Title: Thursday, June 21, 2007 PI
Date: 07/06/21
Time: 9:34 a.m.
[Mrs. Ady in the chair]

The Chair: Committee, I'd like to call us to order as we are already four minutes late. I'd like to welcome everybody. Thank you very much for making the trip up to Edmonton today for our PIPA meeting downtown. Some call it "peepa," and I just want to correct it for the record. It's "pippa." So we're going to send some members back to school on how to pronounce that.

We have a really full schedule today, but I will say at the beginning that I think it's possible for us to stay on track, even maybe finish a little early, depending on how our conversations go. I see that my job is to try and facilitate that today. I've been through our agenda and looked at it. I think, you know, that we can accomplish what we have here today. My hope is that we will have a second meeting where we can accomplish the second half. As I've looked at the schedule in the go-forward position, we might have to have a bit of a follow-up meeting in the fall just maybe for some minor type of cleanup if we stay on schedule at this point in time, and then we can allow the committee to begin its work of writing the report. As you know, we have to report back in the fall to the Legislature. That's what we've been mandated to do. So in order to stay on schedule, I'm hoping that this works. We'll of course see after today unfolds whether we're going to be able to do our work in that way.

I'd like to let you know that you have meeting binders, that were delivered to your offices on Monday morning or forwarded to your constituency offices. Did all members receive their binders? All of you did. Good. Okay. Again, we have a full agenda, so to keep the momentum going, I'm just going to charge.

Can we have an adoption of the agenda? Have all members had a chance to look at the agenda? Yes, Denis Ducharme is adopting. All those in favour? Okay. The agenda will stay as is. Perfect. Moved by Denis Ducharme that the agenda for the June 21, 2007, meeting of the Select Special Personal Information Protection Act Review Committee be adopted as circulated.

Business Arising from the Last Meeting. Item (a) is ownership, custody and control; (b) is right of access and correction, and (c) is protection from liability. These were issues raised during the meetings held on April 20 and May 1 during oral presentations, and staff from Service Alberta will address these briefing papers and answer any questions the committee may have. So this item is for information only, and no action is required, according to mine. Are there any questions that the committee wants to raise at this time regarding those items?

Ms Blakeman: Sorry. I'm just double checking if the issue around volunteers was covered in this because I think there may be some discussion. Maybe not.

Mr. McFarland: Briefing C.

The Chair: He's indicating briefing C.

Ms Blakeman: That's right. Do we have an opportunity for discussion around this?

Ms Lynas: Could I just suggest that we would like to present the information from the paper at the next meeting when we're talking about the question on nonprofit organizations, if that would be acceptable.

The Chair: Yeah. Laurie, we're not going to be discussing that particular point today, so that will give you an additional week to go over the information before we actually get there, and then we'll get a briefing from them at that time. Is that okay with you?

Ms Blakeman: Yeah. I've gone over it. That's why I wanted to discuss it, but if we're going to discuss it as a whole around volunteers and NGOs at the next meeting, that's fine.

The Chair: Yeah. I see that as one of our major issues, and that is scheduled for the next meeting.

Are there any other questions? Seeing none, I'll go back. We will be continuing our review of the responses received to each of the 13 questions in the discussion guide. As the committee may recall, we completed our review of question 1 in the guide, and we'll continue on with our review of the responses to questions 2 through 6 today. As you can see by the various documents included in your binders, Tom Thackeray and his staff have provided a summary and an analysis of the responses to each question as well as various briefing papers to assist the committee with primary issues related to each question.

I would like to move on to question 2 since question 1 has already been dealt with at a previous meeting. It's the access to personal information exemptions. The first question concerns exceptions to disclosure that may be applied when an individual makes a request to access his or her own information, and this is question 2 in the discussion guide. I believe Hilary will review the input from the public from the summary and analyze responses. Then other staff will review the issue papers on specific topics raised in the public submissions that require a more detailed explanation. I think that's what I said earlier. I'd like to move to question 2 and to the first issue paper if we can. It's issue paper 1, Confidential Information of a Commercial Nature, and I believe Jann is going to be clarifying this for us.

9:40

Ms Lynas: I would like to present the summary first.

The Chair: Oh, okay. Let's do the summary, and then we'll move to option 1.

Ms Lynas: As you know, the act gives a right to an individual to request access to their own personal information. The legislation allows the organizations that receive that access request to provide access to all or part of the record in limited, specified circumstances. There are exceptions to disclosing certain information. Most of the exceptions are discretionary, so the organization is allowed to decide whether to release or withhold information.

There are three mandatory exceptions to disclosure where an organization must refuse to disclose information to the individual. The organization must refuse access if the information would reveal personal information about another individual or could reasonably be expected to threaten the life or security of another individual. Also, they can refuse to disclose if the information would reveal the identity of an individual who had provided information in confidence and that individual doesn't consent to the disclosure.

Now, there are also some discretionary exceptions, so the organization can choose whether or not to withhold information on that basis. One of them is when information is protected by legal privilege or if the disclosure would reveal confidential information that is of a commercial nature, and it wouldn't be unreasonable to withhold that information if the information was collected for an investigation or a legal proceeding, or if it's the kind of information that would no longer be provided to the organization if they

disclosed it. So that's typically the case if it's some kind of reference or evaluated information that they need to continue to receive.

There are two others: if the information was collected by a mediator or arbitrator in certain circumstances or if it relates to or may be used by a Crown prosecutor.

So that's what the act says.

I'd like to just highlight a few of the comments that were raised by the public, and we've grouped them into various categories. The first one is about the discretionary exception for investigations and legal proceedings. Four professional regulatory organizations recommended that the exception for access to information collected for an investigation or a legal proceeding which is discretionary should be made into a mandatory exception. The organization stated that complaint information is confidential and should not be disclosed outside of a disciplinary proceeding as it could interfere with the process. The same organization commented that PIPA does not explicitly recognize that there may be specific statutory provisions and common law rules that govern disclosure of information related to disciplinary processes. Two other professional regulatory organizations noted that governing legislation of some professional regulatory organizations requires that some of their information remain confidential.

In our comments we say that PIPA permits an organization to refuse access to personal information if it was collected for an investigation or a legal proceeding. It is a discretionary exception, so the organization can decide whether to apply it or not, taking into consideration the specific facts of their circumstance. If the applicant requests a review of a decision to withhold information by the Information and Privacy Commissioner, he can look at whether the organization exercised their discretion properly, and he could order an organization to reconsider a decision, but the commissioner cannot substitute his own decision in the place of the organization. This exception is not tied in to any test, so they don't have to take into account the likelihood that there could be harm to the investigation. They just have to establish that it was collected for the purpose of an investigation.

Another organization suggested that the definition of investigation be amended and broadened to include advice, deliberations, and recommendations arising out of an investigation. The organization was concerned about being able to fulfill their statutory mandate, which encourages them to make records of their deliberations and decision-making processes. Under PIPA the definition of an investigation includes a process for determining whether a breach of an agreement may have occurred. In this case it was a faculty association that made the comment. They could refuse to disclose personal information collected to determine the merits of a complaint, including information collected to decide whether to proceed with a legal proceeding.

Another association stated that the exception to access in PIPA did not adequately protect an insurer's ability to investigate and settle a claim once an access request was received. PIPA's exception to access to personal information collected for an investigation, as defined in the act, would probably not apply to personal information collected to investigate and settle an insurance claim. It's not clear whether another exception may apply. However, the request for information would only be to the individual's personal information. Other information collected as part of the investigation that's broader than just that individual's personal information is not part of the access request in any event.

There were some comments on other exceptions to disclosure in the act. One business requested adding confidential business information to the discretionary exception, which is confidential information that's of a commercial nature. They reasoned that some information doesn't fit into the traditional definition of what's commercial in nature and were specifically thinking of a list of redundant employees or succession planning. That's one of our issue papers, so we're going to come back to that point in just a minute.

There were also some new exceptions that were proposed. One association noted that individuals or their counsel were increasingly using privacy legislation to obtain prelitigation discovery instead of using the regular discovery process. Individuals are asking for a copy of their file before discovery has happened. They recommend that there be a provision to allow an organization to refuse access to information that may affect a judicial proceeding in which either party has an interest. Quebec's privacy act has a similar provision.

PIPA allows an organization to refuse access to personal information that was collected for an investigation or legal proceeding, as I said earlier. The commissioner has authorized an organization to disregard a request where information has been made available to an applicant under another process, so there's one decision already. The commissioner has also indicated that a request for records that have already been made available through another formal process might be considered frivolous and vexatious, in which case the organization would not have to process it.

A professional regulatory organization has recommended that PIPA allow organizations to identify classes of records to which exceptions apply rather than requiring organizations to examine each record. Currently when an individual makes a request for records, the organization must search records and consider what exclusions and exceptions in the act apply, so they have to review all responsive records rather than just deal with them as a category.

A professional regulatory organization and an association representing the same profession has said that PIPA should not be applied to defeat solicitors' liens. They suggested that Alberta make an amendment to its act along the lines of an amendment in B.C.'s PIPA, which has a specific exception to access to information when it's subject to a solicitor's lien. That's another one of our issue papers that we're going to speak to shortly.

9:50

Another professional regulatory organization recommended that an organization should have discretion to refuse to process an access request on the basis of a request's potential to unreasonably disrupt their operations. This should be available when applicants are being unreasonable or vexatious, and such an exercise of discretion should remain subject to review by the commissioner. Right now an organization can ask the commissioner to authorize an organization to disregard a request because of its repetitious or systematic nature, which would unreasonably interfere with the operation of the organization. But the organization can't do it on its own initiative; they need to put a request in to the commissioner's office. So that's something we'll come back to when we discuss the issue on the commissioner's powers.

One business stated that PIPA should contain a provision similar to one that's in PIPEDA which provides organizations with the ability to refuse access for security reasons; for example, personal information that's used to validate the identity of individuals then, if this information was released, could reasonably assist a person to develop strategies to defeat security safeguards. In PIPEDA there is a note explaining that it may be reasonable for an organization to refuse to disclose information for security reasons, but these notes do not have the force of law. All public-sector access to information legislation allows for nondisclosure to protect the security of any property or system, including a computer system.

We don't have a similar provision in PIPA because it's not contemplated that security information would fall within a category of personal information. But it is possible that certain information collected to authenticate an individual's identity could reveal information about a security system. If such a disclosure were likely to compromise security, an organization might be able to rely on the general provision that an organization may take into consideration what's reasonable in deciding whether to release information. So if it would compromise their security, they would decide that it would not be reasonable to disclose that to the individual.

Those are some of the comments on this topic. We have a number of questions for consideration. They will come up in relation to the papers, and then there are a few to come back to at the end.

The Chair: Thank you. Before we have them report on the issue papers – and I see two of them on this question – I just wanted to remind the committee the spirit of what PIPA was brought about to be. I don't remember being here when PIPA was brought into being, but I know that the idea was to ensure user friendly for small and medium industries. So as we kind of do our work and mill down into it, try to imagine that small industry trying to do the things that we place in this act. I think that's an important consideration. We do want to protect people's private information, but we also need to remember that we're dealing with small business that's trying to run a business and make sure that, you know, we keep it user friendly so that those businesses can actually help us and also operate.

I'm going to move on to issue paper 1. It's called Confidential Information of a Commercial Nature. Jann is going to take us through this issue paper. These are papers that were put together by the department regarding issues that arose during the consultation. There will be two of them on this point, and the first of them we'll have Jann report on.

Ms Lynn-George: I'd like to begin with a scenario that I hope will put a face to this issue and also convey both sides of the issue.

Imagine that you're operating a business in Alberta, and you're following the best management practices. You have a business plan, and you also have what's known in the HR world as a succession plan. That is a plan for identifying, assessing, and preparing suitable employees for advancement within the organization. You may also have a contingency plan, including a plan for layoffs in an economic downturn. These plans are part of your investment in the business, and you keep them confidential. If an employee requested access to his or her personal information in one of these plans in an access request, you may want to withhold the information.

Now imagine that you're an employee of this organization. You know that these plans exist and that decisions have been make about who will be promoted in good times and laid off in bad. You'd like to know whether you have a future with your present employer. If you were to make an access request under PIPA for information about you that appears in the succession plan, you feel that you should have a right to receive it.

So what does PIPA currently say about what has to be disclosed in response to an access request? Well, PIPA provides a right of access to an individual's own personal information. We should be clear that an individual could never request the whole plan, just his or her own personal information in the plan. Then PIPA has a discretionary, or "may," exception to disclosure for information that would reveal confidential information that is of a commercial nature, and it's not unreasonable to withhold that information.

The Information and Privacy Commissioner has not issued any orders under PIPA that consider the meaning of this phrase, "confidential information of a commercial nature." So at present it's unclear whether this exception would apply to the kind of sensitive HR information that we've considered. Both B.C. PIPA and PIPEDA have similar wording to Alberta's act, and there has been no guidance so far from commissioners in those jurisdictions.

Since we have nothing directly relevant in private-sector legislation, we could perhaps turn to Alberta's FOIP Act. The FOIP Act requires a public body to refuse to disclose certain categories of third-party confidential business information that the public body has in its possession or control. This includes commercial information. The commissioner has defined this as information that relates to the buying, selling, or exchange of merchandise or services. He has also said that the commercial information includes other business information about a third party: its associations, past history, references, insurance policies held, bonding held or provided. This definition in the FOIP Act may have led some private-sector organizations to believe that the term "commercial information" would not include personal information in a succession plan.

So how would the matter actually be decided? Well, if there were a review involving a request for information that an organization had refused to disclose, there are three issues that the Information and Privacy Commissioner might consider: first, whether this kind of information is generally considered confidential and whether the organization has consistently managed the information in a confidential manner; second, whether the information is information of a commercial nature. The commissioner could rely on the definition of "commercial" used in the FOIP Act, or he could establish a definition specific to PIPA, taking into consideration the limited number of exceptions available to organizations under the private-sector act. So he could go in a different direction from the FOIP Act.

Thirdly, he'd probably consider whether it was reasonable to withhold the information, so he would be attempting to balance the rights of individuals and the needs of organizations. If the commissioner were to make a finding in favour of individual access, the amount of information that an organization would be required to disclose would be very limited, just that individual's own personal information.

The question for the committee is: should the act be amended to expand the exception for confidential information of a commercial nature? We have suggested that there are two options. The first is to make no amendment to the act at this time and allow the matter to be addressed through the independent review process. I should mention at this point that the case I put before you is entirely hypothetical. There is very little concrete evidence that this is really an issue. There are no cases in any jurisdiction. The advantages of making no amendment are that the act would continue to be similar to other Canadian privacy statutes and also that there would be no risk that by adding something to the definition, you might unintentionally exclude something. The disadvantage is that there will continue to be some uncertainty until there is a commissioner's decision. So that's option 1.

10:00

Option 2 would be to define "confidential information of a commercial nature" to include an individual's personal information appearing in a succession plan, a redundancy plan, or planning for organizational restructuring. So the advantage: greater certainty. The disadvantages: each time you add some specificity to a definition, you reduce the flexibility of the act to address different issues as they arise over time. The second disadvantage would be that an amendment along those lines would move the act in a different direction from other privacy legislation.

The Chair: Okay. Thank you. That is the first issue paper. Now,

as each issue paper comes up, we as a committee need to make a decision on it, but before we do that, does the committee have any questions about this? Ty.

Mr. Lund: Well, thanks, and thanks for the example that you gave. I would think that in business plans of companies you're probably going to run into the same scenario, but there could be quite a difference. Let me use an example of where your business plan is suggesting that there's going to be expansion and you would describe what you're going to need in an individual in order to accomplish some part of your expansion. I could see a situation where you describe that; end of comment. You could also say that an individual that you currently have on staff does not have this qualification. Now, I guess my question would be: if it's the latter and it's in the business plan, would that be considered personal information? By describing the individual as not having the qualifications for this new position that could be created, you are then really defining their qualifications as you see them. Would that be personal information that would be subject to a request for information that the company might have?

Ms Lynn-George: Personal information means, under PIPA, information about an identifiable individual. One of the things that is very important about the act is that it looks in each case at the context. In the case that you've suggested, it sounds as though the context would identify the individual. So quite possibly, quite likely, that would be considered personal information. Bear in mind that when we look at the act, we're looking at legislative solutions. Good business practices would probably also include some sort of process for informing employees about the way a business plans to manage change. So a legislative solution is not always the only solution.

The Chair: Barry, please.

Mr. McFarland: Thank you. I looked at page 2, where you talk about the "two decisions under this provision in PIPEDA, both allowing banks to refuse to withhold an individual's bank credit score." It seems to me that a lot of the discussion that we're going to be having centres not around individuals as much as exemptions that can be applied to companies and commercial activities. I didn't know if that was in meeting with the intent of the original act or not.

If it isn't, it seems to me we should change the name of the act because it's looking more like it's designed for a personal information disclosure or not act as opposed to, you know, for the average person, who might think of their own personal information as something that's kind of sacred and really important, to find out that they have to buy back their own information or to maybe be dissuaded from accessing it for some reason because it's an exemption. So I'm just curious, in a lighthearted vein, about this succession plan and redundancy plan and organizational plan. There are a lot of MLAs that would like to know if one of those exists. You know, maybe it would make life easier. You know what I mean, Madam Chairman?

Ms Lynn-George: Well, one thing that's quite important to realize with this exception is that it hasn't been considered yet by the Information and Privacy Commissioner. The commissioner does look very closely at the purposes and intent and spirit of the act. The commissioner may well consider this balancing between the needs of an organization and individual interests in making a decision on commercial information. I don't think it goes without saying that because an organization is concerned that something might happen, it is necessarily the case that the act doesn't already provide for that situation.

Mr. McFarland: Jann, I appreciate that. Going back to the bank example – and I realize that this is maybe not a good one because apparently there have been two decisions made – I see a potential problem here. In this case – and I'm making a grand supposition here – either the bank is concerned that a competitor might find out what the format is for their credit score or they're concerned that maybe they acted on wrong information and credited a person with the wrong score. Two different issues.

In one of my previous life experiences I dealt with that kind of thing, and it was all subject to the reliability of the credit information that you'd paid to purchase from a credit bureau or a retail credit company. On the other hand, in today's society I don't think anyone should object to knowing just what is the format that bank A or company B or C or Z or Y uses in adjudicating scores to your creditworthiness.

Ms Lynn-George: I think that in these two cases the actual way that the score was calculated was considered to be proprietary information of the banks. In these cases the individuals were able to obtain information about their credit but not the actual score and not the way the bank calculated the score. So that's another of these balancing processes. You can get your personal information but not the piece that is considered proprietary to the business.

The Chair: Thank you.

Mr. VanderBurg: Well, if there are no other comments, I'd like to get moving on this item. I'd like to put forward a motion.

The Chair: At this point in time we're deciding whether we're going to have an amendment or not have an amendment, so go ahead and bring forward your motion.

Mr. VanderBurg: No other comments?

The Chair: Are there any other comments? Did I miss anyone?

Ms Blakeman: Maybe, but I'd like to hear the motion.

The Chair: Okay.

Mr. VanderBurg: Well, at this time I believe strongly that we should not make any amendments to this act. I think it's important that Alberta remain consistent with other jurisdictions across Canada. So I would make a motion to accept number 1:

make no amendments to the act at this time.

The Chair: Okay. Are there any comments on the motion? Any questions?

Mr. Ducharme: I agree with the motion that's been placed, but I'd just like to get clarification. The second advantage in regard to making no amendment to the act: could there be the opportunity of adding the definition of confidential information of a commercial nature to clarify that a little bit more?

10:10

Ms Lynn-George: Well, the problem with a definition is that it tends to remove some of the flexibility. What we'll probably see is that we'll get some rulings on this, and just as was the case under the

FOIP Act, the commission started with a definition and then looked at some other situations and expanded that definition. So that's the advantage of not adding a definition. If you do want to add something to indicate what the term is meant to cover, the danger is that there's something that you don't cover, and it's then assumed to be . . .

The Chair: . . . too prescriptive.

Laurie, please.

Ms Blakeman: Yeah. I support the motion as it is. We're almost dealing with a hypothetical here in that there's been so little request for us to consider this. Overwhelmingly, people were happy with the access provisions, and looking at who requested specific action on this matter, it's very narrow, one or two individuals, I think.

I would argue that we should call the question and move on.

The Chair: All right. I'll call the question. All those in favour of the motion? Agreed? I see no dissenters. Anyone opposed? No.

Okay. We're going to go ahead and move on then to Issue Paper 2: Solicitors' Liens. Kim is going to describe that for us.

