

Title: Thursday, August 12, 2004 HIA Review Committee

Date: 04/08/12

Time: 9:03 a.m.

[Mr. Jacobs in the chair]

The Chair: Good morning, ladies and gentlemen. I think I will call the meeting to order. We are expecting one or two more members, and hopefully they will arrive in the next few minutes. We certainly welcome you here this morning.

There are a couple of things that I just need to review before we proceed with the agenda. You all should have received copies of materials that were e-mailed to your offices and constituency offices on Monday, August 9. Additional copies of anything are available if anyone didn't get all the copies or needs additional copies.

I've had several requests today asking how long I thought the meeting would last. I assume it's not that people want to stay beyond 4 o'clock; I think it's because they want to get out of here a little bit earlier. We have provided lunch, and I expect we will be busy until lunch or perhaps shortly after. My only commitment is that we'll deal as expeditiously as we can with the items. Having said that, I would remind everyone that we need to spend the time necessary to answer your questions, have the discussion necessary to review the submissions that we will be going over today. I believe we will be looking at around 31 submissions today.

I will now ask committee members to please introduce themselves for the record, and then we'll go around the table and ask everyone else to please introduce themselves. I'll start. I'm Bryce Jacobs, MLA, Cardston-Taber-Warner. Maybe we could start with Hector and go over here.

[The following members introduced themselves: Mr. Goudreau, Mr. Lougheed, Mr. Lukaszuk, Mr. MacDonald, and Mr. Snelgrove]

[The following departmental support staff introduced themselves: Ms Gallant, Ms Miller, Ms Robillard, Ms Swanson, and Ms Veale]

Ms Sorensen: Rhonda Sorensen, communications co-ordinator with the Clerk's office.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Especially a welcome to Evelyn, who is new on the team and here to help us and assist Wendy and Linda with submissions from Alberta Health.

You have copies of the agenda before you. I think there's a correction there. We have 31 submissions, not 32. So as we look at that, would you please make the motion, whoever does that, that we would correct that number.

Also, there are a couple of items under Other Business that I would like to deal with when we get there. Any other questions or suggestions for the agenda?

Mr. MacDonald: Mr. Chairman, on the agenda I would like under item 7, Other Business, to bring up an additional matter, please, at the appropriate time.

The Chair: Yes. So also under Other Business we have an item from Mr. MacDonald. Any other additions?

Mr. Goudreau: Mr. Chairman, I just wanted to move the approval of the agenda as corrected on item 4.

The Chair: Okay. We have a motion to adopt. All in favour, please say aye.

Hon. Members: Aye.

The Chair: Opposed, please say no. Carried.

You also should have received a copy of the minutes of the June 21, 2004, meeting. I assume you all have copies of those minutes. I would ask if there are any corrections, additions that should be made to the minutes. If not, I would accept a motion to adopt. Thank you, Thomas. Thomas Lukaszuk has moved that we adopt the minutes. All in favour, please say aye.

Hon. Members: Aye.

The Chair: Opposed, please say no. Carried. Thank you very much.

Moving, then, to item 4, Submissions Received, under item (a), current listing of submissions received, you all have a copy of that. Any questions on that list?

Mr. MacDonald: Mr. Chairman, are those submissions that were e-mailed to our respective offices the submissions in their entirety, or is this a synopsis of the submissions? I understand that we were going to . . .

The Chair: Karen, would like to respond to that?

9:10

Mrs. Sawchuk: Yes. Thank you, Mr. Chairman. The information that was e-mailed to the members' offices is the summaries only.

Mr. MacDonald: The summaries.

Mrs. Sawchuk: Yes. We have the full submissions. If the members want to see them, I'll make copies for you.

Mr. MacDonald: I would really be grateful to receive a copy of the full submission, all of them. I think it is an error to discuss these submissions without first at least having the opportunity to look at them in their entirety.

Thank you.

The Chair: So noted.

Mr. Lukaszuk: Mr. Chairman, if my memory serves me right – and I believe it does – during the last meeting we discussed this very issue. It was agreed by all members that we'll be provided with synopses only, and upon request of a member if he wishes to see the full content, he may request to do so and then view them.

The Chair: I believe that's correct.

Mr. MacDonald: Surely, Mr. Chairman, we could check the record. I don't think that decision was unanimous. If we could . . .

