit into it. Remember, he was talking about that. I'd like to know about that and see if the gentleman previously had a case about where they fit into all this. He was talking, obviously, about the legal profession, but I just don't understand where the self-regulatory fits in here. Maybe an explanation whether there need to be changes there or not.

The Chair: Okay. We do have another group joining us, but just to conclude what we're doing as a committee, Laurie, did you have one more?

Ms Blakeman: There was the initial request that I had made about investigating faith communities, the comment that I made earlier, so I just want to put that back on the record.

The only other issue that has been raised a couple of times is about the access to information by individuals to be able to confirm and correct information. Now, that's very clear in HIA, less clear here. So if we could get some more expansion on that, I'd appreciate it.

The Chair: Great. That was perfect timing, then, to have that, and I appreciate that suggestion, Mr. VanderBurg. I think we cleared up, you know, where we've been up to this point in time.

So we're going to go ahead and proceed because we have our next group here to present. We'd like to welcome Mr. Paul Pellis. He's the Deputy Minister of Service Alberta, and Cheryl Arseneau is his assistant.

I just wanted to let you know what our process is today. Basically, we're giving 10 minutes. I'm going to give you a one-minute warning to let you know on your presentation, and then we're opening the floor to committee members.

We thank you for joining us today.

2:00

Mr. Pellis: Okay. Thank you. Good afternoon, Madam Chair and committee members. I want to thank you for your invitation to address the select special committee regarding Alberta's Personal Information Protection Act. I'd also like to thank the people in attendance here today from Service Alberta for the work they have done during this review, and that includes Hilary Lynas, Jann Lynn-George, Kim Kreutzer Work, Amanda Swanek, and Elizabeth Denham.

As Deputy Minister of Service Alberta, the department responsible for the administration of PIPA, I welcome the opportunity to highlight some of the main points raised in our department's written submission to this committee. These recommendations were compiled in consultation with government ministries. For the most part, ministries reported little concern about the act on the part of stakeholder organizations, client groups, or individuals. We believe that the act is working well. Most of the government recommendations propose minor amendments to enhance the clarity of the act or to address technical matters. I was not planning to comment in detail on the majority of the 21 recommendations as set out in our submission, but I would like to highlight four of the more significant ones.

The first one is the inclusion of exceptions to consent and exclusions from the scope of the act to now be included in the act itself as opposed to regulation. The second one is to have provisions for personal employee information also apply to officials. The third is to allow the Information and Privacy Commissioner the discretion to disclose information to the Minister of Justice and Attorney General. The last one would be to review the act six years from the completion of this committee's review. My staff are prepared to provide further explanation on these and the other recommendations as they are considered. I'd also like to offer some remarks on the general purpose of the act and principles on which it is based, beginning with some brief comments on the development of the act itself.

On April 13, 2000, the federal Personal Information Protection and Electronic Documents Act, also known as PIPEDA, received royal assent. This act was unusual in that it did not claim the entire field of private-sector privacy protection. As a result each province had a decision to make. A province could allow PIPEDA to take effect within their jurisdiction or pass similar provincial legislation and limit the application of PIPEDA to cross-border transactions.

Faced with this choice but with little experience in private-sector privacy legislation to go on, Alberta organizations indicated a preference for a made-in-Alberta solution and made-in-Alberta legislation. This group supported legislation that, one, would be easier for Alberta businesses to understand and apply, particularly small and medium-sized businesses; that would address issues not dealt with in PIPEDA, such as employee information and the sale of a business; and that, thirdly, would allow for resolution of complaints by the Alberta Information and Privacy Commissioner.

Alberta also took the bold step of developing its own act. There is every indication that this decision was very well taken. PIPA

certainly addressed the three main priorities of organizations. The act is much simpler to understand than PIPEDA, and it has been widely praised, especially for its principled but also very practical provisions for employee information and sale of a business. The office of the Information and Privacy Commissioner has been praised for their valuable guidance provided in its investigation reports and orders.

In addition, both my department and the office of the Information and Privacy Commissioner produced a range of resources to assist businesses in implementing the act. We have also continued our efforts to promote compliance through the development of resources to address general questions that apply to all organizations as well as questions specific to particular sectors. That is not to say that all issues have been resolved, and I would like to take a few moments to draw your attention to two items which, I believe, particularly merit the consideration of this committee.

The first has to do with harmonization of the various privacy protection statutes. You may hear it said that Canada has a patchwork of privacy legislation, and there is some truth to this. All Canadian jurisdictions have public-sector privacy legislation. Some provinces, including Alberta, have health information legislation. Alberta, British Columbia, and Quebec have private-sector privacy legislation, while PIPEDA is fully in force within other provinces.

So how do organizations that are subject to different legislation manage to do business and exchange personal information? The answer is that despite the patchwork all legislation is based on the same basic principles. These fair information principles, as they are commonly known, were adopted by the Organization for Economic Co-operation and Development in 1980 and have become an international standard. They have proven to offer a very effective and flexible framework for addressing privacy issues and especially issues arising from rapidly changing technology.