Ms Kreutzer Work: Thank you. When a client has not paid his or her lawyer's bill, the lawyer may have a solicitor's lien against the client's file. A solicitor's lien is a common-law right. It is a form of security that gives the lawyer control over the client's information and documents in the file until all charges and fees owed to the lawyer for services rendered have been paid.

Now, there are some documents that a solicitor's lien does not apply to: most notably, a client's will, title documents, or corporate record books. The professional code for lawyers also places some restrictions on solicitors' liens. For example, a lawyer cannot impose a solicitor's lien over records if doing so would materially prejudice the client.

As mentioned earlier, two respondents, the Law Society of Alberta and the Canadian Bar Association, are concerned that because an individual has a right of access under PIPA, he or she may gain their own personal information in the lawyer's file without having to pay the lawyer's fees, thereby defeating the effectiveness of the solicitor's lien. The Law Society and CBA have recommended that PIPA be amended to include a specific exception for information in a document that is subject to a solicitor's lien. British Columbia's PIPA contains such an exception to access.

Now, the issue paper raises a few key points for consideration. In many cases an access request under PIPA would not require the lawyer to hand over the complete file. The amount of information a client may get through an access request will often depend on the type of information in the file. It's important to remember that the right of access under PIPA is to only your own personal information. It does not give you access to other people's personal information or business information.

Also, PIPA contains, as we've been talking about, certain limited exceptions to access; in this case, where a lawyer may or must refuse access to information in a file. For example, the act prohibits an organization from giving access when doing so would reveal personal information about another individual. If that third party's information cannot be severed, then the record must be withheld. Another example: personal information that was collected for an investigation or a legal proceeding may be withheld by the organization under the act. So in a situation where a lawyer's file is dealing with litigation, there's likely to be a fair amount of personal information that was collected for a legal proceeding, and this discretionary exception to access could apply.

Organizations under PIPA are also permitted to charge a reasonable fee for processing an access request. The commissioner has the jurisdiction to review a fee for an access request as well as the organization's decision as to whether to grant access.

Also, in the legal profession there is a process for a client who is not satisfied with the amount of his or her lawyer's bill to have the bill taxed by a taxing officer. This is the process for review. The officer is a clerk of the courts. The issue for the committee is whether the act be amended to include a specific exception to access for information in a record subject to a solicitor's lien.

We have presented two options. The first option is maintaining the status quo, where there would be no amendments to the act. The advantage that is pointed out is that access may already be limited by existing exceptions under the act. Also, no amendments would mean there would be no additional exception to access. The disadvantage is that the effectiveness of the lien would be reduced in those circumstances where the client would receive a significant portion of personal information from a record.

The second option that's been presented is to amend the act to create a new exception to access for information in a record that is subject to a solicitor's lien. Access would only be refused where the applicant requesting access is the individual who owes the fees under the lien, so this would not interfere with any access request made by a third party whose information is in the file but is not the client. Advantages are pointed out as: it would maintain the effectiveness of the lien where an individual might otherwise get access to that information under PIPA, and it would harmonize Alberta's act with the B.C. legislation. The disadvantage is that a new exception to access encroaches upon the right of an individual under PIPA to ask an organization what personal information it has about the individual. Also, it may generate a demand from other organizations for an exception to access based on unpaid accounts.

The Chair: Some might call that opening the door.

Are there any questions regarding this issue paper? Any questions? Any clarification?

I see in front of us the decision whether we amend the act or we don't. Would anyone like to put forward a motion at this time? Barry. Oh, I see Laurie's hand as well. Laurie, did you want to bring forward a motion?

Ms Blakeman: Sure. I would recommend that there is no amendment at this time.

The Chair: Okay. Do I have a seconder?

Mr. VanderBurg: I will.

The Chair: George. All those in favour of not amending the act? Anyone opposed? It passes unanimously. Good.

Now, as we go through these questions, we're going to see moments where the government makes some recommendations on the act. I said this morning that that might just be where they, you know, oopsed earlier. Tom was going to take all credit for the oopses. Some of these are relatively more like housekeeping items, but again the committee needs to take a look at them.

The first one is that there's one question for consideration from the summary paper that needs to be addressed. It's in question 2C. This is a recommendation in the government submission, and Jann will lead us through it.

Ms Lynn-George: Like most legislation, PIPA sets time limits for challenging a decision made under the act. Under PIPA the time

limit for requesting a review of an organization's decision is 30 days from the day that the individual is notified of the decision. But what if the organization doesn't make a decision, if it simply doesn't respond to a request for access? When does time start to run? At present the act is not clear on this point, so it's proposed to add a provision stating that an organization's failure to respond to a request for access to or correction of a record of an individual's own personal information can be treated as a decision to refuse access or to refuse to make the decision at a certain point. There's a similar provision in the FOIP Act with respect to access requests.

The recommendation is that "a provision be added allowing for deemed refusal of a request for access if an organization refuses to respond to the request, so as to allow the individual a right to request a review."

10:20

The Chair: I'm looking to see if we have any paper on this particular issue.

Ms Lynn-George: It's in the government submission. It's in your binder.

The Chair: It's in the government submission, which is located in your binders. Has the committee found that? Have you got it?

Ms Lynn-George: So that is recommendation 15 on page 11 of the government submission.

The Chair: Okay. Is the committee there? It's tab 63, page 11. We will run into these periodically.

Ms Lynn-George: I think there are about 10 of these today.

The Chair: Does this need an amendment? It does? Okay.

Are there any questions by the committee, first of all?

Ms Blakeman: This is a procedural problem in that an individual cannot request a review because, in effect, there's been no refusal given.

Ms Lynn-George: Exactly.

Ms Blakeman: So we end up leaving the individual in a no person's land. They can't ask for any kind of an appeal or a review because they haven't been told no. Okay. All right.

The Chair: Is everybody understanding, then?

Mr. Lund: Just one quick question: is there the ability to ask for an extension?

Ms Lynn-George: For the organization that has not responded to ask for an extension? Yes, there is. They can ask for an extension when they receive the request or up to a certain point, but they could not ask for an extension well into the process when they have missed all their deadlines.

Mr. Lund: So that I clearly understand this, then, this is where there's been absolutely no response.

Ms Lynn-George: Yes.

The Chair: I'd just like to place an amendment that

a provision be added allowing for deemed refusal of a request for access if an organization refuses to respond to the request, so as to allow the individual a right to request a review.

Mr. Lund: I so move.

The Chair: Ty will move that. Okay. I've been told that I don't have to second it, but thank you, Dave. All those in favour? It looks unanimous. Thank you.

Okay. Then we move to question 3. You're doing very well, committee. This question is related to fees that organizations may charge when an individual makes an access request. This is question 3 in the discussion guide. We're going to get a summary and an analysis of the responses that we received to question 3 from Hilary. Then, I believe, directly after that, we'll have a briefing from Jann on the fee schedule. Okay?

Ms Lynas: Correct.

The statement in PIPA about fees is quite brief. An organization may charge an applicant a reasonable fee for access to records. No fee may be charged when an individual is making a request for a correction of records, and no fee may be charged when an employee requests access to his or her own personal employee information. An organization that is charging a fee must provide a written estimate to the applicant, and the applicant may be asked to pay a deposit before processing of the request resumes. The applicant may request that the Information and Privacy Commissioner review a fee charged by an organization.

Just a few comments on some of the costs of responding to requests by organizations. One association recommended that the act be amended to clarify that the organization may charge reasonable costs to provide an individual with access to personal information where the information was previously provided to the individual and replacement copies are typically provided for a fee. It's likely that it would be considered reasonable for an organization that already charges a fee for certain documents or for replacement copies to charge the same fees if a request were made under PIPA. There would be no obligation to charge a lower fee in that situation.

One business suggested a provision that would allow organizations to recover the actual costs of processing actual requests, including time spent on an unreasonable request, which they saw as one where an applicant had access to all the documents through litigation. This would also discourage abuse of the legislation. A business commented that the act is strict, an administrative burden, and has caused more invalid queries than should have been allowed, that part of the problem is that fees are not associated with employee requests.

On the other side, in terms of the cost to requesters, one association noted that the regulation treats current and former employees in an inconsistent way. The regulation should either allow an organization to charge fees to all employees or prohibit charging fees to former employees for personal information. There has been uncertainty regarding the application of PIPA's provisions to former employees, and we will bring that issue up later today in the question on personal employee information.

One individual commented that the applicant has no control over how many records are generated or the amount of time spent responding to requests and suggested that any photocopying should be done at the organization's expense. Furthermore, professional regulatory organizations that serve the public interest should provide access to personal information without a fee.

An applicant who believes that fees are excessive can request a review by the commissioner, so there is recourse in response to a fee estimate.

There were a number of comments about a fee schedule. Several respondents expressed a desire for a schedule or some kind of guidance on what would be a reasonable fee. Some supported a fee schedule that would permit actual cost recovery, and some requested that either the commissioner or the government establish a fee guideline for routine costs like photocopying. One recommended adding something in the regulation which would help individuals to anticipate in advance whether making a request is affordable and whether they should proceed with a request. We have a briefing on fee schedules that we'd like to present to the committee.

The Chair: Okay. I think what we'll do is we'll go ahead and have the fee schedule briefing by Jann before I open the floor to questions. Jann, could you go ahead.

Ms Lynn-George: This briefing is about the proposal to amend PIPA to add a fee schedule. Six respondents, all organizations, suggested this, and here's what they said.

First, there were some comments on the advantages of a schedule for applicants. They said that a schedule would help applicants decide whether it was worth their while to submit a request. They thought it would prevent arguments as to what is reasonable under the act.

Second, there were comments on the advantages of a schedule for organizations. They said that a schedule would alleviate uncertainty as to what is a reasonable fee and that it would lessen requests made by applicants to the commissioner to review fees.

The briefing that we provided to the committee presents some information about what happens in other jurisdictions. It should be noted that the language in both the B.C. PIPA and PIPEDA is a bit different from the Alberta PIPA. They allow organizations to charge a minimal fee for responding to an access request. Neither of those acts contains a fee schedule.

10:30

The commissioners in those jurisdictions have considered fees in several cases, and I thought you might just like to hear some examples. The B.C. commissioner decided that a $15 flat fee was an appropriate fee for a physiotherapist to charge an applicant for her records. The federal Privacy Commissioner found that a $150 fee charged by a bank was excessive. The federal commissioner also found that a photocopying fee of 20 cents per page was an acceptable fee but that it was inappropriate for the company to charge a file storage fee. So as we go along with this legislation, we're likely to see more decisions of that nature, providing some guidance to organizations.

One factor that may appear to be an argument for a fee schedule in PIPA is that public-sector access to information statutes generally have a fee schedule. There are three points that you might want to bear in mind about this argument. First, it may be worth recalling that the public-sector statutes provide a right of access not just to an individual's own personal information but to all records. This means that public bodies receive a broad range of requests, including some large and complex requests for records in a wide variety of formats. A schedule is particularly helpful in assisting public bodies to produce complex estimates.

Second, the public expects some degree of consistency across government ministries and the different sectors of the public sector as to what they may be charged. It's less clear that this is the case in the private sector.

Third, the schedule of fees under the FOIP Act is based on figures that are considered to relate to actual costs incurred by public bodies. It could be difficult to develop a schedule that would relate to costs incurred by a very broad range of private-sector organizations. It's easier for us to do the research on what happens in the public sector than in the private sector.

In Alberta the Information and Privacy Commissioner has produced an advisory publication regarding fees for access requests under PIPA – that was one suggestion that was made – and also some organizations have produced their own fee schedules. So there is a question that has been presented for consideration by the committee, and that is: should the PIPA regulation be amended to include a schedule of the maximum fees an organization may charge an applicant in response to an access request? In this briefing there are no options presented because there were really very few concrete proposals to work from, but we could certainly develop some options if necessary.

The Chair: Thank you.

I see Denis' hand. Anyone else? Any questions from the committee?

Mr. Ducharme: Do we know how many requests the commissioner has received for review of the fees?

Ms Clayton: We do. We've had five. In two of those cases the fee was found to be reasonable, and in three of those cases there were recommendations made to revisit the fees. In one of those cases the fee was reduced by about 50 per cent, in another case it was reduced by about 25 per cent, and in another case it was reduced by almost 90 per cent.

Mr. Ducharme: So that's five requests in how long of a time period?

Ms Clayton: In over three years, out of about 730 files we've opened.

The Chair: Laurie.

Ms Blakeman: She answered it. Well, I guess the second part – what I see here is I don't think there's a need for a fee schedule because there's clearly an appeal process in place and it's not used very often. I do see an inconsistency between the current employees and former employees, and that I think is an issue we should probably deal with under this question, but I don't see a need for a fee schedule.

Mr. Coutts: Just a question on the five. Are they companies or organizations, nonprofits?

Ms Clayton: I don't think any of them were nonprofits. Usually those kinds of requests would be for employee information, and we wouldn't have jurisdiction over the nonprofits in that case. In one case we had records of a psychologist, another was records held by a union, and another one was a personnel file, and I don't know about the other two.

Mr. Coutts: Thank you very much.

The Chair: Any other questions?

I did have one. Not many are actually charging fees at all. Is that true? So basically very few are charging fees. You only had five cases throughout the last three years, correct?

Ms Clayton: Uh-huh.

The Chair: That was my question.

Okay. Seeing no other questions, basically on this particular one there are no options that are provided on this topic as the committee does not need to make a decision in this area. If the committee wishes to make a motion, you have been provided with some possible motions. I guess my first question is: does the committee want to look at a motion, or does it want to leave it as is? All those in favour of not making any motions at this time, please so indicate. Any opposed? One. Laurie. Okay. It passes, so we'll move on.

We are now going to be again looking at some government requests, and they're in that same section, which is section 63. If you would look at page 2, there's recommendation 1 and then also a second recommendation. These are from the summary paper that has not been addressed, questions 3B and 3C, and Jann will lead us through these.

Ms Lynn-George: The government's submission proposes two technical amendments relating to fees. The first concerns the waiver of fees. The heading within the government submission is Excusing Payment of a Fee. PIPA allows an organization to charge a reasonable fee for providing access to an individual's own personal information. As was said before, reasonable means what a reasonable person would consider appropriate in the circumstances. What is reasonable may vary depending on factors such as the cost of providing similar information in the course of business and also the format of the records. An organization is not obliged to charge a fee.

The act has no provision requiring an organization to consider a request by an individual to excuse a fee. It can waive fees if it chooses to do so. There has been no proposal to add a provision for excusing fees. Nevertheless, there is a reference in the act in a section on time limits to a request for a review of a fee estimate or a refusal to excuse payment. We're recommending an amendment to correct this inconsistency. So recommendation 1 is that

> the reference to excusing payment of a fee be deleted from the act's provisions respecting time limits for requesting a review since the act does not require an organization to consider a request to excuse payment of a fee.

The Chair: Before I call the question, are there any questions?

Mr. McFarland: I think I'm going to move it, but I just want to make sure. This only changes that one little bit so that the organization still will consider somebody that might request.

Ms Lynn-George: They can certainly do so if they choose to do so. There is no obligation in the act to do so.

Mr. McFarland: Okay. But this doesn't tell them that they under no circumstances would ever excuse a payment.

Ms Lynn-George: No.

Mr. McFarland: Good. I'll move it.

The Chair: So it's been moved by Barry McFarland. Any other questions? I'll call the question. All those in favour? It's unanimous.

Okay. Let's move to the second recommendation.

Ms Lynn-George: This is another technical amendment concerning fees for correcting personal information. PIPA prohibits an organization from charging a fee for the correction of personal information, but the act adds a condition. It says that this general prohibition is "subject to the regulations." However, there is no such regulation, and there has been no suggestion that there should be any exception to the rule that an organization cannot charge a fee for making a correction. So the phrase referring to the regulations is in the government's view not needed. The recommendation is that

> the phrase "subject to the regulations" be deleted from the act's provisions respecting fees for the correction of personal information since regulations on this matter are not contemplated.

10:40

The Chair: So Mr. McFarland is moving?

Mr. McFarland: Yeah, I'll be consistent and move 1 and 2.

The Chair: Any questions?

Ms Blakeman: Then section 32(2) would read: "A fee is not payable by an applicant in respect of a request made under section 25." You're really just talking about absolutely deleting "subject to the regulations." Okay. That's good.

The Chair: Any other questions?

All those in favour? It's unanimous.

We will be moving on. Do we need a five-minute break? How's the committee feeling? They want to keep motoring? Okay.

We will move to question 4, and it's forms of consent. The next issue is from question 4 in the discussion guide about the different types of consent permitted by the act. We're going to receive a summary and an analysis again from Hilary. Then we'll move to the policy option paper, forms of consent.

Ms Lynas: Unless PIPA says that consent is not required, an organization must obtain consent to collect, use, or disclose personal information about an individual, and normally this is done at the time information is collected. The act allows for different types of consent. One is express consent, and that's when you give consent in writing or orally. Another is deemed consent, and this is when an individual volunteers information for a specific purpose and that purpose is well understood, so it's when you offer your credit card for a payment. We all have an understanding of how that information will be used. Another is consent by not opting out, so the individual is given a choice of opting a box if they do not want to receive promotional material from a company. That's an example of consent by not opting out. Express consent can be used in any circumstance, but there are conditions in the act before implied or opt-out consent may be used.

An organization cannot make an individual's consent to collect, use, or disclose personal information a condition of supplying a product or service if the organization is asking for more information than is needed for that particular transaction. You know, you can't require someone to provide their e-mail or phone number because they're buying a pair of jeans.

Personal information is collected, normally, from the individual unless that individual gives consent or the act authorizes consent to collect the information from some other source. In addition, an individual can withdraw their consent or vary consent as long as it doesn't prevent the organization and individual from meeting their legal obligations. So you can't withdraw your consent for the furniture store to use your address to send you the bill.

An organization can collect personal information only for purposes that are reasonable and can collect only as much information as is reasonable for that purpose. That's an overall provision in the act. When information is collected, the organization must give notice to the individual of the purpose for collecting the information

and the name of an individual they can contact if they have any questions. So that's what the act says.

In terms of comments, we have a group of comments about withdrawing consent. One industry association said that the provision preventing an individual from withdrawing consent where it would frustrate a legal obligation between the individual and the organization was too narrow. They believed it should be amended to be closer to the language in B.C.'s PIPA, which prohibits the withdrawal of consent where doing so would frustrate the performance of any legal obligation. In the case of Alberta's PIPA an individual cannot withdraw or vary consent if this would frustrate the performance of a legal obligation unless the parties that are subject to that legal obligation agree and the prohibition applies whether the individual is a party to it or not.

In terms of the forms of consent that are used, one organization suggested that requiring notification in cases where consent is deemed should be established. It's saying that since notification is not required for deemed consent, PIPA is out of sync with generally accepted consent standards. In the health care context and under federal privacy law, proper notice is an essential component of implied consent.

Another organization expressed concern that an employer may not be able to rely on a signed consent, suggesting that the commissioner might disregard the existence of a signed consent if he thought that the purpose for collection was unreasonable.

It is true that even where an employer obtains consent, the collection, use, or disclosure must be for a reasonable purpose. This was addressed in an investigation report in which the commissioner found that an employer improperly required job applicants to consent to a credit check during the hiring process. This organization further commented that PIPA should expressly allow for deemed consent for the collection, use, and distribution of personal information for the purpose of administering and adjudicating employee benefit plans if the employee chooses to participate.

An industry association recommended addition of a provision similar to one in B.C. for deemed consent in an insurance context. This would assist in cases where consent should not be required; for example, naming individuals as insured persons on an insurance policy.

Another organization suggested incorporating a provision similar to that in Alberta's Health Information Act, which allows disclosure among government departments and third parties for billing purposes and to ensure accountability.

The same organization suggested expanding the provision for deemed consent to cover situations where individuals by their actions provide consent to the use and disclosure of their personal information. We do have a policy option paper on consent and indirect collection to go into those issues in more detail.

The Chair: Thank you. As well, can we go ahead and have Amanda do her policy option paper 1 now, unless there are questions overall?

Okay. We have issue 1, collection by a third-party organization from an intermediary organization. We have a few options in front of us, but before we do that, can we have Amanda give us an update on that?

Ms Swanek: This policy option paper is discussing something called, basically, indirect consent. Hilary has given us an overview of the way that consent provisions work in PIPA. We know that PIPA requires an organization to get your consent to collect your personal information, to use your personal information, and to give your personal information to anybody else. There are certain exceptions to these consent requirements.