Mr. Lukaszuk: Nonetheless, it was voted through.

The Chair: Mr. MacDonald, we'll certainly make available to you copies of the submissions. Certainly in the future if you want the full copy, I'm sure that could be accommodated.

I'm also going to ask Mrs. Sawchuk to respond to the extension of deadlines for the submissions. We have had a few requests for extensions. So, Karen, would you like to just update the committee on those.

Mrs. Sawchuk: Thank you, Mr. Chairman. I had circulated a copy. There are just five requests that were received to extend the deadline. That being said, any organization, anybody who called us last week before the submission deadline of Friday, August 6 – administratively we advised them that we would accept their submissions until this Friday, August 13. There were some that had some very bona fide excuses, and they were literally just within a day or two of meeting the deadline, with directors, boards of directors meetings, and that kind of thing. But beyond that, we asked that they submit their request in writing to come before the committee. So these five requests go beyond the Friday, August 13, that we dealt with administratively.

The Chair: Thank you.

Mr. Goudreau: Mr. Chairman, a question to Karen then. On those five, did they have strong, legitimate reasons for not meeting the deadlines? Like, certainly the fact still remains that you did extend that.

Mrs. Sawchuk: When these five groups contacted our office, we did advise them that we would accept it one week later. If you look at the attachments there, it's the actual requests that they made. A few of them are asking for substantially longer extensions.

Syncrude was one that just wasn't aware of the process, had missed the advertising and found out about it through their industry connections, and the people who would be looking at this, the people that look after the privacy issues and guidelines for their company, were going to be back in the office this week. So they said that they were pretty sure they couldn't make it till this Friday, but they didn't think they would need that much longer, maybe another week or so.

The rest of them. The AUMA had asked for the end of August, and they explained why. They have a meeting, and then they've got to take a recommendation forward to – however their system works.

Mr. Goudreau: Yeah.

Mrs. Sawchuk: The others, like I say, are considerably longer. With the number 5 shown there, a legal firm, Gowling Lafleur Henderson, I did have a phone call from the lawyer who had sent in the e-mail yesterday. She did advise that the kinds of companies that they're representing are primarily – I want to say oil companies, pipelines. Husky. There were a few names, but she hadn't confirmed with them yet whether they thought they needed an extension beyond tomorrow, so I checked again this morning. I still haven't received the names from her, but she was making a request, and she said that they have anywhere between five and nine clients who may be interested in making a submission.

That's it, Mr. Chairman.

The Chair: Thank you. Other questions?

I think everyone understands that, you know, the timing of the committee, summer meetings, the summer timeline for submissions certainly has not been the easiest timeline. The committee nevertheless had a job to do, and in order to complete our job, that was probably the best we could do. I have discussed this item with our staff, and we think, if the committee would so agree, we could extend the deadline a couple of weeks and still meet our deadlines in order to allow some of these that have asked for an extension some more time. We probably cannot extend into September and October and expect to meet our deadlines, but we might go to towards the end of August. So I put that out there and would ask for comments or suggestions or critique, if there are any.

Mr. MacDonald: Well, certainly, Mr. Chairman, I think the deadline should be extended for submissions. I don't see the fire here. I've never understood the reason why we are speeding ahead with this committee and having these deadlines.

There are five parties mentioned here. The committee clerk has suggested that there are an additional five to nine. In light of the fact that the government is contemplating, for instance, implementing mandatory alcohol and drug testing in the workplace, perhaps these companies in the oil patch that are represented by Gowling Lafleur Henderson need more than a month to look at this. Certainly, Syncrude Canada may have some opinions or some ideas on how mandatory drug and alcohol testing would fit into the Health Information Act, so I think we should extend this. If some parties want until the end of October, some want till the end of December, some the end of August, I think we should, and I'm willing to propose a motion to the committee that we extend the submissions to the end of September.

Thank you.

The Chair: Okay. Mr. Goudreau, did you have a comment?

Mr. Goudreau: Well, I guess I do have a couple of comments. One is just the fact that we have advertised, and I can appreciate that we got caught up in the summer. Somewhere along the line we have to put a deadline date because we'll find reasons to extend this forever.