These principles, such as limiting the collection of personal information, specifying the purposes of collection, limiting use and disclosure, and safeguarding personal information, may seem very general, but they provide a tried and tested method for examining a broad range of issues. They also allow us to analyze the privacy implications of technologies which were probably beyond imagination in 1980. These include camera phones, radio frequency identification tags, blogs, and webcams.

Alberta and British Columbia collaborated during the development of PIPA to create acts that would be firmly based on these fair information principles. The aim was to produce legislation that would be substantially similar to PIPEDA but simpler and easier for small and medium-sized organizations to apply. Stakeholders wanted a provincial act, but they also wanted to see harmonization of privacy legislation. They were very supportive of the work on harmonizing the Alberta and B.C. acts. While harmonization was integral in development of the legislation, we also ensured that the best interests of Albertans and Alberta businesses were at the forefront during the development phases. There are also some national organizations that like the innovations in the Alberta and B.C. acts but would also like to see further harmonization of federal and provincial legislation.

As this review proceeds, there will no doubt be requests for amendments to promote harmonization as well as for amendments that would take PIPA further from other privacy legislation. In this regard this committee may have to weigh some competing priorities. We would ask that the select special committee consider all proposals for amendment in relation to the fair information principles and the need to maintain similarity with other private-sector privacy legislation.

The second item I would like to raise concerns the application of

privacy legislation to nonprofit organizations. During the development of PIPA careful consideration was given to how the act would apply to nonprofit organizations. To meet the requirement that the act be substantially similar to the federal privacy-sector act, PIPEDA, PIPA would at a minimum have to apply to personal information that was collected, used, or disclosed in the course of a commercial activity. The government of Alberta chose to limit the application of PIPA to nonprofit organizations, along the same lines as PIPEDA; that is, PIPA applies to personal information that is collected, used, or disclosed in the course of a commercial activity. An example of that would be selling donor lists. I should note that PIPA differs from PIPEDA insofar as it defines the operation of private schools and colleges as a commercial activity.

The select special committee that reviewed the private-sector and public-sector freedom of information and privacy act in 1998-99 had been concerned about the uneven protection for the personal information of students in public and private educational institutions. The introduction of PIPA provided an opportunity to address this concern. After three years we believe it is time to revisit the issue of how the act applies to nonprofit organizations. On one hand, there are concerns about the amount of personal information held by nonprofit organizations that is not subject to any privacy legislation. This includes the personal information, some of it very sensitive, of clients and employees of some of these large organizations. On the other hand, there are concerns about imposing a regulatory burden on small, community-based organizations that primarily operate through the services of volunteers.

In addition, stakeholders have expressed concern about the definition of a nonprofit organization . . .

The Chair: Mr. Pellis, sorry. We're ending your time at this point. I was trying to signal you with one minute. So if you can conclude, if there is a major point you want to make still.

Mr. Pellis: Okay. Thank you.

In the act it treats organizations differently in terms of nonprofits.

In closing, I'd just like to thank the committee once again for the opportunity to participate, and I would be pleased to respond to any questions. If there are questions that we are not able to address today, my staff are prepared to provide further explanation as these recommendations are considered.

Thank you.

2:10

The Chair: Thank you.

I have Mr. Hugh MacDonald on the list first.

Mr. MacDonald: Yes. Just in regard to recommendation 21, where you indicate that there should be an amendment to "extend the time between reviews to six years from the submission of the report of the special committee." Well, I don't know how or why we would be interested in doing that if we're going to be discussing further harmonization of privacy legislation not only with B.C. but with the federal government. That recommendation I cannot support for that reason because I would think we would need to have a review of this legislation sooner than later, particularly if we're sincere in our efforts to harmonize the legislation, and I think it needs to be harmonized.

Mr. Pellis: I think we're suggesting that proceeding with a formal review after six years does not preclude any of the items that you've referenced that we think still should need to be done. What we're saying is that by proceeding on a six-year time frame, it would give

us an opportunity to proceed with that harmonization, and the next time a special committee did a formal, inclusive review at six years, hopefully most of those harmonization items would in fact be addressed. So it's not intended to not permit those other items to occur. In fact, we're hoping that that window would allow us to do that.

Mr. MacDonald: Interesting.

Now, recommendation 19 is that

the provision for orders that may be issued after inquiry be amended to allow the Commissioner not to issue an order, so as to remove the necessity of an order on a matter where none of the options for orders is applicable under the circumstances.

I can't understand how or why you would make this recommendation. It allows an inquiry to be held but no decision to be rendered by the Privacy Commissioner.

Mr. Pellis: I believe that the intent of that recommendation is that right now the commissioner does not have discretion on whether to issue an order or not. There are instances where the commissioner undertakes a review and there's no requirement for an order, but the legislation does not give him that flexibility. That's really all we're saying here. This is not to imply that if the commissioner requires an order, he certainly will exercise that right.

Mr. MacDonald: So you don't think that section 52 here is adequate?