Let's bring this into the real world. When you subscribe to a magazine, you give the magazine publisher your address so they can send you the magazine. In the language of PIPA you're consenting to the magazine publisher collecting your address and using it to send you the magazine. The publisher might also ask if they can give your address to their advertisers for marketing purposes, and you can either consent to this or not.

So where does direct consent come in? Well, let's say that you are interested in these mail-outs from the advertisers. Maybe it's a fishing magazine, and you like to keep up to date with all the latest equipment. So you tell the magazine publisher: yes, you can give my address to your advertisers. But now the advertisers have to collect that information from the magazine publisher, and they don't actually have your consent to do this. You haven't actually had any direct contact with these advertisers. The advertisers would have to come back to you and say: "Hey, we know you told the magazine Fantastic Fishing that they can give us your address. So can we take your address and use it to send you the mail-outs?" Every advertiser with the magazine would have to come back to you and do that.

Why is this? This is because even though PIPA says that an organization can collect your personal information from someone other than you, it has to get your consent to do this, and it has to get it from you. So when some of the respondents to the discussion paper said that PIPA should be amended to allow for indirect consent, this is the kind of situation that they're talking about.

10:50

What's being suggested is this. If you give the magazine publisher your consent to give your address to the advertisers for marketing purposes, the advertiser should not have to come back and ask you if they can take this address and use it to send you the information. An important point about this suggestion is that nobody is saying that the advertiser should be able to take your address and use it however they want. They can only use it for that particular purpose of sending you the mail-outs. The main point is that the advertisers would not have to come back to you and directly ask your permission. You're giving the magazine publisher the consent to give the information to the advertisers, and then the magazine publisher is telling these advertisers: yes, we're allowed to give it to you, and you can take it for the purpose of this marketing. That's what indirect consent is.

This paper looks at two separate issues. Both are dealing with indirect consent, but they're a little bit different, so I'm going to talk about them separately. Before I get into the first one, I just want to put it into a little bit of context and try to answer the question: what's so important about consent?

Hilary talked about the three different kinds of consent. You've got express consent, where the organization has to explicitly tell you, "This is what personal information we collect; this is why we collect it" and then you say yes or no.

The opt-out consent is the one where you usually get a form. It also has to come with those purposes – this is what we collect; this is why we collect it – and you have that ability to check off and say: no, please don't send my address to the advertisers.

Deemed consent is that voluntary one. That's the one where you go to the store, you want to buy something, so you hand the cashier your credit card. At that point the store is collecting your credit card information, and they're going to use it to process the payment. Now, you haven't said to the cashier: "Here's my credit card information. You can collect it and use it to process the payment." It's understood. You're deemed to have consented to that.

Now, deemed consent only works when you volunteer that information to that organization. Again, you have to have that direct relationship. No one is actually telling you about the purpose for the

collection, and that's because the purpose has to be obvious. In the store case it's obvious that they want to use the credit card to process the payment. They can't turn around and use the credit card information to do a credit check on you. That's not an obvious purpose, so it's not permitted. Even though you're not getting that explicit notice, the purposes have to be obvious.

One piece of information that you don't get that would deem consent, that an explicit notice under express or opt-out consent would give you, is information about where you can direct questions to the organization about the collection of information. You can always ask the organization that on your own, but it's not given to you up front.

So those are the three types of consent. You've got the express, the opt-out, and the deemed.

What is so important about consent? Consent ensures that individuals have knowledge about how their information is used and disclosed. It also gives them control over their personal information. So you have the two key principles: knowledge and control. Regardless of what form of consent is used, you as the individual will know why an organization wants your personal information, how they're going to use it and disclose it. They're either telling you this directly, or as in deemed consent it has to be obvious. That's the knowledge aspect.

Consent also gives individuals the ability to maintain some control over their information. Going back to the magazine, let's say that you're subscribing to this magazine. They ask you if they can send you some complimentary samples or some marketing information about their other magazines, and you say sure. But after a while you realize that you have absolutely no interest in the magazines, and you don't want them anymore. You can go back to the magazine publisher and withdraw your consent so that you don't have to receive these anymore.

The other thing you can do is you can place some conditions on your consent. Let's say that you like the sporting stuff, but you don't want any information about a magazine called *Needlepoint Now*. You can place those conditions on your consent. So that's what the fuss is about: with consent you get knowledge and you get control.

There are two good questions to keep in mind when you're considering whether PIPA should be amended to permit indirect consent in some circumstances. How does indirect consent affect knowledge, and how does it affect control? I've outlined that magazine and advertiser scenario as an example of where indirect consent might be desirable. There are two other scenarios I'd like you to keep in mind.

The first was brought up by Alberta Blue Cross in their submission. Insurance companies like Blue Cross provide insurance for health services, as you know. An example is dental treatments, and that one is particularly relevant to PIPA because dentists fall under the scope of PIPA. You as a patient give your insurance number to your dentist. The dentist can fill out the necessary forms and send them on to the insurance company so they can get paid for the treatment. This creates a nice, simple procedure for the patient. You've given the dentist consent to collect your insurance number, and you've probably given them consent to give your health insurance company some sort of personal information, like the treatment you've received. The insurance company now collects this information from the dentist, but they don't actually have your consent to do this. You haven't given the insurance company permission to collect it. Part of the point of this nice and easy system is that you don't have to deal with the insurance company after every visit to the dentist, but without that direct relationship the insurance company is not getting your direct consent.

What Alberta Blue Cross is suggesting is that when you give the dentist permission to give the necessary personal information to your health insurance company, the health insurance company should be able to collect it from the dentist for the purpose of the payment without having to come back to you and ask your direct permission to do this.

The very last scenario that I want to point out is insurance brokers. A lot of people use insurance brokers to get the best price on their insurance. You give your insurance broker some personal information, maybe your driving history. The insurance broker gives that to a variety of insurance companies so that you can get a variety of quotes. Now, of course, again, you're giving your consent to the broker, but those other insurance companies don't have your consent to collect it from the broker.

We've got those three scenarios where an organization is using your personal information to provide you with a service. You've got your health insurance that is going to pay for your dental treatment, you've got the advertisers that are going to send you mail-outs, and you've got the insurance companies that are going to provide you with quotes, but you don't have that direct relationship with them. You have sort of a middleman in between. You've got the dentist in between you and Blue Cross, you've got the magazine in between you and the advertisers, and you've got the broker in between you and those other insurance companies.

One thing you might notice is that these are really common situations: insurance brokers and health insurance. Strict compliance with PIPA as it stands right now may ignore some of these business relationships and practical business processes. It may also mean that individuals have to give consent at all these multiple points to comply with PIPA, which puts a burden on individuals and also on organizations.

The question for the committee – if you want to follow along, it's the bold print on page 10 of the paper at the very top, and I'm going to simplify it here. If you as an individual give consent to an organization, like the dentist, to give your personal information to a third party, like the health insurance, for a particular purpose, should that third party be able to take that information and use it for the particular purpose without having to come back to you and get that direct consent from you?

There are three options for consideration. The first option is to maintain the status quo, keep PIPA's consent provisions as they are. The main advantage to this is that it requires no amendment, and it doesn't require a change in business practices for organizations. The main disadvantage is that some efficient business processes are not clearly permitted under PIPA.

11:00

The second option is one that I call the without consent option. This would be where PIPA is amended to allow that third-party organization, that health insurance, to collect and use your personal information, collect it from the dentist and use it without your consent. You'd be consenting to the middleman, that dentist, to give your personal information to the third party for a particular purpose. Again, that third party can only use it for that particular purpose.

There are two main advantages to this option. The first one is that it supports that key principle of knowledge. The middleman is asking you: can I give this to this third party for this purpose? So now you know what the purpose is. It also prevents that duplicate process of consent, having to consent at all those multiple points. The main disadvantage, however, to this without consent option is that it undermines that key principle of control. Since that third-party organization can take that information from the dentist, from the middleman, without your consent, you can't withdraw or vary

your consent. You can't withdraw something that you didn't give. So that's the main disadvantage.

The third and last option is something called the deemed-consent option. It's very similar to this last one. PIPA would be amended to allow that third-party organization, the health insurance company, to deem that you have consented to its collection and use of your personal information from the dentist. Again, you'd consent to the middleman, that dentist, giving the information to the third-party organization for a particular purpose. You would have knowledge of that particular purpose.

Since the third party would be getting deemed consent, you won't have that explicit notice that you get under express and opt-out consent. So you will be missing one piece of information, and that is the contact information about where you can go to get information or your questions answered about the collection. The middle organization, that dentist or the magazine publisher or the insurance broker, could be given the added responsibility of telling the individual where they can direct questions about the third-party organization's collection.

The main advantage to this last option is that, like the previous option, that key principle of knowledge is supported because, again, the dentist is asking you: can I give it to your health insurance for this purpose? Now you know the purpose. Also, like the without consent option, it's eliminating that duplicate process, those multiple consents. The third advantage, and this is unlike the last option, is that it does support that key principle of control. That third-party organization is deeming your consent, so there is consent that you can now withdraw or vary.

The main disadvantage to this deemed-consent option is that the middleman, like the insurance broker or the dentist, might have that added responsibility of telling the individual where they can go for information about the third party's collection.

At this time that's the end of issue 1.

The Chair: Thank you. Very clear, Amanda. You could be a star.

We have one question already.

Ms Blakeman: In your example with the magazine and the advertisers, in giving permission for the magazine to pass on the information to the advertiser, what you've really given permission for there is for the advertiser to now come back and solicit to you. So you maintain both knowledge and control in that case, right? Is it correct for me to say that you were making a bit of a leap in that it wasn't just for the purposes of solicitation? As I listened to you, what I heard was that, well, that then enables them to go ahead and send this stuff back to you. That, in fact, is not the permission that you gave when you said okay to the magazine. What you did was allow for the advertisers to solicit back to you, correct?

Ms Swanek: Yes.

Ms Blakeman: Okay. Second point, then, is with the dentist. That's about payment, right? So the permission that you've given to the dentist to take that information to Blue Cross is for who to get paid? Is that for the dentist to get the payment back from Blue Cross? Then Blue Cross would still have to come back to you to get your co-payment. Correct?

Ms Swanek: Yes. As PIPA is currently, yes.

Ms Blakeman: Okay. So then you still have knowledge, and you still have control in that you've given the information to the dentist, and the only thing the dentist can use it for is to get his payment back. For Blue Cross to get the rest of the payment, they have to come directly to you. Correct?

Ms Swanek: Right.

Ms Blakeman: The third example was the insurance brokers. Okay. That's fine.

Mr. Lund: Following along on this issue with the dentist, unless some are different, the dentist I use demands the co-payment at the time of delivery of the service.

The Chair: Yeah. Often they demand the whole payment, and then you recover.

Mr. Lund: Well, mine . . .

The Chair: He still does the co? Yeah.

Any other questions on this issue? Okay. Well, then what I'd like to propose to the committee is that we're really looking at one of three options. The first, as was described to you, is to maintain the current provisions in PIPA. The second is the provision without consent; she called it the without consent provision. The third would be the idea of the deemed consent. So I think those are the three options that we're looking at.

Would any of the members like to move? Denis.

Mr. Ducharme: I'd like to move that we adopt option 3.

> Amend PIPA to provide that when an individual consents to the disclosure of personal information by an intermediary for a specified purpose, the individual is deemed to have consented to the collection by the receiving organization for the specified purpose.

The Chair: We have an amendment on the floor. Are there any questions to the amendment?

Ms Blakeman: I would speak against this. I guess there are three areas of concern for me around personal information. The first one is the Internet and if information in particular is going across the Internet. Although we have organizations that aren't supposed to do more with that information, once they have it and they have it on the Internet, the ability to control it is almost nil. Although they're not supposed to, they now have the information in their possession, and I think it gets away from people very quickly.

In allowing a deemed consent, most people, I think, do not understand that they would have deemed the consent and could now withdraw it, but they have also lost control of it with the organizations. Far too frequently I see organizations demanding information that, in fact, they have no right to. The most common one is Internet purchases where they won't even process your payment unless you fill in all the required fields. They're actually asking for information they shouldn't be asking for because in all of our legislation we're saying: you should collect the least amount of information possible. That's not, in fact, what is happening in society. They're collecting significantly more information, and then, especially where marketing is involved, they get to extrapolate that information and use it back to you.

So I would argue against allowing any widening of the provisions to give anybody more consent to use personal information, especially when you're talking about commercial purposes.

The Chair: Is there anyone else on the committee that would like to respond to the amendment?

Mr. Ducharme: Well, just in rebuttal to the comments that have just been provided. When you're giving consent, you're basically giving consent for a specified purpose. Would that not protect you and take away the worries that you just described?

Ms Blakeman: How would you know?

The Chair: Amanda, do you have an answer?

Ms Swanek: Well, yes. When you provide consent to that middle-man, that dentist for example, you're providing consent to give this information for that particular purpose, and it is supposed to be limited to that particular purpose. Of course, you know, there are going to be the rogue organizations.

The Chair: Okay.

Mr. McFarland: I'm not sure if this is an appropriate one, but I think I'd tend to go along with the comments that Ms Blakeman had purported because I hear more about how information in general is treated, and it doesn't make you feel great. For instance, you see some of the banks now demanding photo ID from their own customers. Well, what is the point? You've already given them signature cards. They've got all the other credit information. What business is it of theirs to have photo ID now? I know of instances where personal health information has followed a client from one part of a hospital to another and become part of a record, maybe from a unit that you didn't want people to know you were in. I know that this is getting away from Amanda's examples here.

In the case of a dentist, yeah, I'd trust a dentist to contact Blue Cross, but wouldn't it be easier to specify the area that you want to give express consent to rather than making it carte blanche across the entire spectrum?

11:10

Ms Swanek: Well, again, when the dentist is getting your consent to disclose this, it has to be for this particular purpose. If an organization is going to, say, disclose to the advertisers, it has to be for the purpose of the mail-out. This doesn't let a magazine publisher, for example, take your personal information and distribute it without your knowing. The only thing this allows is that if you give permission to the magazine publisher to give that information to these advertisers for the purposes of a mail-out, the advertisers don't have to come back to you and say: you gave permission for the magazine to give us this; can we now take it?

Mr. McFarland: Let me ask it a different way, if I may, Chairman. Amanda, I imagine a good many of us probably have an Air Miles card. How it started out, it's a great thing. I'm not knocking anything, just using it as an example, like you did. Who would have thought 10 years ago that Air Miles would have all these partners? You've got now flyers coming in the mail. Everyone gets them. You've got Safeway. You've got Ramada Inns. Or am I supposed to be saying this in public? Anyway, all these, it seems to me, must be crossconnected. I don't recall ever being contacted by all these partners, who are now reporting points, which is a good thing; we're all point collectors. But I don't recall ever giving permission for that to happen, yet it's evolved.

I don't mind that kind of material being shared, but on the other hand, if it comes to personal health information or some other thing, I'd rather be a little bit guarded and have to give my express consent. I think that's actually a form of audit if Blue Cross comes to me and says: "Did you in fact even go to this dentist? They're charging you for it. Did you in fact get this procedure done? You're paying for it." Maybe it's a good self-responsibility thing that we have to assume and be inconvenienced by.

The Chair: Mr. Thackeray, can you give us some clarification here?

Mr. Thackeray: I think that we have to remember the purpose of the Personal Information Protection Act. PIPA is there to govern provincially regulated private-sector organizations in how they collect, use, and disclose personal information. The Internet is not subject to PIPA because it is not limited to Alberta. The Air Miles example: that's a voluntary program that you entered into, and if you were to enter it today, I would suggest that they would be asking for your consent, but that came about long before PIPA or PIPEDA came into effect.

Banks are federally regulated, and they're subject to the federal legislation, PIPEDA. The financial institutions in Alberta, Alberta Treasury Branches and credit unions, are subject to PIPA, and in certain circumstances they're also subject to FOIP.

The options that are before the committee right now talk about business in Alberta, not anything crossing provincial boundaries because that then turns over to the federal legislation, PIPEDA. So if you're going to a dentist and you have insurance and you give consent to the dentist to go to the insurance company for their portion of the payment, then options 2 and 3 talk about whether it's done without consent or whether it's done with deemed consent. The insurance company then has the ability to reimburse you, if you had to pay the full amount to begin with, without having to come back and get your consent to collect that information.

The Chair: Thank you. I think that does clarify. Sometimes we confuse the acts, and I understand why: because it all feels the same in some ways.

Does anyone else have any other questions or comments? I have you, Laurie, back on the list. Are you on the list? No? Anyone else on the list at this point in time?

Mr. McFarland: Madam Chairman, can I just ask one really dumb question on the amendment?

The Chair: There are no dumb questions, Barry.

Mr. McFarland: Well, it seems like I've got lots of them.

When you go to a dentist for the first time, to a brand new dentist, wouldn't it just be much simpler if they had a form – or do they now? – that says all of this, all the things that we're now talking about, that would cover off all these express or implied or any other kinds of options and just make it really clear that anything that transpires between us could very well end up in Blue Cross's office or whatever?

Ms Lynas: Yeah, most dentists' offices have some kind of consent form, and there will be something on the Blue Cross form. The real problem is that when the dentist sends it to Blue Cross, the way the act is written now, technically Blue Cross should phone you up or contact you and say: "I got this form. Can I keep it and use it to process this payment to the dentist?" It's a technical problem in the act that it does make a lot of sense as a business practice to do that.

Mr. Lund: The only comment I was going to make is that we hear constantly from the Canadian Federation of Independent Business that we have too many forms, too much paperwork, and then they ask the question: of what value is a lot of this? I think, with all due

respect, that if we had another form that you had to sign in order for this transaction to happen, think of the consequences of refusing to sign it. Then what happens? You're going to have to dole out the money completely by yourself and not do the more efficient way of collecting the money. I certainly support option 3 and think that it then would allow what's currently happening to be legal.

The Chair: Well, we do have that amendment on the floor at this point in time, so I will call the question if the committee is ready. Denis Ducharme moved option 3. Can I see by a show of hands all those in favour? Opposed? Ms Blakeman. So it passes.

We are now moving on to issue 2, deemed consent for insurance or benefit plans. I call this the basement dweller one because I have many of them in my household. Those would be children that are older and still living at home. I don't know if any of you are experiencing similar joy and bliss in your lives.

We'll go back to Amanda as well, and Amanda will describe this for us. It's the same paper, issue 2. It just follows the last one that we went over. Is everybody there? Can you see it? Okay.

Ms Swanek: This issue, again, is about indirect consent. It's not quite as complex as the first one. What we're talking about here are the group and family insurance and benefit plans. Many insurance and benefit plans, as you know, offer those group and family rates. For example, employee health benefits often allow an employee to enrol their family members. When you enrol in one of these plans, you have to give the insurance company some of your personal information, maybe your date of birth, things like that. You also enrol your family members in this plan, so you'll be giving the insurance company their personal information.

[Mr. VanderBurg in the chair]

Now, like the examples that we talked about earlier, the insurance company has to get consent from each of the family members to collect this personal information. Let's say that an individual wants to enrol himself and his family in a health benefit plan with his employer. The applicant will give his consent directly to the insurance. He might also give his wife's personal information, but his wife doesn't have that direct relationship, so she's not provided this direct consent. Some of the respondents in the discussion paper suggested that PIPA should be amended to allow the insurance company to collect the necessary personal information about the other family members who are to be insured from that single applicant and deem that those other family members have consented.

11:20

The Insurance Bureau of Canada specifically pointed to a provision in the B.C. PIPA that does just that. In B.C.'s act the insurance company must get that direct consent from the applicant to collect his personal information and use it for the benefit plan, and the insurance company can also collect the personal information of the other family members that he wants to enrol from that applicant and deem that those other family members have given their consent to the collection of that personal information and the use of it and disclosure for the purpose of the benefit plan. However, those other insured individuals may not be aware that they're enrolled in the insurance program, so they won't necessarily know that the insurance company has this personal information about them.

Alberta's PIPA currently contains a provision, one of the without consent provisions, that allows organizations to collect, use, disclose an individual's personal information without consent if it is clearly in the individual's best interest and the individual would not reasonably object. It might be argued that being insured under an insurance plan is clearly in your interest and that a reasonable person wouldn't object. It might be the case, then, that an insurance company can collect personal information from the applicant about other family members who are to be insured without those other family members' consent, but this without consent provision has not been considered by the commissioner in this context, so it's unclear whether or not this would apply.

[Mrs. Ady in the chair]

The issue, then, is whether PIPA should be amended to specifically address group insurance and benefit plans. We're proposing two options for the committee's consideration. These options are on page 14. The first option is again to make no changes to PIPA's consent provisions to address group insurance or benefit plans. Insurance companies would either have to obtain consent from each family member to be insured under the plan, or they would have to rely on that exception to consent. The advantage is that there's no amendment, and there's no need to change business practices. The two main disadvantages are that there's a lack of certainty about whether organizations can rely on that without consent provision until a commissioner's decision has been made. It also doesn't acknowledge some practical business processes.