The other comment that I had was the fact that we will most likely be holding committee hearings where companies and individuals and organizations will appear before this particular committee, and maybe I might suggest that those dates, when we set up those hearings, become somewhat the deadline dates for submissions.

The Chair: So you're referring to the oral presentations that some people want to make.

Mr. Goudreau: That's right.

The Chair: Okay. Thank you.
Any other comments?

Dr. Pannu: Speaking to the motion, Mr. Chairman?

The Chair: Certainly, you could speak to the motion, yes. The question arose, Dr. Pannu, about extension of deadlines. I'm not sure when you came in, but there have been a few that have asked for an extension of deadlines, some for the end of August. Others have asked beyond. So Mr. MacDonald has made a motion, and certainly you can speak to the motion, yes.

Mr. MacDonald: Mr. Chairman, I expressed a willingness to make a motion. I didn't formally state it.

The Chair: Oh. Okay. I misunderstood that. I'm sorry, Mr. MacDonald.

We don't have a motion, then, I guess, so we're just talking about the question of whether to extend deadlines for submissions.

Dr. Pannu: Thank you, Mr. Chairman. I have had concerns about the tight deadlines that we had agreed to establish, and I expressed some of those concerns. Summer is certainly a period which makes it difficult for interested parties to do the preparatory work needed for them to make submissions or make oral presentations.

I also have concern about the fact that this review is an important review. It's taken three years, as required by legislation, for us to get

to this stage, and I would like to get things right rather than rush through this review. Given that various interested parties are asking for extensions of those deadlines and given the significance of this review that's before us that's the task of the committee, I would very much support the requests that are seeking extensions to the deadlines and also would like to urge the committee to take time to do things right rather than just get through the task regardless of whether or not the timing that's needed for it is available to us.

The Chair: Thank you.

Mr. Lougheed: Hector's comments made a great deal of sense, and I'd support that direction if we move that way.

Mr. MacDonald: Mr. Chairman, in just going through the correspondence that was sent to the committee and that this member has only received this morning at the start of the meeting – and this is from the parties who request an extension to the submission deadline – Dr. Paul Byrne here writes that the summer timelines for written submissions are unrealistic. He also goes on to say in this letter dated July 29, 2004, that “the consultation document that was released by the Committee at the end of June is not user friendly.” He has a lot to say in this letter to yourself, Mr. Chairman, and I think we should have a close look at this and extend the deadline.

The Society for the Retired and Semi-Retired also express an interest here in having an extension for obvious reasons. We are here to serve the public, and I think we can best serve the public by extending the deadline again to the end of September.

Thank you.

9:20

Mr. Snelgrove: Apparently, a lot of people have lots to say about much ado. This is about a snapshot in time right now. We're studying an act that's been in place for several years, a mandated review. This is not the future of the world in stone. People that have not been informed of this act or have not worked in it probably don't have a lot to contribute to it. If we're willing to sit here and talk about the ability to maybe make a motion about something, we will be here till September. You're here. You've been part of the process. Suck it up, and let's go.

The Chair: Thank you.

I would remind the committee that we did discuss early in our meetings the challenge we had in doing our work. We also discussed the possibility of an election coming sometime later this year, early next year. We discussed the implications that would have on the committee's work. I certainly don't advocate that the committee not do adequate justice to the task, but I also believe that we need to try to get our job done. Given the challenges we already discussed, it seems to me that, you know, a reasonable compromise here might be to extend deadlines till the end of this month, if the committee was agreeable, and then to proceed with the analysis of the submissions and the recommendations of the committee. You know, given the challenge we have, I would ask you to remember that.

Any other comments?

Dr. Pannu: Mr. Chairman, I think that you are quite right. We have an important task before us, and part of the task is for us to listen to Albertans' concerns. Let's not reduce the task to simply preparing a report. The report has to be based on what we hear from concerned Albertans. If, as the letter from Dr. Paul Byrne indicates, some of these people who have serious concerns, who have expertise are going to be affected directly by the provisions of this act and by the

recommendations that this committee makes for making changes in the act, hopefully, then I think we need to pay attention to their request. They are saying that our timing, the committee's timing, doesn't suit them, and they are the ones that we're supposed to listen to in order for us to do our job properly.