Mr. Pellis: Maybe I'll ask my staff to just supplement that as well. The point is that right now the commissioner does not have the discretion not to proceed with an order if he doesn't need one.

Mr. MacDonald: But in British Columbia, if I could interject for a second, the Privacy Commissioner on completing an inquiry must dispose of the issues by making an order under this section, so why should we be so different than B.C.?

The Chair: I see an indication from staff for a response.

Ms Lynn-George: This is to deal with cases where perhaps all the information has already been disclosed in response to a request, and there's nothing further to disclose, so there would be no point in issuing an order because there is simply nothing that can be done. That's the typical example that occurs.

Mr. Pellis: To say it differently, the Alberta commissioner does not have any less powers than the British Columbia commissioner. We're just giving him the discretion that in the event that an order is not required – as an example, where all the information has already been made available – there's no need to issue an order. That's all we're saying. We're not trying to dilute the powers in any way, shape, or form. We're just trying to bring, I think, some practicality to the legislation.

Mr. MacDonald: Okay. Could you please tell me, from Alberta government services, what PIPA precedents have concluded in that manner?

Mr. Pellis: Could you repeat the question?

Mr. MacDonald: Could you tell me, from Alberta government services' perspective, what PIPA precedents have concluded in that manner?

The Chair: Do we have an answer to that question?

Mr. Pellis: I guess I'm not sure of the context of the question, Madam Chair.

Mr. MacDonald: What's the precedent? Why do you need to do this?

The Chair: Are you saying "president" or "precedent"?

Mr. MacDonald: Precedent.

Mr. Pellis: What's happening today is that if the Information and Privacy Commissioner has all the information that he needs, there is still a requirement to issue an order, even though the order really is not required because he has everything. All we're trying to do here is say that he has a discretion, that if he has everything he needs, an order is not required because the individual or the company, whoever it is in question, has met all the requirements; therefore, there's no need for an order.

Mr. MacDonald: So what ability, then, would there be to appeal if that happened?

Mr. Pellis: The rights of appeal, et cetera, would not be compromised by this.

Mr. MacDonald: They would not be compromised?

Mr. Pellis: No. I think there's an inference that perhaps we're trying to dilute the powers of the commissioner. That's not our intent at all.

Mr. MacDonald: Well, that's the interpretation I have.
Can I get back on the list?

The Chair: Yes.

Mr. Martin: Well, just very quickly. I see the need for harmonization, and we're looking at, really, three, the federal, B.C., and Alberta – correct? – and trying to harmonize the three. Without going through all of it, what would be the major changes that we would need to make here, two or three major changes to bring it into what you were talking about?

Mr. Pellis: I think – and I'm certainly going to let my staff supplement – the four points that I raised at the beginning around the definition of officials, the issue of nonprofit organizations, and the selling of a business: what we would prefer there was that there was harmonization and compliance across all jurisdictions. So a company that had operations in various provinces would not have to say: well, this is how Saskatchewan does it; this is how Alberta does it. Our preference would have been a federal approach. I think those are some of the areas where we would need that harmonization. I'll ask my staff to supplement that as well.

Ms Lynas: Also, it's as much not to make changes. At the moment Alberta's legislation is substantially similar to PIPEDA, and it's to be mindful that changes could be made to the act that would mean it isn't substantially similar anymore. So it's as much to say that we want to keep substantially similar status, and that means there are some core elements in PIPA that need to be kept. For example, I think that if Alberta went to the situation where consent was always

implied, that may not be acceptable to maintain substantial similarity to PIPEDA. So it's that kind of thing: maintaining our legislation to a certain bar so we retain that status.

Mr. Martin: We've had some discussion about the nonprofit sector here already and the commercialization. Where is the major difference between what we do and what others do? Is it B.C., or is the federal?

Ms Denham: In B.C. the not-for-profit organizations are fully under the scope of the act. In Alberta it's just the commercial activities of certain nonprofits that are under the act. Under the federal legislation, under PIPEDA, it's commercial activities that are caught by the act, whatever the organization.

Mr. Martin: So we're in tune with the federal but not with B.C.

Ms Denham: Right. We're aligned with the federal legislation, but we're not consistent with B.C.

The Chair: Interesting.

Mr. VanderBurg: Well, I think that's the point that I want to build upon, you know. The Canadian Bar Association complimented our legislation and seemed to think that if B.C. would use common language to ours and the common intent, it would be easier for the cross-border organizations that do business in British Columbia and Alberta. I always get hung up on the wordings of our legislation, some of our pieces of legislation, whether it be federal legislation or the Alberta legislation or B.C.'s legislation. It seems to be the flavour of the lawyer of the day drafting the legislation. I've been at Leg. review and find it probably the most frustrating job that I've ever had here. Some may say Public Accounts is, but I say Leg. review is.

You know, we have to strive to make the legislation easy for Albertans to understand, and I think that what we've heard today are the definitions of commercial. Is selling a chocolate bar and raising funds commercial sales? Or selling pies: is that commercial sales? So I think all of us have defined that there is some weakness, and maybe the weakness is in the wording, that we haven't made it simple enough. Maybe you've got to make it so a welder can understand it, and then everybody will be able to.