The second option is to amend PIPA to include a provision similar to that in B.C.'s act to allow an organization that provides group insurance or benefit plans to collect personal information about the insured individuals from the one applicant and deem those insured individuals to have consented to that collection and then the subsequent use and disclosure of their personal information for the purpose of that plan. Now, only the applicant will be providing that direct consent. The consent of the other insured individuals is deemed, and again, like I mentioned before, those insured individuals might not know that they're enrolled, so they might not know that the insurance company has that personal information about them.

Normally when we think of a family benefit plan, we imagine that one spouse is the applicant and that the other insured individuals might be the other spouse and some minor children, but as has been pointed out, there are a lot of employer benefit plans that will cover children up to 25, especially if those children are enrolled in postsecondary schools. In the 2001 StatsCan census it was revealed that in Alberta over 70,000 households included children who were over 18, so that's that boomerang effect. The point of telling you about that number is that in a lot of these group or family benefit plans many of the individuals who are enrolled in the plans by another family member will be adults who have neither given direct consent nor received notice that their personal information was collected.

Now, the main advantages of this option are that it acknowledges practical business processes, that deemed consent still allows that control – so individuals can still withdraw or vary their consent – and PIPA will harmonize with B.C.'s act on this point. The main disadvantage is that it undermines the key principle of knowledge of consent. Each insured individual will not necessarily be informed that they're insured and, therefore, that their personal information has been collected by the insurance company.

The Chair: Interesting. I try and see my four boys and how well organized they are. I just wanted to add that.

Any questions? I did hear one comment: my house, my rules. That's an old way of thinking although I like it. My father used to use the same quote.

Are there any questions by the committee on this particular issue?

Does the committee have a warmth towards one of these two options? Would someone like to put an amendment on the floor?

Mr. Webber: You bet. I'll, I guess, put a motion forward to amend PIPA to allow an organization to deem an individual to consent – continue on with option 2.

The Chair: So Len Webber is moving option 2.

Mr. Webber: That's right. Do I need to read it?

The Chair: Yes. Would you, please?

Mr. Webber: Okay.

> Amend PIPA to allow an organization to deem an individual to consent to the collection, use, and disclosure of his or her personal information for the purpose of coverage or enrolment under an insurance, benefit, or similar plan if the individual has an interest in or derives a benefit from that plan.

The Chair: Any questions or discussion on the amendment? Mr. VanderBurg, did you want to make a point?

Mr. VanderBurg: No.

Ms Blakeman: Well, I oppose this. I think that every time we erode an individual's ability to have knowledge of and to control their personal information, it's a bad idea, mostly because lots of people today are not aware of how much information about them is being held by others, and this is contributing to that. We've had the situation outlined of how individuals may not be aware, one, that they're deriving the benefit, two, that an insurance company now has their personal information, and three, that they could withdraw the consent if they chose to. None of those things will be known because it's all been deemed on their behalf. So for those reasons I don't support this choice.

The Chair: Any others?

Seeing none, I will call the question on the amendment. All those in favour of option 2, so indicate. Those opposed? Ms Blakeman. It carries. Thank you.

Again I will ask the question: does the committee need just a five-minute break? Keep going? Okay. We're almost to lunch.

Ms Blakeman: Are we breaking at noon?

The Chair: Yes, we are.

All right. We're going back to our binder, to question 4C. It's under that same section. We should be tracking now in the binder. It's pretty clear. It's under section 63 once again. It's on page 3 at the bottom of the page. This, again, is a government request, so we'll let them respond to this.

Ms Lynn-George: Thank you. Amanda has dealt with an extremely complex issue, and I'm going to deal with a very simple one. This is a proposal for a minor amendment that will be of advantage to organizations. PIPA requires an organization to notify an individual of the name of a person who is able to answer questions about the collection of personal information. Some organizations have requested an amendment to allow an organization to provide an individual with either the name or the position title of a person who can answer an individual's questions.

It's been suggested that this approach would not detract from an individual's rights under the act and that including the option to provide a position title is likely to ensure that information in a notification remains current. The FOIP Act refers to the position title rather than the name of a public body's contact person.

11:30

So the recommendation here is that

> the notification provision be amended to permit an organization to provide an individual with the position title or name of a person who can answer an individual's questions.

The Chair: Would someone like to move that amendment?

Mr. McFarland: I will move it if you will give me the assurance that when you're providing that senior person, whether it's Tom, Amanda, or yourself, it doesn't include your personal telephone number. I assume that's what is intended.

Ms Lynn-George: That's absolutely what it is.

Mr. McFarland: It's a business contact number?

Ms Lynn-George: Yes.

The Chair: So, Barry, are you moving the amendment?

Mr. McFarland: Yes.

The Chair: So moved. Any questions? All those in favour? It's unanimous. Perfect.

Okay. We're going to move on, then, to question 5, exceptions to consent. Just when you thought you had enough fun with consent, we're going to exceptions to consent. Hilary will once again give us a summary and an analysis of responses. Then we have issue paper 3, audits and inspections, by Amanda. So we'll go in that order.

Ms Lynas: PIPA lists the circumstances where personal information may be collected without consent, used without consent, and disclosed without consent. There is quite a long list under each of those sections, but they are specific exceptions. For example, information may be collected without consent if another act or regulation requires the collection for certain investigations and legal proceedings or to collect a debt or repay a debt.

Specific rules set out ensure that an individual's personal information is collected, used, or disclosed only for purposes that are reasonable. If an organization is collecting without consent, it may do so only to the extent necessary for the purpose. For example, if an individual's name and home phone number could be released for a specific purpose and there's no need to provide the mailing address, you would only release the name and phone number.

Turning now to the submissions. We had a number of comments about the provisions allowing the collection, use, and disclosure without consent for the purpose of investigations and audits. One business recommended including a definition of investigation similar to B.C., where it allows for the collection, use, and disclosure of personal information for an investigation related to prevention and detection of fraud. The business suggested that the ability to disclose personal information about parties to a real estate transaction would facilitate the investigation, prevention, and detection of real estate fraud.

PIPA expressly permits the disclosure of personal information without consent for the purpose of preventing, detecting, or suppressing fraud if the organization disclosing the information is

empowered under an enactment to do so. In Alberta the Real Estate Act authorizes the Real Estate Council to protect against, investigate, detect, and suppress mortgage fraud by mortgage and real estate brokers and appraisers.

One association stated that there should not be any restrictions on the disclosure of personal information to law enforcement or government ministries, believing the current rules make it difficult for authorities to do their jobs effectively. We can note that organizations can disclose personal information without consent to a public body that is authorized to collect information or to a law enforcement agency to assist with an investigation. Organizations can also collect, use, and disclose personal information without consent if it's reasonable for an investigation or legal proceeding.

One organization recommended an exception to consent for the use and disclosure of information for audit purposes or to ensure accountability. There's a similar provision in the Health Information Act. Businesses are incorporating audit clauses into commercial contracts so they can verify accuracy of e-transactions and verify compliance with contractual provisions. We do have an issue paper on audits and inspections, so we'll talk about that in more detail in a moment.

There were also comments on the current exceptions to disclosure or collection and use. Two individuals stated that information should be collected, used, and disclosed only for reasons that are pertinent, of importance, or in the individual's best interest. One individual remarked that the abuse of personal information is becoming unreasonable. One association stated that it's unclear whether organizations must provide notice when an organization collects personal information directly from the individual in circumstances where consent is not required. Providing notification in such an instance, such as in the middle of an investigation, would defeat the purpose of the exception and also create an excessive administrative burden for the organization. We have an issue paper on notification and exceptions to consent to discuss as well.

There were some other issues raised. One organization requested clarification regarding the need for consent to use information for purposes when it's anonymized. For an example, if an individual provides his name and address to a retailer to receive a catalogue, can the retailer extract the postal code to develop unrelated marketing products? If information is anonymized, under PIPA, then, it's no longer personal information. It's not meeting the definition when it's not about an identifiable individual, when it's only a postal code.

One organization recommended that the exception to consent for the disclosure of personal information in an emergency be amended to include a situation where there's a threat to the property of an individual or organization. This organization further recommended an exception to consent for disclosure of personal information for individuals who make an allegation against an organization to the media. The reputation of an organization can be adversely affected by allegations, and the organization should be able to defend themselves. This organization noted that the exception was for a reasonable purpose and did not offend the purpose of the act.

So those were all the comments.

The Chair: Thank you.

We're going to go ahead and move to the first issue paper unless there are questions in general that you would like to ask. It's on the audits and inspections, and Amanda will be giving us that.

Ms Swanek: Audits and inspections right before lunch. When I hear the word "audit," the first thing I think of is tax audits, but that's not really what we're talking about here. Audits and inspections are basically just a detailed or official examination to assess strengths or weaknesses. Let me give you some examples to give you an idea of the range of things we're talking about.

At one end, there are some audits and inspections that are required by a statute. For example, Alberta's Insurance Act requires an insurance company to let a minister-appointed accountant audit their books. But many audits and inspections are not required in this way, by a statute. For an example, if an organization outsources some data processing functions to a third-party service provider, the organization might require that the service provider let them come in and audit their network security to make sure that they have the proper protections.

Alberta Blue Cross brought up another example. As you know, as we've been talking about, they pay for health services like dental treatments, and they have to have some way of making sure that those treatments they're paying for correspond to the treatments that have occurred. So they routinely perform audits of a sample of these health service providers. This is kind of like those random tax audits.

On sort of the other end of the spectrum we have an organization that's looking to get some kind of certification. For example, globalization and cross-border trade make conformity with international standards, those ISO standards, a significant selling point for organizations. Now, there are specific independent bodies that are authorized to inspect an organization's processes and certify that the organization is compliant with those ISO standards.

Any of these audits and inspections could involve records that contain personal information about the organization's customers, clients, and employees in some way. The Blue Cross example is a pretty obvious example. They may need some limited access to a dentist's patient files to ensure that the treatments paid for were in fact performed. The question is: should PIPA be amended to explicitly permit an organization to, one, use a client's personal information without consent to perform its own audit or inspection, or two, give a client's personal information without consent to another organization so that other organization can perform the audit or inspection? So I have a few points about the current situation.

11:40

Those audits and inspections, the first example that I talked about, the ones that are required by statute, are off the board for us. A section of PIPA's regulations specifically allows for those kinds of audits. Another point is that we know that PIPA generally requires consent to collect, use, and disclose personal information, and organizations don't often include internal business processes like audits and inspections in their notice about how your personal information is used.

There are three things I want to discuss before I present the options. The first is that the use of personal information for audits and inspections that are directly related to an organization's normal business functions may already be permitted under PIPA. Let's look at the example of the retail store with a loyalty program. When you sign up for that loyalty program, you've consented to let the store collect some personal information about you, like your address and maybe your purchases. You may also have consented to let them use this information to send you some targeted marketing materials, maybe some coupons for groceries you often buy. Now let's say that the store decides it has to increase its competitiveness. They might hire a marketing expert, and this marketing expert might want to use the customer information from the loyalty programs to assess which products are selling and which ones aren't. Now, to be clear, that marketing expert wouldn't be able to take that information away with him and use it some other way.

Now, it might be argued that that kind of audit, an audit to

increase your competitiveness, is directly related to an organization's business functions. In other words, when an organization is supplying a product or service, maintaining these normal business functions is the same purpose. So when you consent to the use of your personal information for one, you consent to the use of your personal information for the other. An organization like the store might be saying: "We perform these kinds of audits so we can stay competitive. If we can't stay competitive, we can't supply our service in the first place."

This issue, again, has not been considered by the commissioner, so it's unclear whether an audit or inspection that's directly related to a normal business function would be considered a separate purpose that would require a separate consent or if it would be the same purpose.

The second point is that some audits and inspections are not going to be directly related to an organization's normal business functions. For an example, we've got these green audits that are becoming increasingly popular. They're the audits to assess environmental impacts. A physiotherapist might provide home visits for elderly and disabled patients, and she might decide that she wants to know the environmental impact of all this driving around town. An auditor who would be performing a green audit would need to know some personal information about the clients, like their addresses, to know how far that physiotherapist is driving. Now, if the physiotherapist is not basing any business decisions on this information, then this audit is not directly related to the normal business functions, and this is a situation where it's more clear that PIPA would require a new consent to perform that audit.

The third and last point is that an external body that provides the certification, for example, for the ISO standards might have to keep copies of some of the organizations' records that it inspects for its own purposes. The certifying body couldn't use them for any other reason, couldn't disclose them for any other reason, but the fact is they still have them.

So PIPA currently requires an organization to obtain specific consent from individuals to collect, use, or disclose for at least some of these audits and inspections, maybe not for those ones that are directly related to normal business functions but definitely for those that aren't directly related. The issue is: should organizations have to obtain that consent from individuals for a new purpose of an audit, or should PIPA be amended to allow an organization to collect, use, and disclose personal information without consent for the purpose of the audit?

There are two options. These are on page 5. The first one is to make no amendment to the act. Organizations performing audits and inspections that are directly related might assume that a related audit is not a new purpose, that it doesn't require a new consent. Again, this hasn't yet been decided by the commissioner, so it's not clear. Audits and inspections can often be performed with anonymized data. Anonymized data is data that can no longer identify an individual. It's therefore not personal information under PIPA, and consent is not required to use it.

The advantage to this first option, to make no amendment, is that it maintains harmonization with the federal and B.C. acts, which don't address audits and inspections. The disadvantages: first of all, there's a lack of certainty for organizations because it's not yet clear whether or not an audit that's directly related to business functions is the same purpose, that doesn't require a new consent. Another disadvantage is that not amending the act may at least in some cases hinder an organization's ability to effectively fulfill a business purpose of performing an audit.

The second option is to amend the act to allow an organization to collect, use, and disclose personal information without consent for the purpose of performing an audit or inspection. This would enable an organization to undertake an audit or inspection that may include personal information of customers and clients without consent from those individuals. Where the personal information is disclosed to an external auditor, that external auditor would not be able to use it or disclose it for any other purpose.

Now, the advantage to this one is that it allows an organization to fulfill the standard business purpose effectively. The disadvantages: first, a new exception to consent weakens the individual's ability to control how his or her personal information is used. As you'll recall, those without consent provisions mean that an individual can't withdraw or vary their consent because it wasn't given in the first place. Individuals may not know that their personal information is being used in this way, and they may not know who is using it if an external auditor is involved. Lastly, an amendment would move the act in a different direction from the federal and B.C. acts.

The Chair: Thank you.

We have in front of us two options: one, to not amend the act, and the second, to amend the act as so described. Does anyone want to put a motion on the floor?

Ms Blakeman: I'll put the motion on the floor to choose option 1, which is to

make no amendment to the act.

The Chair: Okay. Are there any questions?

Mr. Lund: I have to speak against that. I think that once again, as has been described to us in the presentation – and I guess that Blue Cross is a good one to use. If I understand what the audit would be about, it would be simply to check and see if in fact the procedure was done. I can't imagine getting a phone call from Blue Cross, for example, asking me: do you consent to having someone ask you whether a procedure was done on April 25? All that's going to do is create more book work, more time spent, money wasted. Guess who pays in the long run? The individual consumer is the person that pays.

Specifically for an audit or an inspection of or by an organization, if that would be the only purpose that that information would be used for, I think that in the business world it would assist in streamlining. Let's face it. Any time that we put barriers in the way of business doing its business – of course, an audit is extremely important – any time we step in that way, consumers pay for it. At the end of the day the consumer pays. For what purpose would we restrict an organization from doing audits and inspections?

11:50

The Chair: I hear his point. Is there a response to that?

I think what I heard you saying, though, is that audits have been expanded into things that we don't typically think of as audits.

Laurie.

Ms Blakeman: Well, yeah. Sorry. If I can jump in front of you, you can do the cleanup when I miss stuff.

The PIPA regulation: on page 2 of the paper it's saying that it's already allowed for organizations to do audits that are specifically authorized by an enactment. So I'm assuming that catches Blue Cross. If the ability to do that audit is already in their act, then they can go ahead and do it. That's what PIPA is allowing here.

The other issue is: for those that want to expand their business practices, then take the personal information out. Make it use anonymous information, and then it's not a problem because you're

not dealing with personal information. So if you're trying to check your business practices, use anonymous information. There's a way for you to accomplish both things without having taken personal information without people's knowledge, basically.

We're trying to achieve a balance here, and I think that by weakening people's ability to know that their information is out there and is being used, then we're shifting the balance.

The Chair: Would the department like to respond?

Ms Swanek: As I understand it, Alberta Blue Cross audits aren't required by statute. But the point about the anonymous data is correct. If an organization anonymizes their clients' or customers' personal information, PIPA doesn't apply to it anymore, and an audit can be done on it.

Ms Blakeman: Equally, we could have Blue Cross put the audit requirement in their legislation. Let's be specific with where we want it to happen. Rather than changing PIPA, which is giving much more of a blanket approval, if Blue Cross is the issue, then let's change Blue Cross legislation rather than giving a blanket approval by changing PIPA.

The Chair: Any other committee members?

Seeing none, I have a motion on the floor at this point in time made by Ms Blakeman that we make no amendment to the act. All those in favour, please indicate. I see two. Those opposed to the motion? The motion does not carry.

Does a member want to make an alternate motion at this time?

Mr. Lund: I would move option 2, which is to

> amend the act to allow an organization to collect, use, and disclose personal information without consent for the purpose of performing an audit or inspection of or by that organization.

The Chair: Any questions or comments?

Then, I'll call the question on the amendment moved by Ty Lund. All those in favour? Those opposed? Is it a tie? So we're at 3-3? No. It was 4-3. I thought so. So the amendment actually carries. I thought I was counting 4-3, George. I think all members had their hands up.

Mr. VanderBurg: Yeah.

The Chair: It went 4-3. Okay. So then that means that option 2 is passed as an amendment.

Let's move to the notification for collection of personal information. I think Jann is going to be describing this one.

Ms Lynn-George: This issue paper concerns a matter that's somewhat technical, so I'd like to begin with a simple account of what the act says about notification. Under PIPA and also B.C. PIPA an organization has to provide notice before or at the time that personal information is collected only when the organization is collecting personal information from the individual; that is, the individual is the source of the information. The notice has to state the purposes for which the information is collected and the name of the person who can answer questions about the collection.

Let's say that an individual wants to sign up for a loyalty card. These loyalty cards seem to be getting quite a bashing this morning. The organization provides notice of how it will use and disclose the cardholder's personal information and seeks her consent. She reads the notice, is satisfied with the terms, and gives her consent.

Now let's consider a case where the individual is not being asked for consent. I think this is the scenario that is envisaged in the CBA comment. An insurance company, no doubt as a last resort, decides to undertake covert video surveillance of an individual because it suspects that the individual has made a fraudulent injury claim. PIPA permits this kind of covert collection of personal information in limited circumstances, including this one, where collection is reasonable for the purposes of an investigation.

Does the act require the organization to notify the individual about the collection? Clearly, it would defeat the purpose of the surveillance to tell the subject about it in advance, but technically speaking, surveillance is a collection of personal information from the individual. The individual is the source of the information, so technically the act, as it is at present, requires the organization to give notice. The issue then is: should the act be amended to clarify that where an organization is permitted to collect personal information without consent, the organization may do so without providing notice? Now, the Canadian Bar Association, which raised this issue, suggests that the committee answer yes to this question.

Before we go on to the options, I'd like to consider one more example of a case where PIPA permits an organization to collect personal information without consent; namely, where an act or regulation of Alberta or Canada authorizes or requires the collection. So let's say a financial institution, ATB or a credit union, is required under the Income Tax Act to collect an individual's social insurance number. The financial institution will collect this directly from the individual. At present, according to a strict reading of PIPA, the financial institution must tell the individual why it's collecting the social insurance number. And perhaps that's not unreasonable. So that's a case where the covert surveillance example does not necessarily set a good precedent.

Here are the options for consideration. The first option is to maintain the status quo. Notification would still be required where collection is directly from the individual. The advantage is that the act would remain similar to B.C.'s. The disadvantages would be a continuing lack of certainty for organizations and the possibility that there could be some weakness in the without consent provisions. That's the surveillance example.

The second option is to amend the act to clarify that where an organization collects personal information from an individual in circumstances where consent is not required – that's the SIN example – the organization does not have to provide notice if doing so would compromise the availability or accuracy of the information. That second option takes the existing language and adds a little tweak. It speaks to the question of availability or accuracy of the information. Under this option: notice for SIN, not for covert surveillance.