So the task is important. Part of the task is to listen to Albertans before we make up our own minds with respect to recommendations. If people that we are supposed to be listening to are saying, “We need more time, more than to the end of this month,” to come before us to do their job, then I think it's incumbent on us to pay attention to their request for extension beyond the end of this month.

So that's all I would like to say, and I conclude my comments.

The Chair: Thank you.

Mr. Goudreau: Mr. Chairman, I recognize that things have been tight but also recognize that, you know, certainly this is an important thing. Those individuals that feel that it is important, it seems to me, would take the time to study it and respond to it. Again, I reiterate my comments that we can extend this forever, and there still will be people that will be asking us for extensions of deadline.

Having said that, I would make a formal motion that

we look at September 10 as a formal deadline, recognizing that we would start having the public hearings most likely on September 13. So I'd be prepared to do that and look at that time frame and, as somewhat of a compromise rather than the end of August, go to about mid-September and be very firm on that date.

The Chair: So that is a formal motion, Mr. Goudreau?

Mr. Goudreau: I'm making that as a formal motion.

The Chair: Thank you very much. So we do have a formal motion on the floor now, and I would entertain comments or questions to the motion.

Dr. Pannu: On the motion, Mr. Chairman. I certainly like the intent of the motion, but September 10, in my view, is too early. I think we should extend the deadline to September 30, and I'd certainly be happy to make a friendly amendment to the motion to that effect if that would be acceptable. Otherwise, I'll find it I think difficult to support the motion in its present form. So I'll try and present this as a friendly amendment and ask my colleague for consideration of this request.

Mr. Goudreau: Well, you know, certainly, we can go forever and ever, and at this stage I'd be prepared to entertain a vote on September 10.

The Chair: Okay. The motion stands. I have comments from Mr. Lougheed and Mr. MacDonald.

Mr. Lougheed: I'd just like a friendlier amendment, that we make the end of the oral submissions the deadline for the written so that they're simultaneous.

Mr. Goudreau: So are we looking at September 14?

Mr. Lougheed: Yeah. Just whatever day the end of the oral submissions would be.

The Chair: Karen, do you have a comment to make on this? Go ahead.

Mrs. Sawchuk: Mr. Chairman, I know that when the committee was setting their meeting dates going into September, we were basing it on, you know, a number of variables, and one of them was how many requests we would get to appear before the committee. The thing is that we didn't put a closing time on that. We could still get additional requests, so there's no guarantee that the committee will necessarily be done by September 14 hearing from other parties. That's the only thing. If we sort of tie it in there, it's like we're setting another deadline, and then you could potentially have requests coming in from parties saying: well, we can't appear until the end of September or whatever. So that would be my concern.

The Chair: Thank you, Karen.

Mr. MacDonald: Well, certainly, I'm disappointed that Dr. Pannu's suggestion has not been accepted. September 30 is certainly the middle of the road, so to speak, between the end of October and the end of August. Again I would urge this committee to slow down and let's have additional time, and you need more than the first two weeks in September.

The requests here come from the University of Alberta; the association for the retired and semi-retired; Syncrude Canada, one of the largest employers in the province; the AUMA; and of course a law firm in Calgary that may represent five to nine parties who have an interest in the activities of this committee.

So I don't think September 30 is unreasonable, and I think the committee should re-examine and reconsider Dr. Pannu's friendly amendment.

The Chair: Thank you, Mr. MacDonald.

Dr. Pannu: I just want to add that I had a meeting with a constituent of mine at his request just 10 days ago, and the meeting was about the deadlines and the extension of the date. The individual who asked for the meeting – and we met for about an hour – wanted to go in detail over the procedures that we have set up and the deadlines, and this gentleman is an expert in this area. He has lots to say. He urged me as my constituent to bring his request to the committee for extension of the deadline, and he was talking about October. When I talked about September 30, I have sort of arbitrarily reinterpreted his request for extension so that it suits the timetable of the committee as well as the time that various parties think they need in order to do an effective job.

This constituent of mine, as I say, is someone whose opinions I respect and respect greatly. So I wanted to put on record this request that came to me through my constituent for extension for a variety of very compelling reasons that he gave to me.

The Chair: Thank you.
Mr. MacDonald.