2:20

Mr. Martin: You don't want that out.

Mr. VanderBurg: Well, I'm a welder, so it's okay. I can say that.

The issue is that we need to have our nonprofits that don't have legal staff – you know, there is a difference between Greenpeace and the United Way and the community leagues here in Edmonton. We need to have some clear wording, some clear definitions on who we're trying to protect and who we're trying to bring into this law.

I think Service Alberta has a real role to play in that communications piece. You know, we have a really good website for Albertans, Service Alberta especially. I can talk, Paul, a little bit more about the government services side of it because they're an outward-looking department, out there telling you about your driver's licence and about your consumer protection needs. I think that maybe there needs to be an easier link on our websites from each department that maybe focuses in on what Service Alberta can define for you under this legislation. So I think Service Alberta has a role to play in educating Albertans and making it really simple and easy to read and understand, like I say, so that a welder can understand it.

The Chair: Or even the Member for Calgary-Shaw.

I have one minute left on my time slot right now, and Mr. MacDonald wanted to go back on the list. So if you could keep your question fairly tight, Mr. MacDonald, I'd appreciate it.

Mr. MacDonald: Okay. Yes. This is heavy stuff for a boilermaker. But the wording that you were suggesting – and I'm disappointed we only got 25 minutes to deal with it, because your recommendations are interesting – regarding recommendation 12 allows the organizations and the Privacy Commissioner to use their own discretion when no discretion should be allowed because personal information and personal employee information is owned by an individual, not the organization and not the Privacy Commissioner. Section 21 has something to say about this.

Earlier we met with an individual, and I was left with the impression from the individual that he was quite concerned about the correctness and the accuracy of information provided and not being able to get access to that information. That individual felt, as my interpretation was, that this wasn't fair.

Regarding recommendation 12, what sections of the Freedom of Information and Protection of Privacy Act, PIPEDA, or the British Columbia act or other privacy legislation similarly allow for the denial of the rights of an employee to his or her personal employee information and personnel information? Where are you coming from on this?

Mr. Pellis: I think I'll ask my staff to provide you with the specifics of that legislation.

Ms Lynn-George: Recommendation 12 is really just a technical amendment. There was a commissioner's investigation report that raised the question as to whether the reasonable purpose test and the limited collection/use/disclosure requirement applied to these provisions for personal employee information. So it's just a clarification that will make sure that those provisions, that reasonableness requirement, applies to personal employee information. It's very friendly to the individual, but really it's just a clarification.

Mr. MacDonald: Well, I see it as more than a clarification because if you look at section 14, Collection without Consent, it clearly states that personal information may be collected "without the consent of that individual but only if one or more of the following are applicable." With all due respect, I consider that more than a technical change.

Mr. Pellis: Could you perhaps articulate what your concern is with this piece relative to personal information? The individual you cited before, that was here before in front of this committee: perhaps if you could just clarify what the concern is and what you think is the problem that's being caused by what we're recommending here.

Mr. MacDonald: Well, that individual saw it as a one-way street, if I could use that term.

Mr. Pellis: That the rights rested with the employer but not with the employee, for example?

Mr. MacDonald: Yes. There could certainly be information sent out. That person felt that they should have the right to see that information. Again, I don't think any organization should be able to collect or use or disclose personal employee information or personal information without consent.

Ms Lynn-George: I think that's not quite the issue that is being addressed in recommendation 12. Recommendation 12 relates only to personal employee information and is simply adding or making it clearer that there is a requirement that the purpose of the collection be reasonable and that the collection be only to the extent that is reasonable for the purpose. So it's not adding any new exception. It's not limiting access. It's just making sure that the intent, the overall purpose, of the act clearly applies in the case of personal employee information.

Mr. Pellis: In fact, one of the things that it's doing is protecting the individual, because the access or the collection of information must be reasonable. It really amplifies that and ensures that the employee's own rights are protected. That's why I was trying to understand where you were coming from with this one.

Mr. MacDonald: Well, you made this submission in December. Right? There was a decision – I've got the press release here – from the Privacy Commissioner, dated April 4, 2007. This is Order P2006-001, regarding the Alberta Association of Registered Occupational Therapists. It is a case of an employee's personnel information being provided to her prospective employer without the consent of the prospective employee, that resulted in the loss of a job for the prospective employee. So how can that be a technical amendment in light of this decision?

Ms Lynas: This particular recommendation isn't addressing the issue in that order is how, I would say.

Mr. MacDonald: The employee was not allowed to obtain the information that was provided regarding her.

Ms Lynas: Right. And this recommendation was not meant to address that case.

Mr. MacDonald: No. It was made in December.

Ms Lynas: Right.

Mr. Pellis: But this clause deals with the collection of information and the retention of information, that it has to be reasonable. It does not address your issue around disclosure.

The Chair: Mr. MacDonald, if I could interject.

Mr. MacDonald: Yeah. We could have a good discussion on this.