The advantages of option 2: it addresses situations where there is a valid purpose for not informing the individual about a collection of personal information, such as during an investigation, and the act would be similar to PIPEDA on this point. The disadvantage is that it would move the act in a different direction from the B.C. act.

The Chair: Thank you. In essence, with option 2 you're saying that if you don't need consent, you don't need to give notice. Could I sum it up that way?

Ms Lynn-George: No. Option 2 says that there is a requirement to give notice except when information is collected directly from the individual but not if doing so would compromise the availability or accuracy of the information.

12:00

The Chair: So what I said, just differently. Well, maybe not.

Okay. We have in front of us, then, issue paper 4, with two

options. Would somebody like to move an amendment on option 1 or option 2?

Ms Blakeman: Well, I'll move an amendment that
we should be maintaining the status quo.
I don't think the government should be enabling or helping organizations to spy on its citizens, and that's what we're allowing here.

The Chair: Are there any questions or comments on the amendment?

Mr. Ducharme: I had an experience where I had a constituent come in who had a tape recording that had been done by the Workers' Compensation Board. Basically, it showed, I guess, that he was faking his injury. Do they have their own legislation?

Ms Lynn-George: The Workers' Compensation Board has its own legislation, and it is a public body subject to the FOIP Act.

Mr. Ducharme: I shouldn't have asked: does it have its own legislation? I knew that. I guess the question is: in their legislation do they have that?

Ms Lynn-George: Yes. They are permitted to conduct covert surveillance.

Mr. Ducharme: Okay.

Ms Blakeman: Specific to WCB?

Ms Lynn-George: To WCB.

Mr. VanderBurg: How about the EUB?

The Chair: But we digress.

Any other questions on the amendment? Okay. So I'll ask the committee: on option 1 we make no changes to the act. All those in favour? I see four. All those opposed? I see two. Are you planning on voting, hon. member?

Mr. Lund: I'm not sure. Can I vote on both sides?

The Chair: You can't not vote. You can put both hands up, but you have to do one or the other.

Mr. Lund: I'm not sure. I'm a little bit nervous about the compromising of an investigation if you have to notify that, in fact, you're investigating. I think that's what number 2 basically says. I know of one investigation that's going on right now where if, in fact, they have to notify the individual, there would probably be an exit from the province.

I just really have problems if there has been some kind of fraud or something going on and you start an investigation and all of a sudden you have to notify the individual that you're investigating them. I have some difficulty with that.

Mr. Ducharme: This won't apply to the police, though.

The Chair: It won't apply to police. That is what I'm hearing.

Mr. Lund: Yeah, but this isn't the police yet. I mean, it's an investigation that so far, as I understand it, is being done internally.

Ms Lynn-George: Why don't I just clarify? There would be no requirement to notify where personal information is collected without consent but the collection is not from the individual. So if you're collecting information from a third party, which is mostly the case in those without consent provisions, there is no issue of notification. It's only this situation where you're collecting from the individual.

The CBA has raised this example of surveillance, and really it's an odd example because surveillance is a situation in which technically you're collecting directly from the individual because the individual is the source. But in most cases when you collect from an individual, the individual knows that you're collecting information. Surveillance is the odd case.

Mr. Lund: I don't want to belabour the point, but I need some clarification. I guess I need to get specific on one that I'm aware of in order to demonstrate why I'm concerned. We have currently a farm fuel distribution allowance. There's a case that I'm aware of where a dealer was using people's numbers and claiming that they were selling fuel that was marked. As near as I can tell, the people where the numbers are being used also benefited from it. We say here that providing the notice would compromise the availability or accuracy of the information. So you go and you tell the farmer: we're investigating this whole thing, but we have to investigate you because your number is being used. Do you think they're going to get accurate information from that individual? Now, maybe I'm reading this wrong and it doesn't apply that way, but I really have concern because you're going to destroy the investigation if you notify all of the players in the act. The only way you're going to know whether all of the players are in the act is by doing the investigation.

I guess I'm really confused on whether just leaving the act the way it is – and I'm not sure what they're doing. I'm not sure that they're notifying all of the recipients currently. Am I off base?

Ms Lynn-George: No. Actually, that's a really interesting case. I would actually like to apply my mind to it a little bit. We've been working on the legislation that governs this matter, and it's quite complex legislation because it involves government, peace officers, and there are some authorizations in the legislation that are unusually complex. For the most part I think that that would fall under the FOIP Act. In some cases it may fall under federal legislation if the RCMP is involved. I think there is a provision in that act, the Fuel Tax Act, to have other persons involved. I'm just wondering whether that would be the private sector.

Just thinking aloud here, if they're conducting an investigation and they're not going directly to the individual for their information, notification is not an issue. If they're going to an individual and they're saying, "We're investigating this matter, and we'd like you to answer some questions for us" and they have the authority to obtain that information without consent because there's some authority in the statute governing the matter, then I think the act currently says that they would have to provide notification. But I'm not sure that they haven't already done that by turning up on the doorstep and saying: we're investigating this matter. I guess the question would be how much detail they would have to provide about the investigation.

Ms Blakeman: And which act, which is where you started.

Ms Lynn-George: Yeah, which act would apply, but the Fuel Tax Act would govern what they can actually do.

Did that in any way answer your question? I don't think it's going to interfere with the investigation, and I think that's the bottom line.

Mr. Lund: Well, Madam Chair, I still don't have comfort enough to vote one way or the other.

The Chair: Well, we have a motion on the floor, so we have to vote. All members have to vote according to Standing Orders, so we did.

Mrs. Sawchuk: All members have to vote. It's in the Standing Orders.

Mr. Lund: I'm sorry. I did not understand that.

The Chair: Yeah. You don't have the option to not vote. All members must vote according to Standing Orders.

Mr. Lund: Have I been notified?

The Chair: I'm notifying you.

Mr. Webber: I'd like to ask a question, though, to the panel here with respect to private investigators who investigate an insurance claim such as an injury, where I would say that a large percentage of the investigations are done by a private investigation company, a third party. Would this motion on the floor right now to maintain status quo, then, require this third-party private investigation company to notify the individual that they are surveilling?

12:10

Ms Lynn-George: Okay. This is a fairly complex one as well. What happens with a private investigator who's working for an organization is that the organization must be authorized to collect the information. The private investigator is just acting on behalf of the organization.

Now, when an insurance company is investigating a claim, that doesn't actually fall in most cases under the act's exception for collection of personal information without consent for the purposes of an investigation because it doesn't fit within the definition of an investigation. There is no contravention of an act unless you're talking about some sort of criminal investigation, criminal fraud or something. It doesn't fall within the definition of an investigation. Really, that kind of investigation requires the individual's consent. Basically, if you're making a claim, you know, you would really have to consent to your insurance company collecting information for the purposes of deciding how to respond to the claim. If it's collected with consent, then you would have to receive notice. There would be some limitations on the amount of covert collection that could take place within the notice that is given.

Is that a fair assessment?

Mr. Webber: So, then, if an individual puts a claim in to the insurance company, are they giving consent to the insurance company at that time to basically do an investigation if it's required?

Ms Lynn-George: More or less. The collection would have to be reasonable. That would be the overriding condition under the act.

Mr. Webber: Okay. Thank you.

The Chair: I'm being coached procedurally. This is a good discussion, and I know that Barry wants to come in on this discussion, but at this point in time I have a motion on the floor that is in midvote, so we must vote on the motion. Another motion can come forward, but we have to complete this, according to Standing Orders. So, Ty, you have to at this point vote or – I don't know – off with his head.

Mr. McFarland: Well, I might be prepared to change my vote because Mr. Webber just raised a question that puts a different light on it, depending on what the answer is.

Mrs. Sawchuk: Madam Chair, I think that procedurally the vote has occurred on the motion that was made with the exception of one member who has not cast his vote. According to the Standing Orders the member is required to cast his vote.

Ms Blakeman: If he's here, he has to cast a vote.

Mrs. Sawchuk: Yes.

Ms Blakeman: If he's not here . . .

Mr. Lund: Well, is that physically or mentally?

Mrs. Sawchuk: That doesn't preclude another motion coming forward after, but this motion has been made, and the vote is midway through. We've got to complete it.

Mr. Lund: Well, I have a tie, and that means that it's negative.

The Chair: Okay. So we are now in the tied position.

Ms Blakeman: It was 4-2, and now it's 4-3.

The Chair: It's 4-3. Right. So we're now going with status quo. Let's repeat that for the record. What is the count? It's 4-3 in favour of the motion, so it carries.

Mrs. Sawchuk: Is a request being made for the show of hands?

The Chair: So can we see hands? All those in favour of the motion, please raise your hands.

Mrs. Sawchuk: Okay. Now, see, this varies, Madam Chair, from the original vote, and that's totally improper, I would think.

Mr. Webber: I think if we're unclear here on who's voting what, let's have a vote.

Ms Blakeman: No, that's actually challenging a decision of the committee that's been made, which is contrary to the Standing Orders.

Mr. Webber: I don't think that there was a decision made, though. That's the question.

The Chair: Well, hon. member, I would, you know, say to you that there are some decision issues here, but a vote was on the floor. It was made; it did carry. I can't rescind that at this point in time.

Mrs. Sawchuk: You could make another motion.

The Chair: She's saying that another motion can be made and then another vote held.

Mrs. Sawchuk: A motion can be made to rescind if that is the committee's wish. This motion has gone. It has passed. If a member wants to challenge it, really the only way to do that is to make a motion to rescind the motion that the status quo be maintained, and that has to pass before something else can be put on the floor to supersede it.

The Chair: I should've read *Robert's Rules* last night.

Ms Blakeman: *Beauchesne*.

The Chair: *Beauchesne*. Sorry.

Mr. McFarland: I may have misunderstood. I would make a motion, but I would like to ask the department to elaborate a little bit on the example, as I understood it, that Mr. Webber brought. I'll put it another way. Maybe I'll just make it much clearer. A private investigator goes somewhere in Alberta, is investigating on behalf of an insurance company what could potentially be a fraudulent insurance claim, plain and simple. Does that person have to notify the person that the insurance company suspects of filing a fraudulent claim, yes or no? And if the answer is yes, then I'm sorry, I'm changing my vote.

The Chair: Mr. Thackeray, could you bring us some clarity?

Mr. Thackeray: Perhaps. When an individual signs up for insurance with an organization, there is a fairly detailed consent form included in the application for insurance. I'm not very young, and my memory is not that great, but I believe that there is a clause in the consent form when you sign up for insurance that talks about allowing an investigation to take place – you're giving consent – if you make a claim. Now, I can follow up.

Mr. McFarland: I'm saying that even when you receive payment or something else, you're actually validating that what you said was true, and if you lie, God help you.

Mr. Thackeray: Madam Chair, in that case that would be the notice, and that would be the consent.

The Chair: Okay. Then the question I have for the committee is: does someone want to rescind the motion that we just passed?

Mr. Webber: I'd like to ask another question. A different example. A suspicious spouse wanting to investigate or to put some type of surveillance on their significant other.

Mr. Ducharme: It's in your marriage oath.

Mr. Webber: It's in the marriage oath.

They hire a third-party private investigator to follow the significant other. Now, would that private investigator have to contact the significant other in order to get their consent?

Mr. Thackeray: The answer is no because neither spouse is a provincially regulated organization. This would be for sort of domestic purposes.

Mr. Webber: Okay. You're right. Bad question.

The Chair: Okay. At this point in time seeing no further motions on this, I'm going to assume that the committee has made its decision, and we will be moving on.

I smell Chinese food. I have a very discerning nose. What I would like to do is break for lunch. I will ask the committee a question. Would you like to have a working lunch, or would you like to have an actual lunch break?

Hon. Members: A break.

The Chair: Okay. Let's take a break, and we're going to resume at 1 o'clock. We'll be back. Thank you.

[The committee adjourned from 12:19 p.m. to 1:03 p.m.]

The Chair: According to my tick-tock we're supposed to begin. I'd really like to get on with it because I didn't think we had as many of these government things. I thought we had two, and it looks like we actually have five. Is that what you're saying?

Ms Lynn-George: I'll be very quick.

The Chair: They'd better be; that's all I can say.

What we're going to be doing is returning to section 63. According to what I see in front of me, there are several questions for consideration at the end of the summary paper that have not been addressed. These, again, are government submissions. It's questions 5C to 5H. From what I can see, we'll be jumping from 5, 9, 7, 3, and then to 8 if that helps you as you're flipping around. It's all in the same section.

Just as a matter of housekeeping myself, I'd like you to limit the time that you spend on each of these recommendations because we don't want those to be longer than the entire day. If you could, you know, try and limit and give us clarity at the same time if, in fact, they are more housekeeping in nature. So maybe we don't need as long of an explanation unless there are questions.

Let's begin with 5.

Ms Lynn-George: Okay. Perhaps I could just mention that the first one is the most complicated, and some of the others are very simple and straightforward. Because the first one was fairly complicated, we expressed it as two questions, the first one relating to securities and the second relating to fraud prevention. The reason they are the subject of one recommendation is that they appear in one provision of the act.

So far the government recommendations have been quite technical, but this recommendation that we'll consider now is more substantive. It has to do with the disclosure of personal information without consent for the purposes of fraud prevention. The act as it stands has an exception for fraud prevention and related matters that runs to eight lines. It has a somewhat complicated history, and I'll start with the part of the exception that permits the disclosure of personal information for the purpose of preventing fraud in the securities industry.

During the development of PIPA there was a request to include an exception addressing market manipulation and unfair trading practices in the securities industry. The securities marketplace is regulated by self-regulatory organizations. They're authorized under something called national instruments, and they're recognized under agreements among provinces. So they're different from other regulatory bodies that are established under provincial or federal statutes and have their powers established in that legislation.

The Alberta Securities Commission was concerned that self-regulatory organizations in the securities marketplace might not have the legislative authority to disclose personal information without consent under their own governing legislation – that's these national instruments – so PIPA was worded in such a way as to ensure that these organizations could continue to operate as they're intended to do. Shortly after PIPA was introduced, the Securities Act was amended to put these powers into that act, so those provisions in PIPA are thought to be no longer needed. What we're proposing here is to remove the reference to market manipulation and unfair trading practices, so that's the answer to the first question.

The second question, about fraud prevention in general, also has a bit of a history. When PIPA was being developed, it was recognized that the act needed to allow for fraud prevention activities performed by a few independent nongovernmental bodies within industries such as insurance and banking, so the Insurance Bureau of Canada's investigative services and the bank crime prevention and investigation office of the Canadian Bankers Association. These agencies have assumed an important role in protecting the public from fraud, and they needed to be able to continue in this role. The federal private-sector Privacy Act already allowed for this.

PIPA was designed to permit these organizations to disclose personal information without consent for the purpose of fraud prevention and to permit other organizations that needed to report to disclose personal information to them. Now, the act did not open up fraud prevention broadly. It said that to be permitted to disclose personal information under this particular provision, the agency in question had to be permitted or otherwise empowered or recognized under federal or provincial legislation to carry out any of those purposes. This language was intended to capture those organizations that had already been captured in PIPEDA. It wasn't intended to be broader than that.

However, it seems that there's a bit of a legal problem with the language here, and it may not as it currently reads allow those two organizations, in the insurance industry and banking, to perform all of their investigative functions. In particular, the act may not permit the disclosure of personal information for some market surveillance activities because they're not expressly authorized by federal or provincial legislation, and I can give an example if you would like when I'm not being short.

Ms Blakeman: Which page?

Ms Lynn-George: It's 20(n).

Ms Blakeman: Thank you.

1:10

Ms Lynn-George: For this reason it is proposed to amend the act to clarify the scope of this exception, and the act would continue to permit the disclosure of personal information for the purposes of fraud prevention by organizations that are permitted or otherwise empowered or recognized under federal or provincial legislation to carry out those purposes. That's what it currently reads. Then it would specifically designate the two agencies I've mentioned, insurance and banking.

So the recommendation, capturing both of those issues, is that the exception to consent for fraud prevention be amended to delete the current provision for market manipulation and unfair trading practices and also that the exception be amended to expressly permit designated organizations – namely, the Insurance Bureau of Canada's investigative services and the bank crime prevention and investigation office of the Canadian Bankers Association – to disclose personal information for the purpose of fraud prevention.

The Chair: We have in front of us a recommendation. Are there any questions by the committee?

Seeing none, all those in favour of this recommendation, can you so note? Oh, I need the motion on the floor. Would someone bring the motion?

Ms Blakeman: There are two pieces to it.

The Chair: Well, apparently it's under one now.

Ms Blakeman: Well, this recommendation is.

The Chair: My understanding is that we're looking at one recommendation that encompasses both.

An Hon. Member: Yes.

Ms Blakeman: Yes. So you want the government one. Okay.

The Chair: Yes. So would someone like to bring the motion to the floor? Anyone?

Mr. Coutts: This is recommendation 5?

The Chair: Yes, it is recommendation 5.

Mr. Coutts: I'll so move that

> the exception to consent for fraud prevention be amended to delete the current provision for market manipulation and unfair trading practices and also that the exception be amended to expressly permit designated organizations – namely, the Insurance Bureau of Canada's investigative services and the bank crime prevention and investigation office of the Canadian Bankers Association – to disclose personal information for the purpose of fraud prevention.

The Chair: Very good. Any questions or comments on this? I'll call the question then. All those in favour? Opposed? Ms Blakeman. It carries.

Can you go on to 9?

Ms Lynn-George: Okay. That's on page 6 of the government recommendation, headed Publicly Available Personal Information. This is another proposal for clarification to make PIPA more user friendly. PIPA has an exception for the collection, use, and disclosure of publicly available personal information, and the meaning of the term "publicly available" is set out in the regulation under PIPA. The regulation limits the scope of the term "publicly available" quite strictly. Users of Alberta's act sometimes fail to realize that the scope of publicly available information is limited by regulation. This is a trap that even a lawyer or two have fallen into. Both PIPEDA and B.C. PIPA indicate that the user of their acts must consult the applicable regulation, and it is suggested that Alberta's act should be equally clear. So recommendation 9 is that the act's provisions respecting publicly available personal information be amended to include a reference in each case to the meaning of the term that is prescribed in regulation.

The Chair: Do I have anyone on the committee that would like to move?

Ms Blakeman: I will move that

> the act's provisions respecting publicly available personal information be amended to include a reference in each case to the meaning of this term that is prescribed in regulation.

The Chair: Are there any questions, comments?

Mr. McFarland: Do you want a co-sponsor?

The Chair: Don't need a seconder. I see no questions or comments, though. I would like to call the question. All those in favour? Any opposed? It carries.

We'll now move to 7.

Ms Lynn-George: This is question 5F, and the recommendation is on page 5 of the government submission. This next recommendation is quite significant. It is a proposal to delete regulation-making powers that allow the Lieutenant Governor in Council to amend the act by regulation. Now, these powers caused some concern when the act was passed in 2003 because it was thought that they might affect the act's substantial similarity with PIPEDA. That did not turn out to be the case.

If I can provide a little background, when PIPA was in development, there was some uncertainty as to how the act would work in practice. There was some experience with PIPEDA, but that act applied to different kinds of organizations. To ensure a smooth transition, regulation-making powers were included in the act to allow the Lieutenant Governor in Council to make regulations adding or expanding upon exceptions to consent as well as exclusions from the scope of the act. The reason for this is that regulations can be enacted in a more timely way than amendments to the act.

Now, these regulation-making powers were in fact used to clarify provisions relating to personal information that's collected, used, or disclosed under a statute or regulation of Alberta or Canada. The regulation was used to define the meaning of statute or regulation. It is now proposed, just to bring greater transparency, to delete the regulation-making powers and to move the provisions that are currently there into the act. I should emphasize that this proposal will not change the way that the act applies. It will simply eliminate powers that the government believes are no longer needed.

Recommendation 7 is that the provisions allowing the Lieutenant Governor in Council to make regulations adding or defining exceptions to consent and exclusions from the scope of the act be deleted from the act, and regulations currently established under any of these powers be re-established in the act.

The Chair: Would any of the committee members like to bring forward this recommendation?

Mr. Webber: I'd move, then, that

> the provisions allowing the Lieutenant Governor in Council to make regulations adding or defining exceptions to consent and exclusions from the scope of the act be deleted from the act and that regulations currently established under any of these powers be re-established in the act.

The Chair: Thank you. Mr. Webber has placed this on the floor. Are there any questions or comments?

Mr. Lund: Just a question at this point. How many times have the regulations been amended since the act came into power?