9:30

Mr. MacDonald: Yes. Another point of information for the committee, and I'm sure they've had a chance to look at the response I have received from I believe Wendy in regard to my question on June 21, 2004, and how public security legislation, whether it's by the Canadian government or the American government, may affect our Health Information Act in this province. I was delighted to learn that the B.C. Privacy Commissioner has announced that he will examine the implications of the USA PATRIOT Act for British Columbians on their personal information and how it relates to outsourcing of public services to U.S.-linked service providers.

Now, I phoned the commissioner's office yesterday afternoon to

see how this study was proceeding, and the commissioner's office told me late yesterday afternoon that they have extended the deadline. The commissioner was to report in the middle of August in regard to this matter and has decided because of the number of submissions and the interest British Columbians have in this matter that the office will examine it until the end of September.

I also think that our Privacy Commissioner should have a look at our statutes and the relationship they have to that security legislation, and that is another reason why I think we should extend the deadline for submissions until September 30. There has been an overwhelming response in British Columbia to the commissioner's studies, and I think we should at this time also allow our commissioner a chance to have a look at this as well.

Thank you.

The Chair: Okay. Thank you, Mr. MacDonald.

Are there any other comments on the motion? Seeing no one, Mr. Goudreau, would you like to state the motion again for the record.

Mr. Goudreau: Well, my motion was that the deadline be set for September 10 and certainly, you know, in line with the possible future submissions that we might have or the actual presentations here.

The Chair: Thank you.

A question on the motion, Mr. MacDonald?

Mr. MacDonald: Yes, please, Mr. Chairman. Just a clarification. You said September 10. I thought that originally you had said September 13.

Mr. Goudreau: No. September 13 is our anticipated public presentations before this committee, so I sort of felt that that would happen as of September 10, just prior.

Mr. MacDonald: Okay. Thank you.

The Chair: Okay. I'm going to call the question, and I'm going to ask for a show of hands on the committee's response to this motion. I will ask for a show of hands of those who are in favour of the motion. Okay. Opposed?

Mrs. Sawchuk: It's a tie, Mr. Chairman.

The Chair: So I guess a tied motion is lost.

Mrs. Sawchuk: No. You get to vote, Mr. Chairman.

The Chair: I get to vote. Oh, okay. Well, I will vote for the motion, in favour of the motion, so the motion is carried.

We will go on to the next item, and I guess that at this point we will call on Wendy to take us through the submissions 1 through 31. She and her staff have done some analysis of the summaries and today will be looking to the committee's input, questions, recommendations, comments, which then will be used in bringing forth further policy and a final recommendation. So we certainly encourage and ask everyone to ask the questions you need to ask, make comments. We'd appreciate that very much.

So, Wendy, would you please start those, and maybe in about 40 minutes or so we can take a 10-minute break.

Ms Robillard: Certainly. To start with, the summaries that have been prepared focus on the HIA issues that were identified in the submissions, so these issues come largely in response to the

consultation guide and, obviously, the legislation, and some people have raised some other issues which we've also put forward. As much as possible the summary documents are using the language directly from the submissions that were received, so just to make that clear.

Before I get into the specifics of the responses, of the first 31 responses, just to give you a bit of an overview, we received 11 responses from municipalities. I'll certainly speak to those clearly. We have a number of responses from what I would call business-related organizations, a number, as well, from health-related organizations. There are some other organizations that have responded. Some Albertans have responded, and a couple of police organizations have responded in the first 31 submissions.

The question to the municipalities at the request of the committee was a very specific question. They were asked to provide response to the following question: "Should operators as defined in the Ambulance Services Act be included in the scope of the Act? If yes, what is the rationale [for that]?" As I indicated, there were 11 responses summarized to date. Ten of those responses supported inclusion of ambulance services into the Health Information Act. One opposed that, and the rationale provided was that the transfer of governance and funding does not necessitate a change to any current laws or standards. So that was the rationale there.

The Chair: Excuse me. Just a moment, Wendy. Does everyone have these responses? You have access to them? You've found them? Okay.

Ms Robillard: Yes, and I should have indicated that the municipal responses were on a separate chart because there was only one question that they were responding to.

Then there's a larger document. The first submission, number 1. This document has the summaries of the remainder of the submissions, excluding the municipal responses, which were in the previous chart, so we'll go through each of these submissions in some depth.

The Chair: Excuse me, Wendy. You're starting with submission 1?

Ms Robillard: Yes, with IMS Health Canada.