The Chair: We obviously have wound ourselves into a corner here, I think, on this particular issue. So the suggestion that I would make is that, you know, we can maybe track this particular question down. It sounds to me like you're asking one, and they're answering another at this point in time. Our time has now elapsed for this particular public presentation, so I think we can readdress this later.

Mr. MacDonald: As we go through the proposed amendments.

The Chair: Yes, as we go through the proposed amendments.

I appreciate your indulgence in this area. I'd like to thank you very much for the time that you've spent with us today and for coming over. I'm sure that we'll be having some more conversations before we finish our work here.

Thank you once again.

Mr. Pellis: Okay. Thank you very much for the opportunity to speak today.

The Chair: Committee, we do have one more presenter today. I know that many of you have got plans to cross the province to other parts of it, places you call home, and that you've been here since Monday and that you'd like to go home. But I'd like to welcome Mr. Frank Work. He is our Alberta Information and Privacy Commissioner. We thank him very much for coming to present to us today.

Mr. Work, much as with the other groups I've kind of just established some rules, which we're trying to keep in a loose sort of way. You have about 10 minutes. I'll try to give you a one-minute warning. Then we'll open the floor up for questions from the committee.

Thank you, Mr. Work.

2:30

Mr. Work: Thank you, Madam Chairman. Thanks to the committee for affording me the time on a Friday afternoon, when people probably want to get home. I thought I might come in here and implore the committee to urge the Legislative Assembly to pass a law requiring the dispersal of snow and the advent of spring so that everyone could get home.

The Chair: If only we had that power, we'd do it. Trust me.

Mr. Work: All right. I understand what you're saying, Madam Chairman. I guess I'll deal with PIPA instead. I don't even know if I need the 10 minutes. Maybe I'll spend a few minutes just bragging.

This is good law. This province is just miles ahead, in my opinion, of anyone else in Canada because of this law. Also, in my opinion, the paving that was done by what was then the department of government services and is now Service Alberta in terms of working with the private sector to prepare them for this law, to get them onside for this law, made it all the more so. While I was sitting in the back, I overheard a comment. I think what was said was that the Canadian Bar Association was rather fond of this law and that the common sense in this law might prevail in British Columbia as well. I wouldn't want to throw kerosene on any rivalries, but it's nice to hear that.

I think what this law has done is that it has made business better in Alberta. It has made being an employee better in Alberta, and it's made being a customer better in Alberta. It's a tough law. I mean, there are two things in my mind that stand out about us as human beings. One is that we're tremendous communicators. I mean, that's probably, evolutionwise, why we've achieved what we have. The other thing about us is that we have just an utterly insatiable interest in each other's business. Putting those two things together, any attempt to regulate that kind of human activity is going to be a challenge, for sure. I think this law does the best job that can be done with that.

It does that, to a large extent, by placing a lot of the decision-making requirements on the individual business. I'm sure that someone has told you members of the committee that the word "reasonable" appears 60 or 65 times in the act. There are lot of decisions that businesses and organizations have to make for themselves on whether a certain piece of information about an employee is legitimately collected under the act or legitimately disclosed. It's not the easiest stuff in the world, again going back to what we're trying to regulate here, but I think this law does a very, very good job of it. I just reiterate that a lot of that is probably

attributable to the preparation work that was done with the private sector in anticipation of this law.

I think what I might do for a couple of minutes is highlight, and I do this with some trepidation. In our submission to the committee we had 24 recommendations. I don't want to tell you that these are the four most important because, obviously, they're all critically, urgently important, but I will mention a couple of them, maybe, because they're timely.

You talk about the law of unintended consequences. Well, I think that at the time this legislation was passed, the primary concern was likely just the collection, use, and disclosure of people's information by businesses. I think that in the ensuing couple of years, one of the unintended consequences that this act addresses very well is the security issue. Of course, you can hardly open a newspaper today or turn on the TV without hearing about a breach, a hack, a loss of personal information. What exacerbates that, we now know, is that in a lot of cases those losses of information and thefts of personal information go to criminal elements, and the proceeds of the frauds that they bring about through the use of that information fuel things like the drug trade, crystal meth.

I was stunned a couple of years ago when my office first became aware that there were people in Edmonton, for example, deeply involved in the crystal meth trade who were basically dumpster diving, finding little bits and pieces of information, and using that to facilitate their drug trade. You know, I would have never thought that somehow being a Privacy Commissioner brought you anywhere near the crystal meth trade. The world we live in. This law provides a powerful tool in that regard in terms of the requirement that businesses protect personal information. As the rate of loss and theft and so on has increased, I think it has really put this province in a very good position in that somehow we had the foresight to pass this law two years ago, before this incredible rate of loss, theft, hacking occurred.

Consequently, one of the recommendations that I'm particularly interested in now is the second one. You've probably heard a lot about this in the news. The federal law is undergoing review, and there's a lot of talk about notification requirements if there is a loss or a hack and whether the business should be required to notify its customers, should be required to notify someone else. Our position is, for your consideration, that we think it would be advisable to require businesses to notify the office of the Information and Privacy Commissioner as opposed to necessarily notifying the public. If this committee believes that the public should be notified, that would be, you know, something obviously within the ambit of your deliberations, and I wouldn't question that, but I would at least say that organizations that lose or suffer losses of information should have to notify the commissioner.