Ms Lynn-George: None.

Mr. Lund: Now, I guess that causes some problem for me because I've heard a number of very grave concerns about this act, and obviously that should have been used rather than waiting till the review. I wonder if, in fact, the fact that the act required that it be reviewed in this time frame is the reason that this authority has not been exercised.

The Chair: Anyone want to try and answer that question?

Mr. Thackeray: To the best of my knowledge we never received any requests to use that portion of the act to amend the act. As Jann explained, while we were developing the Personal Information Protection Act, we were under a time constraint. We had to have the act in place by January 1, 2004, or else the federal act would prevail in Alberta, so the drafting process was done fairly quickly. The recommendation from Legislative Counsel was to include this section in the act just in case we missed something in the initial drafting of the bill. As I said, I'm not aware of any requests to utilize this section in order to amend the act, so that's probably why we haven't used it.

Mr. Lund: Well, I guess that if we haven't used it up to this point, it could be argued in two directions. It could be argued that, well, you don't need it, but it also could be argued that it's not hurting anything. I really have some difficulty. I think that if we don't have those kinds of provisions in an act, then if there is something wrong, of course you have to open up the act in order to correct it.

Being chair of the regulatory review, one of the things I've noticed is that departments are wanting to extend the review of the acts for, in most cases, up to 10 years, and I'm a little bit uncomfortable. If you don't have the ability to correct an error or a mistake or something that's causing difficulty, that doesn't make a lot of sense. If you don't have a provision in the act somewhat similar to this, then you end up having to basically live with it because it may not be substantive enough that you'd want to open up the act. As we all know, when you open up an act, then the whole act is open for discussion. So I would not support this recommendation.

1:20

Ms Blakeman: Well, I think the government always has control of this. If the government wants to bring an act back onto the floor of the Legislature to amend something, they have full power and control to do that. They can call us back into session in order to do that if they want to. I would argue that if it's substantial, then it should get a public airing. Certainly, the government has the ability to do this and doesn't have to wait for a review committee to come around every five or 10 years. I think that if the recommendation has been to take it out, we should follow that and take it out.

The Chair: Any other questions or comments by the committee?

Mr. McFarland: May I ask a question of Mr. Lund just for clarification, then? As you see it, it's the review as a sunset clause that's a problem. I thought that by having regulation-making authority within the realm of the minister, it was always a much more conducive way to do things than opening up the act.

Mr. Lund: Well, I agree with you that it's a much quicker and easier way to deal with a problem with an act. But on your first question, about it's being deemed as a sunset clause, unfortunately that seems to be the attitude albeit that these are regulations and can be certainly changed without waiting for the expiry date of the regulation. I'd just hate to see us remove the ability to quickly deal with an issue that is causing a problem. So often you're able to do it through the regulations. You don't have to open up the act.

The Chair: Anyone else?

I have a motion on the floor at this point from Mr. Webber choosing to accept this recommendation. All those in favour of accepting the recommendation, please raise your hands.

Mr. Webber: I can vote against my motion?

The Chair: You can always vote.

Those opposed? Okay. So it has been turned down. The recommendation has been turned down.

We now move to number 3.

Ms Lynn-George: This is about business contact information, and it appears on page 3 of the government submission. PIPA doesn't apply to the collection, use, and disclosure of business contact information. That's the name, position name or title, business address, telephone number, and e-mail address. This exclusion comes into play only when the business contact information is collected, used, or disclosed for the purposes of contacting an individual in his or her capacity as an employee or an official of an organization. An organization can collect, use, and disclose business contact information for these purposes without any restrictions.

Public bodies have noted that this provision applies only to the business contact information of employees and officials of organizations, so the exclusion is effectively limited to the private sector. However, this provision was intended to ensure that all business contact information in both the public and the private sectors could be freely collected, used, and disclosed to facilitate business communications.

In addition, it's been noted that the provision excludes the collection, use, and disclosure of business contact information for the purpose of contacting a person, and there's a concern that the language should have said that it was for the purpose of enabling an individual to be contacted. There's a question of whether the language as it currently reads properly permits disclosure of business contact information by an organization on its website so that listed individuals can be contacted. The language of the British Columbia PIPA more accurately reflects the intended scope of this provision, and we'd like to move a little further in that direction.

Recommendation 3 is that the exclusion for business contact information be amended to clearly enable an individual to be contacted in his or her capacity as an employee, including an official, of either a private-sector or a public-sector body.

The Chair: Is there a recommendation from the floor to accept this recommendation? Laurie?

Ms Blakeman: Sure. I'll recommend that

> the exclusion for business contact information be amended to clearly enable an individual to be contacted in his or her capacity as an employee, including an official, of either a private-sector or a public-sector body.

The Chair: Any questions or comments? We have the spring rolls getting us in their grip. I see no comment, so I'm going to go ahead and call the question. All those in favour of this recommendation? Any opposed? And did all vote? Were you voting in favour or against, Mr. McFarland?

Mr. McFarland: I was reaffirming my in-favour vote.

The Chair: Your in-favour vote. So that passed. It's unanimous. Thank you.

We move to the final one of these particular government recommendations. It's number 8.

Ms Lynn-George: It appears on page 6, and I will be extremely brief because this is the case of simply adding a definition to the term "officer of the Legislature" where it appears in PIPA. The proposal is to use the definition that currently exists in the Freedom of Information and Protection of Privacy Act.

The Chair: Mr. Webber is moving that recommendation. Any questions or comments? I see none. All those in favour? Carried. It's unanimous. Great. Those are completed.

We're now going to move to the final question on today's agenda, which is question 6 coming off the discussion paper. It's the personal employee information. We will first of all be receiving a summary and an analysis of responses. There is a new document being passed around that Service Alberta is providing – I guess it must relate to this question – covering the options, and there are three. What we'll do is that we'll begin with this summary and analysis by Hilary, and then we'll move to policy option paper 2, personal information of employees, and Kim will be leading that.

Ms Lynas: Thank you. Personal employee information is a subset of personal information. It's personal information in a particular context. It's defined as personal information about an individual who is an employee or a potential employee that is reasonably required by an organization for the purpose of establishing, managing, or terminating an employment relationship or volunteer work relationship that's between that individual and the organization.

Not all personal information collected about an employee is personal employee information. It has to be reasonably related to the work. If it's information about an employee's hobbies or leisure activities outside the workplace rather than information in their capacity as an employee, it doesn't meet the definition. The act allows an employer to collect, use, and disclose personal employee information without consent for reasonable purposes related to recruitment, management, or termination. The employer must give current employees notice of the purposes for which the information is being collected, used, or disclosed. If the employer doesn't give that notice, then the employer needs to get consent.

The act includes a provision that allows an organization to provide without consent a reference about an employee to another Alberta-based organization that is collecting the reference in order to determine whether to hire the individual. The general provisions of PIPA regarding personal information also apply to personal employee information, including the employee's right to request access to and correction of personal information. The employer must make a reasonable effort to ensure that information that is collected, used, and disclosed is accurate and complete; safeguarded against unauthorized access, modification, or destruction; and retained only for as long as is reasonably required for business or legal purposes. As we mentioned earlier, an organization may not charge a fee to process requests for personal employee information.

1:30

In terms of the comments from the public, one association encouraged the committee to advocate for clearer guidelines regarding employee information. It comments that employee information constitutes a large portion of personal information held by employers, and employers are unsure about their ability to disclose it. Some of the questions asked of the association by employers include: what information may employers give a collection agency? What information can be shared when giving references? Which government agencies have a right to demand access to employee information?

There is now a body of legal and professional commentary on a wide range of privacy issues. Increasingly, there are decisions of information and privacy commissioners to provide guidance on substantive issues. Both Service Alberta and the commissioner's office have produced several publications to assist organizations in understanding the act and their ability to collect, use, and disclose personal employee information without consent. We have listed some of them on page 6.

In terms of retaining personal employee information, one association recommended amending the PIPA regulation to include

a specific retention rule for recruitment information. For example, they were saying that recruitment information about an unsuccessful candidate for a job opening should be destroyed one year from when the competition closed. PIPA does allow an organization to retain personal information only as long as it's reasonable to retain the information for legal or business purposes. So the organization is able to determine what the appropriate retention period is.

Another association requested a review of the requirement to hold or retain CV information of employees versus information about candidates who were hired and those that were not hired. They were concerned about retaining information for one year as it creates file management issues and possible increased risk of privacy breach. This may be a bit of a misunderstanding. There is a one-year requirement in both the FOIP Act and B.C.'s PIPA act, but it's not in Alberta's PIPA act.

In terms of the application to former employees one association recommended explicitly including personal information about an individual who's a former employee in the definition where the information would be personal employee information if the individual were a current or potential employee, saying: treat former, current, and potential employees similarly. This is something that we are going to discuss in the policy option paper.

Several organizations made comments about consent to obtain references. Several supported prohibiting an organization from collecting a reference about an employee without that individual's consent. One business suggested that a notification provision for current employees should apply to the collection of references for potential employees. One individual stated that employers should be required to use only the references supplied by the individual. The issue of consent and notification for employment references is also discussed in the policy option paper.

That's all.

The Chair: Thank you. We'll move now to policy option paper 2, Personal Information of Employees. Kim, I'm assuming that this chart here, which I've just been scanning, is also going with the discussion that you're about to . . .

Ms Kreutzer Work: Right.

The Chair: It actually kind of lays it out in a way that I can really understand it, so go ahead.

Ms Kreutzer Work: That chart relates to issue 2. There are two issues in the paper. I'll start with a bit of explanation about the act, and we'll go into issue 1, and then when we get to issue 2, that chart sets out the options, hopefully, in a clear and understandable way.

There are approximately 1.5 million private-sector employees in Alberta whose personal information is protected under PIPA. PIPA recognizes that because of the special relationship that exists between an employee and an employer, the general principle of consent for collection, use, and disclosure of personal information may not be appropriate or practical in the employment context. There are circumstances where an employer may not be able to operate his business and could not fulfill its legal obligations if an employee was able to withhold consent. For example, an employer requires certain personal information to process payroll and must follow laws for collection of information regarding income tax, employment insurance, and pension plans.

At the same time, it is questionable whether a consent given by an employee is truly voluntary. This is because of the power imbalance between an employer and an employee. The consent that an individual may give may not be considered voluntary because the individual may feel that if they refuse to give consent, it would have a negative impact on their relationship with the employer. As a result, as Hilary explained, PIPA has special provisions for the collection, use, and disclosure of personal employee information without consent. As she noted, personal employee information is personal information about an individual who is an employee or a potential employee, and that information is reasonably required by the organization for the purposes of recruitment or for the purposes of managing or terminating the employment relationship.

I just want to stop here for a quick moment to say that "employee" under the act refers to an employee in the traditional sense, but it also incorporates a volunteer, a participant, a student in a work program, and an individual who's acting under a contract for the organization. Also, with "potential employee" I'm referring to a job applicant, someone who is being considered or might be considered for an opening with the organization.

The ability of an employer organization to collect, use, and disclose personal employee information without consent is subject to certain limitations. First, it must be reasonable to collect, use, or disclose that information for the purposes, as we've said, of recruitment, management, or termination; the information that is collected, used, or disclosed must be limited to information about the employment relationship; and in the case of current employees notice must be given to that employee as to the purposes for the collection, use, or disclosure. I want to point out that these personal employee information provisions in the act are discretionary. They're not mandatory; they permit but do not require the organization to handle personal information without consent.

Now, inconsistencies in the wording of the definition of personal employee information and the provisions for collection, use, and disclosure have raised the issue of whether the provisions allow for the collection, use, and disclosure of personal information of former employees. In other words, can an organization rely on these special provisions to collect, use, or disclose the personal information about former employees for employment-related purposes without consent? This arises from the fact that the definition in the collection and the use provisions use the phrase "is an employee," where the disclosure provisions says "is or was an employee."

This matter has come before the commissioner, and he determined that personal employee information relates only to the personal information of a current employee or a potential employee but not to former employees; therefore, organizations can rely on the personal employee information provisions only to collect, use, and disclose without consent the personal information of current or potential employees. The commissioner noted the little discrepancy in the disclosure provision and said that although personal employee information doesn't apply to former employees, there obviously was an intent by the Legislature to allow organizations to disclose information about former employees for reasonable employment-related purposes. So it puts us in the position where an organization cannot collect or use former employee personal information under the personal employee provisions; they can disclose former employee personal information without consent when it's reasonably related for employment purposes.

1:40

This interpretation of personal employee information not applying to former employees has implications throughout the act. First, as I mentioned, although an organization can disclose certain information about a former employee, it cannot collect or use it about that former employee without consent. There may be instances in the postemployment situation, particularly with respect to pension plans, where an organization may need to collect or use limited information about that former employee.

Second, as we've discussed, PIPA allows an organization to charge a reasonable fee to process an access request, but a fee cannot be charged when the access request is for personal employee information. This means that with the present interpretation an organization cannot charge a fee when a current employee asks for his information in a personnel file, but they may be able to charge a fee when it's the former employee asking for their employment information in a record.

Now, some people may argue that it's unreasonable whether or not an individual can charge a fee for access to personal information collected as a result of a employment relationship when it is dependent on the individual's employment status at the time of the request. Others may argue that being able to charge a reasonable fee to former employees would reduce the number of access requests and the number of documents requested by former employees who may wish to inconvenience the organization or create a hardship for it. We should note that an applicant is not required to state his or her purpose for which they are making an access request, and an organization can also apply to the commissioner for permission to disregard an access request when it is frivolous or vexatious or is repetitious or would unreasonably interfere with the operations of the organization.

Now, in response to the committee's discussion paper, as Hilary pointed out, the Canadian Bar Association has suggested that the act be amended to clarify how the provisions for personal employee information apply to former employees. The CBA also stated that it may be preferable to have a consistent approach in the way current and former employees are treated with respect to fees for access requests under PIPA. I would like to note that the commissioner in his recommendations, recommendation 21, supports clarification as to how the act applies to the personal information of former employees, and the government submission, recommendation 11, also recommends clarification with respect to how the act applies to former employee personal information.

If you're following along in your policy option paper, I've reached page 8. The issue before the committee is this whether the act be amended to allow an organization to collect, use, and disclose personal information about former employees without consent and without notice. I'm just going to make a note right here that I'm not talking about employee references in this instance. That's a totally separate issue that we're going to address in issue 2 shortly. This is collection, use, and disclosure of personal information about former employees in other contexts.

We've presented three options for the committee's consideration. That is not the chart that you've got in front of you; that's issue 2. The first option is, basically, the status quo with a little tweaking of the language. It would entail minimal amendments, just to clarify the existing position as to how the act applies to former employees. So the definition of personal employee information would continue to apply only to the personal information of current or potential employees. Organizations would be able to collect, use, or disclose personal employee information about current or potential employees without consent. Notice would continue to be required for current employees.

Organizations would be able to only disclose without consent the personal information of a former employee for reasonable employment-related purposes after termination of the employment relationship. It could not collect or use it without consent. And organizations would be able to charge former employees a reasonable fee for processing an access request.

The advantage is that it provides the clarity that's been requested by the respondents and suggested by the commissioner and the government. The disadvantage is that it does not resolve the issue of the same personal information being treated differently by an organization based on an individual's employment status with that organization, and it doesn't address the situations where it might be reasonable for an organization to collect or use without consent the personal information about a former employee for reasonable postemployment purposes.

The second option is to amend the act so that organizations need consent to disclose the personal information of former employees. It also would clarify that personal employee information applies only to current and potential employees. This option is the least inclusive in terms of what personal information of former employees may be collected, used, or disclosed without consent. Organizations would generally require the consent of former employees, and the personal employee information provisions would relate only to current and potential employees. In addition, organizations may charge a former employee a reasonable fee for processing an access request. Fees would not be charged for personal employee information of current or potential employees.

Advantages: again, the clarity that has been requested would be provided, and consent gives former employees greater control over their own personal information. Disadvantages: again, it does not resolve the issue of the same personal information being treated differently by an organization based on employment status. It does not address those situations where an organization may need to collect or use information about a former employee for reasonable postemployment purposes without consent. It removes the ability of an organization to disclose without consent personal information about a former employee.

The third option that we present to you is to amend the act to expand the scope of personal employee information to include the personal information of former employees. This is the most inclusive of what personal information of former employees can be collected, used, or disclosed without consent. Now organizations would be able to collect, use, and disclose without consent the personal information of potential, current, and former employees. The existing conditions for personal employee information continue to apply; namely, collection, use, or disclosure must be for reasonable purposes related to the employment relationship, it must be limited to only that information necessary in relation to the employment relationship, and, again, current employees would be notified. Organizations would not be able to charge former employees a fee for responding to an access request for personal employee information.

Advantages: again, we have clarity. It does resolve the issue of the same personal information being treated differently by organizations based on status, and it does address the situation where an organization may need to collect, use, or disclose personal information of a former employee without consent. The disadvantage is that when you remove consent, former employees have less control over their own personal information.

The Chair: Thank you. Well, as I see it at this point in time, this option paper has three options, which I think have been described. Are there any questions from the committee regarding any of the options before I call to see if we have someone that wants to move?

1:50

Mr. Lund: I guess I find it a bit disappointing that – and I'm looking on page 2 of the discussion paper, where you define what personal employee information is. We deal with date of birth, employee number. Now, I don't know if that would be the number that the employer, I guess, had assigned to that individual. I don't know why that's even relevant.

Ms Kreutzer Work: It's personal information that can be related to an individual, an identifiable individual. These are just examples of types of personal information that may be considered personal employee information and therefore would fall under those general provisions for without consent.

Mr. Lund: Okay. I guess what I was getting at: there are some things here that are very personal to that individual, like the social insurance number, like the date of birth. The employee number and salary and wages are two that I'm finding a little bit iffy. But the hours worked, absences, vacation dates, performance assessments, discipline record, and resumés and references: those latter are pretty much work related. While I know that they're specific to an individual, when it comes to disclosure, I'm not sure why a new employer wouldn't be very interested. Probably those last five bullets would be very important to a new employer when trying to assess whether the individual that's applying is in fact qualified. It gives a pretty good record of how that individual may perform in the new scheme of things.

Ms Kreutzer Work: Yes.

Mr. Lund: But those others that I mentioned: yeah, those are very, very personal. I'm not sure why those would be relevant if it was a new employer that was asking for this information from the former employer.

Ms Kreutzer Work: I'm not sure I've got your point, but a new employer could collect this information without consent. Obviously, there's a job applicant in the picture, and it would be considered personal employee information, so a new employer could be collecting this without consent.

Mr. Lund: I guess my point, really, is that there's quite a distinction here. The one is relative to performance of the individual. The other is more historic, like birthday, social insurance number, even the salary being paid. When we lump them all and call them personal employee information, I'm not comfortable that some of these be given without consent. I have no problem with the facts being given, like hours worked, performance assessments, because for a new employer those are critical, yet they're lumped in with some of these others that are very personal. You've got no control over your date of birth, but you do have control over your performance.

Ms Kreutzer Work: Date of birth, though, or social insurance number would often be required by law to be gathered by an employer.

Mr. Lund: Maybe I'm reading this wrong.

Ms Kreutzer Work: These are just examples of what may be considered personal employee information and, therefore, what an organization could collect, use, and disclose without consent about a current employee or a job applicant. The question that the committee is looking at is: should these without consent provisions for personal employee information also apply with respect to former employees?

Mr. Lund: But now you're making it clearer. I just have some difficulty with necessarily giving some of those bullets, but they're all lumped in. The act would refer to personal employee information about a former employee.

Ms Kreutzer Work: That's the question.

Mr. Lund: Yeah. But I still have a problem with all of this being lumped into one category, and don't ask me how to do it differently.

Ms Kreutzer Work: Well, if I could just say that the act doesn't specify in detail what personal employee information is. It is the broad definition of personal information about a current employee or a potential employee that is reasonably required by the organization to manage or terminate the employment relationship or to recruit an individual into that relationship. The act, unlike the FOIP Act, does not list what is personal information or what is personal employee information. It's a broad definition. These are just examples that in a certain circumstance could be considered personal employee information, and therefore they could be collected, used, and disclosed without consent.

Mr. Lund: Well, Madam Chair, I guess the reason I'm having some difficulty with this is that if an individual is applying for employment and they want the information from the former employer, then there are a number of these things that are very, very important to that new employer. Date of birth is likely not one of them.

Ms Kreutzer Work: Yes.