The Chair: Yeah. Very good.

Ms Robillard: So IMS was particularly interested in the question about whether health service provider information should be included within the scope of the act. They concluded that it should not be included within the scope of the act, and they provided a number of reasons for that around patient safety, drug utilization trends, research projects, a number of those activities, as well as some documentation around information on professional practices of health service providers and its use in the private sector. So that was their submission.

They went on further to provide three potential ways that the problems could be addressed. The first possible way is to delete any reference to health service provider information in its entirety from the act. The second was to delete a specific section of the act, section 37(2)(a), and the third option was amending that section. So, again, it speaks clearly to their request to have that information not included in the legislation.

The Chair: Are there comments, questions?

Ms Robillard: The next submission is submission 4. It's from the Edmonton emergency response department. They were responding

to issues around definition and if there were any definitions in the act that needed to be modified. They were supporting the inclusion of ambulance services in the scope of the act, and they talked about how exclusion hinders current service provision. So they're speaking in favour of that.

The next submission was received from the Better Business Bureau of Southern Alberta, and they spoke to a specific question, number 7. Question 7 is "Should personal health information contained in [the] employee health file be part of the scope of the Health Information Act?" Then if yes, what is the rationale, and if no, why not? They indicated that they represent over 3,000 small, medium, and large businesses in southern Alberta, and their response to this question is no; personal health information should not be included. They say that including that coverage under the Health Information Act would be redundant and confusing for businesses and that there is a piece of legislation that currently addresses employee information, which is the Personal Information Protection Act, and they feel that it adequately covers that requirement.

9:40

The Chair: Any questions from the committee? Are we going too fast? I'm surprised that we haven't had any comments or questions at this point. I guess your recommendations are really good.

Ms Robillard: Actually, they're not my recommendations.

The Chair: Your analysis; excuse me.

Ms Robillard: Yes, and we may get to some that are a little more complicated as we continue through. Some of these first ones are speaking to one question and one question only.

Submission 9 from Petro-Canada, out of the Calgary office, again spoke to the question about personal health information contained in employee files and whether that should be part of the scope of the act or not, and again they're fairly clear in stating that, no, they don't want the act extended to include private-sector employment records. They feel that adding another level of legislation would become onerous and unreasonable, complex and bureaucratic for them.

There is also a concern that the rules under HIA may not be entirely consistent with PIPA and/or PIPEDA, which presumably those organizations follow. So, again, they're speaking against that recommendation.

The Chair: Mr. MacDonald.

Mr. MacDonald: Yes. I have a question at this time, please.

The Chair: Mr. MacDonald, could you speak a little closer to your mike, please?

Mr. MacDonald: Sure. There.

I have a question at this time, Mr. Chairman. Where exactly does the information in a file or the result of an alcohol or drug test on an employee go now? Is that in the Health Information Act or in another piece of legislation? Or is it even in the occupational health and safety regulations? If I were to be tested on a job site for alcohol or drug use, where would the results of those tests be held?

Ms Robillard: I'm not sure that I can answer that question, Mr. MacDonald. I'll take a stab at it, but it's obviously not my area of expertise. When we're talking about businesses such as the ones we've been talking about this morning, they're not bound currently by HIA, obviously. Most of them, I presume, would also not be

bound by the Freedom of Information and Protection of Privacy Act. However, as they have indicated, some of them will be bound by PIPA and by PIPEDA. The information, therefore, that would go into their employee records, assuming that that would go on an employee record, would then be dealt with under those pieces of legislation. We'd have to go back and look further into the application of PIPA and PIPEDA to small businesses.

Mr. MacDonald: I would really appreciate a response at some point.

Also, if there was an alcohol or drug test done, who has access to that information? Where does that information go?

Thank you.

Ms Robillard: I hopefully will be able to call on my colleague from the commissioner's office who probably has a little more experience in this, but I'm sure that we can come up and prepare a response.

Mr. MacDonald: I appreciate it.

The Chair: Okay. Thank you.

Dr. Pannu.