The reason for this is that we're getting pretty good at understanding what happens with a lot of these hacks and losses, that we're getting pretty good at assessing how bad it is. I mean, no one is perfect at that, but I'm saying that we're in a good position to advise the business and to advise the people who are affected on what the implications of this might be for them. So we're suggesting: capitalize on that knowledge by requiring notification to my office. Again, I leave it to you if you're considering notification to affected individuals of the public as well.

Similarly, item 3 follows up on that. If it's the wish of this committee, if it's the recommendation of this committee, we could require organizations to notify customers or not in the event of a breach. So that's an alternative to the business having to notify absolutely everyone. They notify us. We tell them who else we think they should notify.

The tendency in the States: 43, 46 states, I believe, in the U.S.

have across-the-board notification laws. Notify everybody no matter what the breach. There are some reports, the experts here will probably tell you, that people are now starting to regard the warnings as spam; like, ah, another warning.

Okay. We have a bit of an issue with the offence provision. To create an offence under the act, the standard is: wilful. That requires a little bit more than just the doing of it. That requires a degree of intention, that can be very hard to prove in situations like this. We are asking the committee to consider creating more of a regulatory offence, which lowers the standard a bit. It doesn't mean that anyone is going to get railroaded. It just makes it a little easier to prove offences.

2:40

Our recommendations 11 and 12. There is no doubt that laws like this do provide the opportunity for mischief, and after a couple of years we're starting to recognize mischief when we see it. These two amendments allowing me to tell an organization that they don't have to deal with a complaint is helpful. I don't want to castigate anyone here, but there are people that get into a beef with their employer or the company they do business with. It might not be about privacy. It might not be about personal information. You know, there are bad feelings, ill will, anger, and people might avail themselves of any recourse they have against the business. I think that has to be watched, and these two amendments would give me the power to do that. I do that presently under both FOIP, Freedom of Information and Protection of Privacy Act, and the Health Information Act. I use it very sparingly. I usually ask the parties for their side of it before I disqualify them, but I think it's important to maintain the integrity of the legislation to have that facility.

I don't think I'll say anything else since my time's almost up anyway. You've got your work cut out for you. As I said, it's not an easy law, but it's a good law. From what I've seen of the submissions and the material you have before you, I think you will be well positioned to make it an even better law. Certainly, if there's absolutely anything I or my office can do to help your committee, you have simply to ask.

Thank you very much.

The Chair: Thank you. I do have some questions. I have first on the list Mr. Ray Martin.

Mr. Martin: I'm going to go into the area that you didn't cover but that you mentioned because we've had some discussion about it, and that is that you're recommending the inclusion of the nonprofits. We just had – you probably were here – the discussion that I guess it's only B.C. that has other than commercial aspects. But you're suggesting that we include them. I guess I'd like some explanation of that. I'm specifically worried that we had some conversation of small nonprofits. We're dealing with volunteers, and they're feeling overwhelmed as it is now. Adding this we think possibly could hurt the volunteers and that sort of thing. So I'm wondering about your rationale for including them.

Mr. Work: It's a sensitive subject, for sure, Mr. Martin. My hunch with respect to the nonprofits is that since, as the discussion went earlier, they are partially subject to the law insofar as they undertake commercial activities, it might almost be easier for them to be all the way in. Then they don't have to be second-guessing themselves about: "Is this a commercial activity? Is that a commercial activity?" As you said, nonprofits run largely on volunteer efforts. I don't think there is a lot of personal information involved in that side of their operation that will make this unduly complex for them.

There could be things arising. For example, Big Sisters & Big Brothers might want to have CPIC criminal record checks done on

their volunteers now. So the question under the act would be: is that reasonable? I mean, if they were brought fully into the act, some volunteer might question them and say: well, is that a reasonable collection of information about me? My commissioners shouldn't stick their necks out, I guess, but my hunch would be that that's quite easily justifiable if you're working with children.

So they might face those kinds of things initially. The way the legislation works on kind of a complaint and response basis: the complaint and the response would be dealt with at almost no cost to the organization. My office would do that, or the individual might look at the Service Alberta website and see FAQ or something and say: "Oh, yeah. Well, sure, they can do that." Or if it was my office, my investigators would tend to say: you know, it looks like the organization can do that under the legislation. Of course, if the person wants to push it, they can. What I'm saying is that I think a lot of the obvious questions that a not-for-profit would have to deal with would be readily answered, and the word would get around fairly quickly. Certainly, between our office and Service Alberta we could make every effort to inform the not-for-profit sector.

Mr. Martin: Can I just follow up?

The Chair: Yeah. Quickly if you can, please.

Mr. Work: That was too long an answer. I'm sorry.

The Chair: Yeah. Can we tighten the answers up?