Mr. Lund: It could be, but it shouldn't be. When you get long in the tooth, you don't like to have date of birth as a limiting factor. An employee number: I can't imagine what that's got to do with it. Hours worked – I'm just repeating. Anyway, that's my point. Maybe I'm missing something that could be clarified. Tom is used to doing that.

Mr. Thackeray: I guess what we were trying to do in section 2.1 was to give some examples of what would be on the personal file of an employee within an organization. So you've got the file. This is the type of information that would be in that file. The question is that the act allows for the collection, use, and disclosure of this type of information for establishing potential employees and current employees. What should we be doing with former employees with this file? What's in the file is not really relevant. It's the file. It's the information that is personal information about the employee who is no longer employed by the organization.

The Chair: Laurie, is this on this point? I've got Denis. Is this also on this point? So Denis and then Laurie.

Mr. Ducharme: The water has got a little bit muddy now that Tom has spoken. If you've got a file on a former employee, you know, in my mind, well, he's a former employee. Destroy it. Destroy that information. You no longer need it.

However, going back to the first point that, I think, Ty was trying to bring forward on the situation where I'm going to be applying for a new job and I give my former employer as a reference. Okay. I've given permission in order to do that. However, there's certain information. I think you kind of clarified it as to what's in the file, but I don't see a reason why my social insurance number should be given out at that point in time to my prospective new employer. If I get hired on, I'll provide that information, but until that point why should that prospective employer receive that information from my previous employer?

Ms Kreutzer Work: If I could speak to that. The former employer would not be giving it to the prospective employer. The prospective

employer, notwithstanding that they can collect without consent, only can collect what they need for that particular purpose. In this case, the recruitment purpose, they need to analyze the ability of the person to do the job. We will talk about references as a separate issue. But you're quite right. They wouldn't need the social insurance number at that point, and the act wouldn't allow them to collect it. You're not allowed to collect more than what you need for that particular purpose. So it's not a question of: just because I have a file with all this information about a former employee, I'm going to disclose the entire file whenever without consent.

What we're looking at is the ability to disclose about a former employee just the limited amount of information that is needed for postemployment purposes, and that's probably for pension plan purposes or whatever other benefits or perhaps income tax, things that come after the termination. It's not going to be the whole personnel file. It will just be those elements of personal information that the organization has because of the employment relationship and now needs to disclose for a particular purpose.

Does that clarify that?

2:00

Mr. Ducharme: I'm going to leave it go through the fog a little longer.

Ms Blakeman: I'm wondering if you can give us any information about why we treated employees differently. Why did we start out separating out former employees? We've treated potential employees and current employees pretty consistently in this act, the same, but former employees are separated out in a number of instances. Why did we do that?

Ms Kreutzer Work: This will kind of get into a bit of issue 2. Certainly, it was the intent of the act to cover employee references without consent. That maybe has gone astray, and we'll deal with that in issue 2. It's not clear what the intent necessarily was with respect to the personal information of former employees. I don't know if my colleagues have any additional information on that.

Ms Lynas: Yeah. I mean, there's a drafting problem. It's turned out, when we've looked into it, that it is confusing. We have this different treatment. I wouldn't necessarily say it was intentional from the beginning.

Ms Blakeman: Okay.

Ms Lynas: We're trying to fix the problem.

Ms Blakeman: So we're trying to fix this?

Ms Lynas: Yes.

Ms Blakeman: Okay.

The Chair: Yes, we're trying to be consistent, I suppose, is what we're looking at. But before we can get consistent, Barry is on the list.

Mr. McFarland: I'm really confused about how I would vote on this because one minute you can see the benefit of some of the things that you're talking about, and in the very next minute you see the bad side of it. Is there any chance that somebody going in – no. This is all about former employees, not potential.

The Chair: Right.

Mr. McFarland: So the disclosure can't be hung over somebody's head as a take it or leave it thing for a future job because we're only talking about former.

I can see where all information should be available for security reasons. If somebody is looking for a job and he/she was a convicted pedophile, I don't have a problem with it, but that's just the dad in me.

The thing that I don't quite understand is, as Ty mentioned, that if some people can use date of birth as a reason to challenge based on some sort of indiscriminate picking on somebody based on their colour, their religion, their age, then I guess you have to give that some thought. I think I would lean more to the security side of thing, but I'd be really far more comfortable if somebody, when they took the job, signed a consent that said: in the future, you know, if you're contacted after I leave your employ, you are free or you're not free to disclose whatever this list becomes. You know, if somebody were to say, "I really object to my date of birth – it's nobody's business – but the rest you can send; I don't mind," and they did it knowingly, then I think that's good.

Ms Blakeman: Can I reframe this? Really, can anybody give me an argument as to why we should continue to treat former employees differently? If you can't give me that argument, then we should be supporting the recommendations here; that is, to treat them the same.

The Chair: Yeah. I agree.

Ms Blakeman: Okay.

The Chair: Can anyone give her that argument? We stumped the panel.

So then the question becomes: do we look at this recommendation? We've got three options in front of us to kind of correct and make it the same, or I suppose we can always say that we do nothing at this point in time. Correct?

Ms Lynn-George: The do-nothing option is not provided here. There is no do-nothing option.

Ms Kreutzer Work: The first option is kind of to do nothing but with some clarification.

Ms Blakeman: It's a clarification. It's option 1 at the top of page 9 of the discussion paper, right? Am I tracking here? Okay. The second possibility is option 2 at the top of page 10, which is: amend the act to remove the ability to disclose without consent.

Ms Kreutzer Work: In other words, you would need consent.

The Chair: To disclose it all, right?

Ms Kreutzer Work: Right.

The Chair: Then the third option is that broader application where we include the former employees and make it uniform.

Ms Kreutzer Work: Correct. And that is without consent.

Also, with regard to the ability to not charge a fee for . . .

The Chair: They can only collect the information for the purpose of – it's limited in what they can access.

Ms Blakeman: So it's really the third option that is what is going to bring the former employees underneath and treat them exactly the same as current.

Ms Kreutzer Work: Correct.

Ms Blakeman: Okey-dokey. Thanks.

The Chair: Ty. Only if you can clarify.

Mr. Lund: Well, I'm probably going to create a little more problem here.

I'm late in this process, so I don't know whether some of this has been through the committee before and was agreed to. I recognize this as examples, but on page 2, where we talk about all of that personal employee information – quite frankly, I've got no problem with treating present, future, and past employees the same. But has the committee ever agreed that this is a good way to treat the present and the future?

The Chair: I don't believe the committee has ever discussed that option. It's not one of the discussion questions. Correct?

Ms Kreutzer Work: Correct.

Mr. Lund: Well, I thought this committee was charged with looking at the act.

The Chair: It was. When it originally organized itself, it came up with the 12 questions, and those were the 12 that we sent out for review and received reaction and response to and that we're looking at today. You know, that would have been handled earlier in the process, Ty, before you joined the committee. That's probably why. I mean, I don't know what the rules are on that.

Ms Blakeman: Well, there's nothing to stop us from, in essence, parking his question, which is the validity of the list of information we're talking about, and asking for some prep work to be done and coming back to it. What we'd be missing from that is the public input on it, but we could get some background information, comparisons with other provinces, for example. We just can't get the public input piece of that. We could come back to it and talk about it at the end of everything else we've got on our plate.

Ms Lynas: I don't know if this will help or not, but I'll try it. We've been talking about collection and disclosure, but probably with this example on page 2 where it makes a difference to the employer is under use. The idea is that the employer collects a date of birth. He gives notice to the employee: we're going to use this to manage your employment relationship. The employer can then use that date of birth for any purpose they need to to manage that employee's employment. They can use it to manage benefits, whatever else they may need. The same with an employee number, a social insurance number: if there's a new use for the social insurance number that comes up, they don't need to go back and get consent. They can just use it because it's for the purpose of managing that employment relationship. That's what having this definition of personal employee information does. It lets the employer collect it once and then continue to use it related to employment without going back and getting consent of the employee over and over.

Then the issue is: we're doing that for current employees. Do we need to keep doing that for former employees without consent, or do we want a regime where we go and get consent because now we have to deal with this person? This person has left, but they have a pension eligibility, and we need to keep a relationship with them.

The Chair: Okay. You've created more of a list.

Denis, then Barry.

Mr. Ducharme: I think that's where the confusion comes in for me. I can understand that you've already gotten consent for a present employee – okay? – or a new hiree that's come on. Basically, I guess, it's a present employee. Where I can't separate it is: what good is it for a former employee? You're done with that employee. Why would you be sharing that information with a new, prospective employer? You know, they're gone. If I've moved on to a new area, their HR person is going to come up to me and ask me for that information. Why should that new employer go back to my former employer and be able to get that info? That's where I think we're facing that mental block right now.

2:10

Ms Lynas: Right. And we haven't gone through part of Kim's paper talking about the references, which is where the new employer may be collecting it. What we're really still talking about here is the idea that I'm an employer and I have former employees and I still have legal obligations to these people because they have a pension with me or I've made contributions to Canada Pension Plan on their behalf and Canada Pension may come and ask me questions about them.

Mr. Ducharme: Thank you. You just clarified it.

The Chair: I have Barry. Did you get your clarification there?

Mr. McFarland: Almost.

The Chair: Almost?

Mr. McFarland: Yeah. You know, I don't pretend to know anything about the administrative side of it. All I can think of is the ordinary people that I might on very rare occasion talk to about FOIP or PIPA. I think people in general don't have a problem with sharing information when applying for a job. They kind of expect that if they're honest, hard-working people and if they've done a good job at a previous employment situation, they're probably more than happy to have any and all information disseminated.

I guess a lot of us are of an age when there are things which are our own personal property. We expect them to be treated that way because society has evolved to the point that – God knows, the Canadian taxing authority knows all my farm income, and consequently, because I disclose it, the Ethics Commissioner and all the public does, and it's in public accounts whether I paid for it or not. Whether you've been a social worker, a restaurateur, everyone knows everything about you. There was a time when nobody knew Mr. Coutts's social insurance number except for him. That should not be something, I don't think, that gets shared around because there are too many groups that somehow, magically, have a connection that accesses stuff anyway.

So when it came to Denis's point, yeah, it hit a bell with me. If the guy has some eligibility issue, that would make sense. You'd expect former and present employers to work together on it. If it's a security thing that the former employer is being asked about – work performance, odd habits, or something – geez, I guess that's in the best interests of the general public. But I don't know that anyone

needs to know my bank account number, if that's where somebody's going, or my social insurance number. You should have to go to the individual and say: is it okay to get that information from somebody else?

The Chair: What I'm seeing, basically, is that we're getting kind of, if you will, hung up on what is personal information, and really we're here discussing what we're doing with personal information. So I'm wondering if we can for a moment park what is personal information over here and deal with just this issue – what are we doing with personal information? – because I don't have as much discomfort about the idea of former employees needing to be treated the same and being able to access for pensionability and those types of things. But the list of what's on the personal information: that might be another subject. So I'm wondering if I could direct the committee to focus on that issue. Does that make some sense for everyone of what we're doing right now?

Ms Blakeman: Focus on which issue?

The Chair: Well, I'm asking that we focus on what we're doing with the information, not the list of what is.

Ms Blakeman: To be including former employees under option 3.

The Chair: Right.

Do I have someone that can move an amendment, if you will, on one of these options so that we can actually vote on this? Which one would we choose if we were picking? Not talking about what is personal information.

Mr. Lund: Well, with the proviso that we will come back and visit the whole issue about personal information, I would move option 3.

The Chair: Okay. Any questions or discussions on option 3?

Seeing none, I'll call the question. All those in favour? That's unanimous. Oh my gosh. I think I'll have a fifth child; it might be easier.

Mr. Lund: It's not over yet.

The Chair: Okay. So we have moved on option 3, and that has passed by the committee with the proviso – I think that you heard that – that we'd like to come back and visit what is personal information. There seems to be some discomfort in the committee, so maybe we could instruct you to go out and come back with some of that information for us. Maybe we could work it into our second date or, if not, further into the fall. Is everyone comfortable with that?

Ms Blakeman: For clarification, I think what's troubling people is: under what circumstances do they release what bits of information on that list? Does the social insurance number go to everybody automatically or only to somebody that asks or only under certain circumstances? That's part of what I'm hearing.

The Chair: Yeah. Thank you.

All right. I'd like to move on to issue 2 – dare I? – and this is in regard to employee references. We give you a prize if it's clearer than the last one.

Ms Kreutzer Work: I can't promise that because it's quite technical in nature.

The Chair: Okay. Again I can see three options.

Ms Kreutzer Work: Before we get to the options, if I could give some explanation. We're talking about employee reference checks. We're not talking about any other kind of background checks – we're not talking about criminal checks; we are not talking about credit checks – only employee reference checks, just to be clear.

Employee reference checks are recognized as a normal part of the pre-employment process. As members of the committee have pointed out, organizations conduct the checks so they can determine whether a potential employee has the appropriate skills, training, credentials, or personality required for the position. When a job applicant supplies a list of referees to the potential employer, he or she is giving consent to that potential employer to collect personal information about the applicant from those specified referees.

But what if the potential employer wants to collect an employee reference from someone who is not named on the listed reference? Or what if in the circumstance of a current employee the employer wants to obtain additional reference information because perhaps the employee is not performing up to the expectations? Some people may argue that an employment reference should be collected only with consent of the individual the reference is about. Others may argue that by requiring consent, an employer will not be able to accurately assess the suitability of the potential employee or, in fact, the current employee because the individual will only consent to contacting those referees that will give a favourable reference.

So what does PIPA presently allow organizations to do with employee references? Alberta private-sector organizations can collect references from other Alberta organizations or from public bodies without consent; therefore, an organization could collect a reference from an employer that was not named on the list of referees that the job applicant provided. Of course, there are conditions. The information must be reasonably required for recruitment purposes; in other words, in order to assess the job candidate's suitability for the position. It's not the ability to collect any and all information about the candidate. The information must relate to the particular purpose of recruitment for a job applicant.

If the reference is being collected about a current employee, the organization, under the act, must give notice to that employee. So although an organization can collect without consent, there may be a problem for the former employer to provide the reference without consent. This all depends on what type of organization that former employer is. This is where it gets a little tricky, and you have to bear with me. Organizations can give a reference about current employees to another private-sector organization in Alberta without consent, but they could not provide a reference about a former employee to a private-sector organization without consent. That's going back to that original commissioner's interpretation of personal employee information not relating to former employees.

However, there's another provision in the act that would allow organizations to provide employee references about current and former employees to a public body without consent. In other words, I could give without consent a reference about a former employee to a public body that's looking to hire this employee, but if I want to give a reference about my former employee to another private-sector organization in Alberta, I would need the consent of the former employee. It's a little drafting problem in our act.

2:20

I should also mention that an organization can always give references with consent. Notwithstanding that you have these discretionary provisions in the act, an organization can still have a policy that it will only give references with consent or that it will

only collect references with consent. In addition, human resource professionals may have their own guidelines and code for collecting and disclosing references without consent.

I've mentioned that whether a reference is being collected with or without consent, there are always these overarching principles that the information must be collected, used, or disposed of for a reasonable purpose. It must be reasonable. The information that is involved must be limited to what is reasonable to fulfill that purpose. The organization that's giving the reference must make a reasonable effort to ensure that the information that they are providing is as accurate and as complete as is possible for that purpose. When an organization is collecting information to assess an applicant's suitability for the position, they cannot use that information for any other purpose, like marketing to the individual. Organizations, when they have collected a reference, must protect that personal information from unauthorized access or other risks of modification or destruction or unauthorized disclosure.

The paper does look at other jurisdictions, and I just want to briefly touch on a couple of key points on this. First of all, B.C.'s PIPA has personal employee information provisions similar to Alberta's. Organizations can collect references without consent, but even under their legislation it's not clear whether an organization can provide a reference without consent. Also, I'd just like to note that when the FOIP Act underwent a review in 1999, the select special committee considered the issue of employee references in relation to public bodies as the employer. This is on page 15 in your policy option paper, if you're looking for a place to follow.

As a result of the committee's considerations and deliberations, the FOIP Act was amended. The FOIP Act allows references to be collected and disclosed within the government or within a single local public body without consent. That's because the government or the single local public body is considered to be a single employer. However, references can be collected without consent from a third party, but the government can only disclose a reference to another public body or to a private-sector organization with consent, and it's standard practice for the government to obtain consent before seeking pre-employment references.

As mentioned by Hilary, some of the respondents to the discussion paper have stated that references should only be collected with consent. This is why the issue is before the committee as a separate issue. The issue for the committee's consideration is whether organizations should need consent to collect, use, or disclose an employment reference. The issue is on the bottom of page 15 of your policy option paper. On the next page are the three options that we are presenting for the committee, and this is where your chart now comes in handy.

Under option 1 it is the status quo. There are no amendments made to the act. So the present formulation would continue, and that is: private-sector organizations can collect employer references about current or potential employees without consent. Now, we're just making the assumption here that there are very few cases where you would ever be collecting a reference about a former employee, so that's why N/A is in your chart. You tend to be collecting about a current employee or a potential employee. Private-sector organizations can provide employee references about current employees without consent. They would need consent to disclose a reference about a potential employee to another private-sector organization. As I've mentioned before, they can always provide a reference about a current or former employee without consent to a public body. The organization providing the reference would not have to give notice.

Do I have everyone with me still?

The advantages and disadvantages with respect to the first option. The advantage: organizations can determine for themselves whether they will collect employee references with or without consent. This goes back to the fact that the provision would be discretionary. The disadvantages: it does not address the argument that consent be required for employee references, and there's still this inconsistency in the ability of organizations to provide references about former employees without consent to public bodies but needing consent to provide a reference about a former employee to a private-sector organization.

The second option. It is the most restrictive for organizations. It would require consent in order to collect, use, or disclose an employee reference. So consent is required for collecting a reference about a job applicant or a current employee. Consent would be required to provide a reference, whether that reference was being given to another private-sector organization or to a public body, and because consent is required, an organization would be required under the act to also provide notice to the potential, current, or former employee that it was either collecting or disclosing the reference, as the case may be.

Now, I might confuse you a bit here. A special provision could be added that would excuse an organization that is giving the reference from requiring consent when the organization that is collecting it has consent. So if I give my permission to the Acme company to collect a reference about me from my former employer, under the special provision my former employer wouldn't have to get my consent to disclose the reference because I already have knowledge of what's going on, and I've given my consent to the organization that's collecting it.

The advantages of requiring consent for the collection, use, and disclosure of employee references. It provides the highest level of privacy protection. It addresses the respondents' concerns about requiring consent. It resolves the inconsistency in the ability of an organization to provide a reference without consent to a public body but with consent to another private-sector organization. The disadvantage of requiring consent is that it may increase the administrative burden on human resource management operations.

The third option. It is the least restrictive for organizations because consent would not be required for collecting or providing a reference. However, the organization that is collecting the reference would be required to give notice to the job applicant or to the current employee that the organization is collecting a reference about the individual. So no consent but notice. The organization providing the reference would not have to give notice as, typically, an organization provides a reference only upon request, and the individual would have notice already from the collecting organization.

Advantages of this option. It resolves the inconsistency between the ability to provide a reference to a public body without consent but needing consent for the private-sector organization. Organizations still can determine for themselves that they will only collect or disclose references with consent. They still have that option because it's just a discretionary provision. It addresses the argument that in the absence of a consent requirement notification would apply to the collection of employee references about a potential employee as well as a current employee, and it would limit an increase on the administrative burden that human resource management departments within an organization might feel. The disadvantages: it does not address the argument that consent be required for employee references, and it does not provide the highest level of privacy protection.

2:30

The Chair: Thank you. Okay. Again, we have a weighty matter in front of us with three options, and I already have on my list Laurie.

Ms Blakeman: Probably we've got three different acts that we're responding to here, the difference between Kal Tire talking to Mr. Lube, Big Brothers Big Sisters talking to Meals on Wheels, or the Securities Commission talking to the government about a reference for somebody. We've got different acts that are governing, whether they're completely in the private sector, whether there's some sort of crossover, or whether they're government. Yes?

Ms Kreutzer Work: We've got the FOIP Act and PIPA. I'm not sure what the third act is.

Ms Blakeman: I was thinking it would have been PIPEDA, but if it's not there, let's not bring it in.

Ms Kreutzer Work: PIPEDA would apply when you're crossing borders.

Ms Blakeman: Or national organizations, which would be like national nonprofits, right? It's okay. I don't think we need it there.

Ms Kreutzer Work: We won't go there.

Mr. Ducharme: I had a question initially, but as I continued to listen, it got resolved. I'm prepared to make a motion that

> we go with option 2 with the provision that would permit an organization to disclose a reference to an organization that has the individual's consent.