Mr. Martin: We were talking with the previous speaker about harmonization, and I guess this would be harmonizing with B.C. the other way. Right?

Mr. Work: Yeah.

Mr. Martin: Federally, what are they looking at in terms of nonprofits? Are they even considering it?

Mr. Work: I don't think the federal law cares about profit/nonprofit. I think the federal law just cares about whether you're a commercial activity. So if you're a boys and girls club and you're selling chocolates, that would be probably a commercial activity that would bring you into the federal law. It's also a commercial activity that would bring you into the provincial law.

Mr. Martin: You see, we've had a big discussion about this whole area, so we really have to deal with this. Thank you.

The Chair: Mr. MacDonald, please.

Mr. MacDonald: Yes. Thank you very much. Mr. Work, in your submission, item 3, Duty To Notify of Loss of Information, you make a suggestion that under duty to notify of loss of information organizations only inform the Privacy Commissioner of breaches of security and allow the Privacy Commissioner to determine what constitutes a security breach serious enough to warrant informing the individual of a loss of security. In my view, this is to deny the ownership rights of the information of the individual and to elevate the office of the Privacy Commissioner to a such level of control in the lives of Albertans that if they were aware of what we were discussing today, I believe most certainly the majority of them would not be impressed. Why do you need this right, and why should you be given this right by the Legislative Assembly in this act?

Mr. Work: Well, I'm not sure I need it. We've got lots of work for sure. Here's my thinking, Mr. MacDonald. There are a lot of breaches that happen now, whether they're thefts or accidents – you know, someone leaves a laptop in a vehicle, and it's stolen, and it's got thousands of files on it – where the law simply requires notification to anyone affected. What then happens is that the company contacts you and everyone else that was affected. Maybe they hire a call centre to do that. They'll phone you and say: "Your information was lost. Here are the circumstances." Then it might be entirely open to them what they then tell you. Maybe they can't tell you anything. So now you've been informed that your information has been lost. You're going: "Okay. What does this mean to me? What do I do about this? Should I cancel all my credit cards? Should I go hide in the basement and not emerge ever again?" I'm not sure that where it's just blanket notification, the consumer gets very well informed.

You state the principle very well. The principle is: let the consumers decide for themselves how to deal with this breach, or have an office like mine intervene to say: "Notify here. Notify there. When you notify them, here's what you tell them. Tell them that this is not a serious breach." We have had some of those in Alberta where the breach has not been particularly serious. We had a tape from Alberta Health and Wellness go missing. The courier actually lost it, not Alberta Health and Wellness, and it was names and addresses and some health care numbers. If Alberta Health and Wellness had notified the 600,000 people affected, there would be more or less 600,000 upset people. If they asked, "Well, should I now cancel all my credit cards," you'd say: "Well, no, I don't think so. This was just kind of telephone book information, so don't cancel all your credit cards. Maybe don't do an Equifax credit check every month." In another case, where the loss was more serious and more sensitive information, maybe there should be someone to say to the company: "You'd better notify them about this one because it's bad. While you're notifying them, you'd better tell them to watch their credit card statements or to cancel their cards or to have their credit report flagged."

I don't want to take any rights away from the consumers. I put it to the committee that you weigh the ability of the individual consumer to decide how to handle the information that there's been a breach or a loss, or you put an agency like mine or consumer affairs in the picture to advise them on what to do.

2:50

The Chair: Did you have a supplementary question to this question, Mr. MacDonald?

Mr. MacDonald: Yes, please.

The Chair: Okay. A supplementary, and then we'll move to George.

Mr. MacDonald: We're four years down the road with this act. How many cases have you or your office dealt with that would be affected by the amendment you are suggesting to us here in this submission?

Mr. Work: A dozen. Maybe two dozen.

Ms Denham: Do you mean actually . . .

Mr. Work: . . . losses like in losses of information?

Mr. MacDonald: Breaches or whatever you want to call them.

Ms Denham: We've had 23 self-reported breaches in the last year from private-sector organizations.

Mr. MacDonald: Twenty-three self-reported?

Ms Denham: Twenty-three companies have phoned us voluntarily and said: "You know what? We lost personal information. This is what happened. Can you help us with that?" Again, there's no mandatory requirement to report to the office. Out of those 23 cases we actually suggested – again, we only have the power to recommend this – that they notify consumers. Those are self-reported breaches.

Mr. MacDonald: And that's in one year, right?

Ms Denham: That is in one year. In 15 of those cases we said: "You know what? You need to notify people." In the rest of them the information was recovered, so we thought, "Well, there's no risk," or the information was just phone book information, not necessary. Out of investigated cases, so cases where we got a complaint or the commissioner decided to go in on his own motion, there were six cases – again, this is investigation, not self-reported – where we said, "You need to notify the individuals because there's potential material harm that could happen to the individuals because of the breach."

The Chair: Okay. On this point?

Mr. Webber: Yes. Was there follow-up at all with your department regarding whether or not they've gone by your advice and called those individuals?

Ms Denham: Yes. In all of those cases, both in the self-reported breaches and also in the investigations, there was follow-up, including: can you please show us a copy of the letter of notification to the affected individuals?

The Chair: Laurie, on this point also?

Ms Blakeman: Sure. Just a number clarification. The six non self-reported, or complaint-driven: what's the six? Is that the ones that you advised to do something, or that's the total number? Six of how many?

Ms Denham: I don't have the total number. I remember that there were six investigations where we recommended that the company notify the affected individuals.

Ms Blakeman: Could you at some point supply us with the total number that came to you driven by complaint or other than self-reporting?

Ms Denham: Yes, I'll provide you with that.

Ms Blakeman: Thanks.

Mr. MacDonald: Through the clerk.

The Chair: Yes. Through the clerk, please.

Ms Blakeman: Sorry. Through the clerk.

Mr. VanderBurg: I just want to build on Mr. Martin's comments

with regard to the nonprofits. You know, we've had some discussion about making sure that Albertans feel free to volunteer and give of their time generously like they have in the past, but we don't want to create more barriers, and we want to make it simple for them to understand our legislation. I worry that when we talk about maybe encompassing them all into this legislation, we would maybe further scare away volunteers. Is there a better way to deal with nonprofits than we have? If you had this time that we've had over again, would we have dealt with nonprofits the way we do today under this legislation?

Mr. Work: That's a tough question, Mr. VanderBurg. That's a tough question.

Mr. VanderBurg: Well, that's why you get the big bucks.

Mr. Work: Okay. Take a stand here. I think they had to be brought into the commercial extent, the status quo, because some nonprofits are heavily involved in commercial activities, you know: houses, cars, all kinds of stuff. They do collect a lot of information: the TJX breach, which involved credit card numbers. Nonprofits that are raffling houses and cars and collecting vast numbers of credit card numbers: it's good that they're subject to this law because the law says they have to look after that information. That's the status quo now.

With their volunteers I honestly don't think it's going to be really onerous for them. Here's an argument for you to consider. It may even be good for the volunteers. Take my example of the Big Brothers Big Sisters wanting to screen volunteers, criminal record checks on volunteers. If they were fully subject to the law, what the law would also do is assure that volunteer that after they give their criminal record check to Big Brothers Big Sisters, it's not going to go anywhere else because this law would say: "You can't further disclose that. You are justified in collecting it, but you can't disclose that any further." That may in fact be of some comfort to volunteers, and it may be a selling point for nonprofit organizations to be able to say, "Look. Here's how we protect our volunteers' information."

Mr. VanderBurg: So is there something further that your office or Service Alberta could do to better educate these groups and their members about this and what their obligations are?

Mr. Work: Yeah. Absolutely. If the not-for-profits do at your recommendation become subject to the act, I think it would be a priority for both us and Service Alberta to go out and do as much as we could for them, just as both of our offices did for small businesses, for example. We really turned every stone in terms of enabling small businesses who don't have a lot of resources either to comply. Certainly, we'd do the same with not-for-profits.

Mr. VanderBurg: Thank you.

The Chair: Well, thank you very much for taking time to come to present to the committee today. Very interesting to see the kind of

work you do, and I just want to know that my private information – well, only my weight maybe. That's the one thing I really want you to protect. Thank you for coming.

Mr. Work: Thank you, Madam Chairman, and thank you all for your time. I appreciate it.

The Chair: As far as the committee is concerned, thank you very much. I think we've had a big, long, hard day here today, and as I said before, we are approaching the afternoon. Before we break, I just want to remind the committee that, first of all, we will be meeting on May 1 from 7 to 9 to finish the last of the oral presentations, and I would appeal to all committee members that can make it to show up.

Before we do conclude – and I go to Mr. MacDonald – are there any points that you still would like us to have staff investigate from the last two presentations that we've heard today? I think they've caught the not-for-profit piece that we need to do a little bit more exploring on. That one I did hear. Are there any others?

Mr. Martin: As part of that, some idea about what B.C. is doing in the nonprofits.

The Chair: Some comparisons. Yes.

Mr. MacDonald, did you have a point also?

Mr. MacDonald: Yes, Madam Chair. I found the presentation and the submission from Mr. Paul Pellis, the Deputy Minister of Service Alberta, quite interesting. Mr. Work: I think we're going to need his advice as we proceed along with this. The last time we had a similar committee like this, I believe he appeared more than once with advice and counsel.

The Chair: I'm happy to call on any expert advice that we can get as we consider these things. If he would oblige us, we'd be happy to have him come back.

Mr. Work: Absolutely.

Mr. MacDonald: If necessary.

The Chair: Yes. Thank you. So we will set that up and try and organize it for us on behalf of the committee.

Okay. Well, thank you very much, committee. Good work. Do I have to have a motion for adjournment?

Mrs. Sawchuk: Yes, please.

Mr. Ducharme: So moved.

The Chair: Mr. Ducharme so moves. All those in favour? It's carried unanimously. What a shock. Thank you.

[The committee adjourned at 3 p.m.]