I believe that if you relate to it in the real world, if you're going out to give a reference, you're going to be giving that permission out wherever you are, and in most cases that's probably what's going to be happening. That's why I'd like the provision in there.

The Chair: Okay. I have a motion at this point in time on option 2. Do you have questions, Dave?

Mr. Coutts: I have a question. If I'm applying for a position – and it is customary now; it doesn't matter where you go. You go to any door, and you see resumés being taken by small businesses, big businesses, et cetera. If I put down the information on a resumé – everything from my birthdate to my social insurance number to references to every job I've ever had, et cetera, et cetera, and every qualification I've had – and I pass that resumé over to my prospective employer, is that consent that they can check out everything that is on there? Is that implied consent, or is that written consent? If it is, it solves a lot of problems for me in voting on this.

Ms Kreutzer Work: Yes. The information that you've provided to them on the resumé you have given to them with consent, so in the case of the referees that you have listed under employment references, then that would be consent. I'm not going to go to whether it's deemed, implied, express, or whatever.

Mr. Coutts: Okay. But that is consent.

Ms Kreutzer Work: It would be consent, yes.

Mr. Coutts: I'm concerned about the small businesses here. My resumé goes in, and then they have the consent to check me out in any way that they want that is on that resumé.

Ms Kreutzer Work: They would have the ability to check with the referees that you have listed there. But, again, what they can ask for is only information that is reasonably required by them to determine whether or not you're suitable for that particular position.

Mr. Coutts: I understand. Thank you very much.

Mr. McFarland: Last dumb question of the day for me. How many times did issues like this come up? How many people in total took part in this? I just have begun to think: how many man-hours, woman-hours have we spent to address – what? – a half of 1 per cent issue of all the workforce or three people that brought this thing up? I'm being sarcastic, but are we overreacting to all this stuff?

The Chair: Anyone want to answer that one?

Mr. Thackeray: I think it's fair to say that the issue of references has been around since the act was first thought of in 2003. We went out and consulted with Albertans clear across the province, and the number one question we always got was: can I ask for a reference; can I give a reference? That's what we're trying to resolve.

Mr. McFarland: But, Tom, the number of people that came and made submissions: I mean, that's a joke. When this whole stuff was evolving and Frank Work was sitting down where David McNeil is, suddenly we developed FOIP and "fip" and "drip" and all this other stuff. We now have administration and we've got departments and we've got everything. You know, it's just amazing. It's a make-work project. I'm sorry.

The Chair: I think that's the question no one can answer.

We do have a motion on the floor, and we are developing. I guess my only comments – and I haven't made many comments as the chair, but I would like to make one comment on this one. I, obviously, don't get to vote unless there's a tie, and counting numbers, I won't. Between option 2 and option 3 I am concerned with the administrative burden. One of the things, I think, as a committee I would like to point out as something we might want to look at, particularly if 2 is the most restrictive, is that sometimes that creates an awful lot of burden administratively. I'm not sure if that's something that we want to do: oversolve the problem for people in some ways.

An Hon. Member: Protecting privacy.

The Chair: Yeah, protecting privacy.

That's my only point, so I was wondering if the committee would like to discuss that for just a minute before we actually call the question. Anyone?

Ms Clayton: I just wanted to offer some information from the commissioner's office on this question of references. We haven't had that many complaints involving the issue of references. What they tend to be about when they come is the same sort of issues that Mr. Lund was raising: whether or not this particular kind of information should have been disclosed in the reference. I think that from our experience organizations in general, whether or not consent is required to collect reference information, tend to contact those referees whose names are provided on a resumé. Often they set a very high standard for obtaining consent before contacting references and before providing references. As a best practice they often have a policy in place that restricts the amount of information that can be disclosed and only allow certain individuals within the organization to provide references. This is anecdotal, but generally our experience has been that organizations are reaching a very high standard with respect to obtaining consent for collecting or giving references.

Ms Blakeman: Then option 2 would be following with common practice?

Ms Clayton: I think that's what we're seeing, but again that's anecdotal.

Ms Blakeman: Good. Excellent. Question.

The Chair: Okay. I think the committee is ready for the question. No? Len Webber suddenly has come out of his Chinese food funk and has a question.

Mr. Webber: I'm still in my funk, thank you very much. I'm just reading here under option 2: "an organization would be required to provide notice to a potential, current or former employee that the organization was going to collect or disclose a reference about him or her." As a past employer I get a call from a potential employer on an individual. If we go with option 2, do I as a past employer then have to give notice to this past employee of mine that I am going to disclose information to a potential employer?

Ms Kreutzer Work: If we go with option 2 with the proviso that an organization could disclose a reference to an organization that has the individual's consent to collect the reference without the disclosing organization having to obtain a separate consent – if we go with that extra proviso – the disclosing organization would not have to give notice.

2:40

Mr. Webber: All right. Thank you.

The Chair: Thank you. Are we ready for the question? Okay. I'll call the question. Those that are in agreement with option 2, so indicate. It looks like it's unanimous, so we'll pass along.

If you turn back to section 63, we again have some government recommendations, and I note in this one that there are three questions for consideration in the summary paper that need to be addressed, questions 6C to 6E. These are recommendations in the government's submission and the commissioner's submission, and Jann will lead us through those. I note that the commissioner is making some recommendations. I thought I would note that for the committee to know that the commissioner is also involved here.

[Mr. Ducharme in the chair]

Ms Lynn-George: Well, you may be pleased to know that recommendation 11 in the government submission – that's the definition of personal employee information – has now been addressed, as has the commissioner's recommendation, so we can move on, I think, to question 6D. That is on the same page of the government submission, page 7, and that's the definition of an employee. The definition of employee was intended to include all individuals providing services for or on behalf of an organization, but the definition as it stands doesn't make it clear how the act applies to officials of an organization. That's directors and board members.

It's proposed to amend the definition of employee to make it clear that all officials of an organization are subject to the act's personal employee information provisions and are also protected by the act's whistle-blower provisions, so the recommendation is that the definition of employee be amended to clarify that all provisions of the act that apply to employees of an organization also apply to officials of the organization and that the provision for business contact information, which we looked at a little earlier, be simplified to refer to an employee of an organization rather than employee or official of an organization.

Mr. Coutts: Does that mean that if I'm a member of a board of a corporation, if we go for this, I'm automatically an employee and that information is then made available to whomever requests it?

Ms Lynn-George: Now, what we have to recognize is that information about employees wouldn't be made available to anyone who requests it.

Mr. Coutts: Thank you very much.

Ms Lynn-George: Everything relating to employees has to meet several tests that refer to the kind of information and the employment purposes, so the ability to collect, use, or disclose is quite limited.

The Acting Chair: Any further questions?

Ms Blakeman: I'm struggling a bit with this one because it really is going to capture a director of a not-for-profit organization under any other reference in this act where you're talking about an employee.

[Mrs. Ady in the chair]

Ms Lynn-George: Exactly. Yes. The assumption is that if you need to know who your employees are, you probably need to know who your directors are.

Ms Blakeman: I'm struggling with being able to vote on this one because I feel that I'd need to go through and check every reference in here to employee so that I knew what I was doing to those directors or those volunteers. Are we including them in this too?

Ms Lynn-George: Volunteers are already included because an employee includes a volunteer, a participant, a work experience student. It's really anyone who is providing a service on behalf of the organization.

Ms Kreutzer Work: If I could perhaps help out with which provisions have the word "employee" in them. You're looking at, obviously, the definition of personal employee information and the collection, use, and disclosure without consent provisions for personal employee information. You would have also the reference with respect to fees, which is that you couldn't charge a fee for an access request for personal employee information.

Ms Blakeman: Right. We've got three definitions under the definition section that grab employees. You've got 1(e), you've got 1(j)(i) and (ii), and it looks like (n), volunteer work relationship.

Ms Kreutzer Work: Yes. The volunteer work relationship definition only comes into play, again, with respect to the personal employee information provisions for collection, use, and disclosure.

Ms Blakeman: Okay. So we've got them under those three definitions, and you pick them up under the fees section, and you pick them up under – what was the last one?

Ms Kreutzer Work: Whistle-blower. I haven't got to that one yet.

Ms Blakeman: And without consent.

Ms Kreutzer Work: That's the personal employee information provisions without consent. That's 15, 18, and 21.

Ms Blakeman: Yes. Right. Okay.

Ms Kreutzer Work: The whistle-blower provision is section 58.

Ms Blakeman: Thank you.

Ms Kreutzer Work: I believe those are all the provisions.

The Chair: Are there any references to officials in the act right now?

Ms Lynn-George: The business contact information provision refers to an employee or an official, so this tends to suggest that an employee does not currently include an official. That's why we're suggesting that we put officials underneath employees and then keep the business contact information with just the reference to employees so that it'll pick up both.

The Chair: Does that answer your question, Laurie?

Ms Blakeman: Yes.

The Chair: That was so strong.

Ms Blakeman: Well, I'm a little concerned about the without consent phrase, that we would now be using personal information without the consent of the individual and applying it to a director of an NGO, for example. I think that sector is not aware that this one could be coming, and I don't think we gave them an opportunity to contemplate it when we had them before us. That's a big move.

Ms Kreutzer Work: The application of the act with respect to nonprofits is coming next meeting.

Ms Blakeman: But this is anticipating that. If we do what's before us right now and include officials, which would include directors from a board of directors as incorporated under the Societies Act or part 9 of the corporations act, we've already anticipated and foreshadowed the discussion that's coming.

The Chair: Yeah. Point taken. I think an idea would be to table this one until after we have the discussion on the not-for-profit sector. Would the committee be okay with that? Or do them together?

Ms Blakeman: Yeah. I'd be more comfortable doing that because this is a huge move.

The Chair: Okay. All right. Are we in agreement? We'll do that instead. So we'll table this one, and we'll move on.

Now, you were at 10. Are you moving to 11 now?

Ms Lynn-George: No, to 12.

The Chair: Going to 12? Saving 11 for something?

Ms Lynn-George: No. We've already discussed 11.

The Chair: Oh, excellent. That's even better news.

Okay. So number 12.

Ms Lynn-George: Now, I think this is the last item from us for the day. I'm afraid that it is quite an important recommendation, so I will need to discuss it in just a little more detail.

You may remember from an earlier presentation that there's one word that occurs with great regularity in PIPA, and that is the word "reasonable." The purpose of the act is to protect personal information in a manner that recognizes the rights of the individual and the needs of organizations to collect, use, and disclose personal information for purposes that are reasonable. The provisions for the collection, use, and disclosure of personal information each begin with two general principles: that an organization can collect, use, or disclose only for purposes that are reasonable, the first principle, and only to the extent that is reasonable for those purposes.

2:50

Now, the act specifies a number of circumstances when personal information can be collected, used, disclosed without consent. In some cases an organization has little room for discretion; for example, if they have to collect personal information as required by law. In those cases the organization can operate on the assumption that the purpose is reasonable. In other cases they might need to consider whether the purpose is reasonable. For example, say that you had a request to disclose personal information that was wanted by another organization that was going to make an honour or award and they wanted to assess an individual's suitability. You as an organization might need to use some discretion before you disclose that information.

Anyway, the question has arisen whether this idea of the reasonable purpose applies to personal employee information and to personal information that an organization wants to collect, use, or disclose for the purpose of selling or acquiring a business. Now, it was certainly intended that these overarching principles should apply throughout the act, but there was a decision about section 15, the little phrase at the beginning which says, "Notwithstanding anything in this Act." The decision-maker in that case decided that that phrase, "notwithstanding anything in this Act," threw out those two important principles – only for purposes that are reasonable, only to the extent that's reasonable for those purposes – and the government would profoundly like to put them back again.

That is the issue before you. It may seem like a narrowly legal issue, but it is very important in terms of the test that will be applied in every set of circumstances. Was it reasonable? Was too much information collected or disclosed? The recommendation is at the bottom of page 8.

Ms Blakeman: So this is specific to division 6, business transactions?

Ms Lynn-George: No. It's personal employee information and business transactions, so sections 15, 18, and 21.

Ms Blakeman: And 22.

Ms Lynn-George: I think this goes to Mr. Lund's point about the amount of personal information and also to Mr. Coutts's point: how much personal information is disclosed? Everything at every point in this act is supposed to be reasonable and to the extent necessary for the purpose.

Ms Blakeman: The "notwithstanding anything in this Act" section that you're quoting – oh, it is section 22. I'm sorry. There's the reference right there. Okay.

The Chair: Any other questions?

Would somebody like to bring forward this recommendation for consideration by the committee? Dave Coutts, would you, please?

Mr. Coutts: I will move that

> the language of the provisions for collection, use, and disclosure of personal information without consent be amended to clarify that an organization may collect, use, or disclose personal information, including personal employee information, only for purposes that are reasonable and only to the extent that is reasonable for those purposes.

The Chair: Thank you. Any questions? All those in favour? Carried. Oh, two hands from Laurie.

Okay. I need you to move to tab 33. This is the commissioner's submission, and I suppose that you're going to bring it forward on his behalf. I'm not sure I caught your name. Jill.

Ms Clayton: It's the same issue that was just decided.

The Chair: Oh, okay. I'm sorry. I'm uncertain what we're doing then.

Ms Clayton: The commissioner's recommendation was to clarify again those umbrella provisions.

The Chair: So we don't need to cover this issue. Perfect.

Okay. Well, committee, thank you very much to those of us that have endured to the end.

Just a little bit of other business before we conclude today. First of all, I'd just like to say that we'll probably be starting the day – it's next week sometime.

Mrs. Sawchuk: Next Wednesday.

The Chair: Next Wednesday, and we're going to be at 9:30 having the not-for-profit conversation. You know, I'd just ask that the committee kind of think about that a little bit before we get here because it's, I think, one of our bigger issues. Also, just try to remember the days when you worked for the community association and your role as a volunteer as you're considering those options. I like to kind of always take it down to the grassroot level. That will be one major consideration that we'll have in front of us next time.

Laurie, did you have a point on this issue?

Ms Blakeman: No. I just wondered if there's any more information coming. Is there another binder?

The Chair: Oh, you'll get another binder.

Ms Blakeman: Okay. I just need a bit more time to read this stuff. I've got too many meetings next week.

The Chair: She's going to address that in just a moment. There are some new rules that are coming forward in this area because of the other all-party committees. I know that some have heard some of the early indications of the fact that we don't get binders anymore and that they come on the Net. I don't know if that's going to prove to be true, but I think our committee is also being picked up in that. So I'm not sure if you'll get a binder as much as you'll get a file.

Ms Blakeman: I just want the information faster.

Mrs. Sawchuk: Madam Chair, the committees branch through the Clerk's office is making changes to – you know what? I'm just going to read this document that we put together and that was used last week during a meeting with the chairs and deputy chairs of the new policy field committees. It's referred to as modern procedures for all-party legislative committees. One of the things to keep in mind is that staff from the Clerk's office travelled across Canada to various jurisdictions, and really Alberta is kind of behind a bit in how we, you know, follow through our procedures for meetings. We're working on this now, and we're building on these common practices found in other Canadian jurisdictions.

Seated to my left is Jody Rempel. She's the new committee clerk who's joined us. One of the biggest changes – and we're instituting it tomorrow – is that there will be a new internal website accessible only to the members and their staff, so their staff in their constituency and their staff here in the Legislature. We will send you the link each time to the website for each meeting that we hold. Every piece of paper that you've got in this binder will be posted on that website. If you choose not to print it all out one day, if you just want to sit there because you're on an airplane and you're looking at a laptop, you can do it that way. If you've got access through Our House – you know, the intranet site – anywhere, then you can access that or your staff can access it. The documents will all be posted on there.

Members will still be given a binder. It will have all the bells and whistles in it, all the tabs, all the pockets you need. Everything will be delivered tomorrow to your offices here. The link will be e-mailed to you with all the documents on it. The internal website will have a lot of different information on there. It'll have links that will take you to another spot to get copies of the relevant statutes or the annual reports of different government departments that may be needed during these reviews or to other government websites. I mean, we're going to try and make it as easy as we can, but the end result is that there will no longer be paper issued through the committees branch. Everything will be sent out electronically.

Your staff will not have any problem. It's no different than if they were working on a computer today. They'll open up the document; they'll print it off. The difference is that we're not going to be handling 120 binders for nine different committees. Each member will receive a binder for the committees that they're on, and you'll be given the information you need to access the documents for that meeting. And these ports that are in front of every member – you can bring your laptops. The documents will be there. You can just scroll through them if you choose to use your laptops in the meetings. It's an option.

3:00

The Chair: That was my question: will there be paper support here for members while we're actually going over things? You're saying that it will be electronic, so we might need to consider bringing our laptops. Will there be somebody here who can help us if we can't get it?

Mrs. Sawchuk: Well, if you want to use your laptops, it has to be your LAO laptop – that's the other thing – because everything here is configured.

An Hon. Member: Pardon me?

Ms Blakeman: They don't support Macintosh.

Mrs. Sawchuk: No. The LAO laptops that were issued.

However, you're going to have the link tomorrow. Your staff could print off all of these documents if that's what you choose, if

you'd prefer that. All of this stuff in the binder will show up exactly like that on the screen. The first link will be the agenda. They'll click on it; the agenda will be right there. They can print it off. Next will be item 3 that would have gone under tab 3. It'll just keep going.

Ms Blakeman: And that's ready tomorrow?

Mrs. Sawchuk: We're working on it right now, actually. We've got a number of them ready. Now, the PIPA one might be a little bit later in the day. We've got a number of meetings all on the same day next week, so we've got to try and get them all operational at the same time. They're working on it.

The Chair: Okay. Just in reference to that as well, I'm hearing that we'll have some technical support if you do bring your computers. Computers for dummies will be here as well as everywhere else in the Leg., which has helped me immensely.

The other point that I wanted to make, too, is for next week's meeting. I know that we have a number of all-party committees starting, and I appreciate that I'm even working on one of those. I just wanted to let members know, any of you that are here, that there is some conversation about moving between committees. I just want to remind the committee that we're at the point in this committee that we are voting on recommendations, and the others are basically starting up and coming up with their procedures. I understand that there's importance around that, but it's very important that we hold quorum as we try to vote on these final issues. We're kind of nearing the end of our process, so I just want to encourage all that can come to be sure to be here.

The other thing is that we did have a late submission to the committee. It was a Ms Ida Mitten. She wrote to the committee by e-mail, and I need to know if the committee wishes to accept this late submission. Of course, she noted that we had accepted a late submission by a Ms Anne Landry and heard from her on May 1. So I wanted to ask the committee.

Denis would like to respond to this issue, and then we'll chat about it.

Mr. Ducharme: I don't have a problem in terms of reviewing this information if it's all right with Mr. Thackeray and his team.

The Chair: I was going to recommend that we do accept this but that we ask Mr. Thackeray's team if they would take it and analyze it and work with it. I probably would not have another date for oral submission, but it could be provided in writing, and we would treat it the same as all other submissions. It's in our binders. If the committee is okay with that, we will proceed on that. I'm getting a lot of head nods, so I'm assuming that that's agreed upon. All right.

I guess I'm finally at the point where I'm looking for adjournment unless somebody else has an issue. David.

Mr. Coutts: Madam Chair, I think we've had a very productive day. I just want to compliment and thank the staff for the detail and the presentations that they've made as well as their ability to answer tough questions, provide clarity that helped us move on.

Tom, to you and your staff, thank you very, very much for everything you've done for us today.

The Chair: Well said. Well said.

Any other issues? Karen.

Mrs. Sawchuk: Madam Chair, I was just going to say: tomorrow when we send out the e-mail notices and stuff for our meeting next week, feel free to call us – we're going to be here all day tomorrow – if there are any problems at all, but I don't think there will be. I'm confident there won't be. We'll work with your leg. assistants. We know them. We deal with them. We'll work with them.

Mr. Lund: Over in 513 there are at least two leg. assistants absent. Mine won't be back until Tuesday morning.

The Chair: You might need a hand.

Mr. Lund: Yeah. I just got today's this morning. Maybe I wouldn't have asked so many questions and taken so much time . . .

The Chair: . . . if you had gotten it earlier. Can we maybe help out Mr. Lund and Mr. Coutts? Thank you. I'll look to my clerk to help us out here. I understand the areas of concern.

Our next meeting is, again, Wednesday the 27th. I'd like to thank all committee members for their due attention today in helping us struggle through what I consider to be some complex issues, so thank you for your attention.

Do we need a motion for adjournment? I do. Ty. Everybody's raising their hand, trying to be first. All those in favour? That's unanimous. We're going home. Thank you.

[The committee adjourned at 3:06 p.m.]