Dr. Pannu: Thank you, Mr. Chairman. Again on this submission from Petro-Canada one of the points that the summary includes is the concern that Petro-Canada has concerning the privacy rules under HIA and whether or not they're consistent with PIPA and PIPEDA. Is this concern legitimate? Should the committee seek some expert legal advice on this? Is it available in here, or do we need to go outside of the resources available to us to get some clear idea about this? Those two pieces of legislation, PIPA and PIPEDA, were important. As I understand, PIPA has to be consistent with the federal act as well – this is PIPEDA – so any comments on that at this stage?

Ms Robillard: I would let my colleague from Justice speak to that question.

Ms Veale: Certainly. Dr. Pannu, that is a good question. It is a question that would require a fairly detailed legal analysis. It's not something that we would be prepared to answer off the top of our head today, but if you are requesting that kind of analysis, we could do that for you.

Dr. Pannu: Thank you. I think we would need a fairly extensive legal opinion on that.

The Chair: Ms Veale, you will take that under advisement and provide the information?

Ms Veale: I'll undertake to provide that to you.

The Chair: Thank you very much.

Mr. Goudreau: Mr. Chairman, I'm following Mr. MacDonald's question: you know, can employers share files? Certainly, if I work with Petro-Canada and I do have a positive drug test and it's in my file and then I want to go work with Syncrude, do they have the right to transfer the file over to Syncrude, and does my personal health information follow?

The Chair: Wendy, were you able to follow that question?

Ms Robillard: Sorry.

The Chair: Mr. Goudreau, would you mind repeating the question?

Mr. Goudreau: I can never repeat it as I initially said it, but I can explain it a little bit.

Mr. MacDonald asked, you know, where does the information go when, certainly, you might get a positive drug test working with Petro-Can and it's in your personal file. Then six months later the employee decides to go work for somebody else. Do they have a right to share files? If, you know, I ask for a reference, does that become part of the reference? Can that information be transferred from one employer to the other?

Ms Gallant: Maybe I would respond to that. In my opinion, no, there would not be any legal authority to automatically transfer that information to another employer.

As it is currently even under OH and S, occupational health and safety, the individuals who are employed under that act only provide information on patients with their consent. Especially when they're providing information to employers, it is a limited amount of information that would perhaps indicate what date they can return to work, what limitations, perhaps, they require, do they need modifications to their work environment. But at the moment it wouldn't be any more than that and certainly not transferring it to another employer without consent.

Mr. Goudreau: Thank you.

The Chair: Other questions on submission 9?

Ms Robillard: Submission 10 from the Edmonton Police Service. The Edmonton Police Service addressed the second question, again, which is around definitions and any need for modification in the definition. They indicate that their primary concern is that the Health Information Act "prevents healthcare providers from contacting or disclosing to police services information where it is reasonably suspected that a person attending the hospital has been involved in some form of criminal activity." They go on to provide some examples.

The first one is around a rigid interpretation and implementation of the section of the act. They indicate that they "have obtained informed consents from . . . individuals or court orders for production of documents, yet healthcare providers have refused to disclose information or to produce documents."

In the case of missing persons, they would find that their investigations would be assisted if we were able to provide registration information to them. They also would like to be able to obtain information about recent medical attention or recent contact information. They indicate that they can't show imminent harm, which is one of the sections of the act, indicate that if there is imminent harm, a custodian could disclose information. In a case of missing persons it's simply that the person is missing, so they really don't know if there's an imminent harm. Also, they indicate that in some of those cases it's impossible to swear an information to obtain a warrant because there is no information, and that's one of the challenges.

9:50

They also talk about the disclosure of registration information and the fact that even when they have been engaged in some kind of an incident where an individual is taken to hospital for medical care, when the police arrive at the hospital, the staff are not able to disclose information about the location of the parties, the contact information, or the names because of the Health Information Act.

They also express a concern that “hospital staff and the public attending hospitals will be put in a position of increased risk if [hospitals] treat injured persons who have been involved in criminal violence and there is no police intervention or knowledge.”

They also speak to children and minor persons and indicate that “the Child Welfare Act provides for mandatory disclosure of suspected child abuse.” They indicate that where there is disagreement about whether a child is at risk, their members may not be able to obtain the information without consent of the child’s guardian or parent.

On the issue of transmittable diseases, on occasion they have interactions with individuals where there may be a potential for exchange of body fluids, and they indicate that they require consent from the individual around testing to determine if there’s a health risk to the police officer.

They have asked that law enforcement disclosure provisions be amended similar to FOIP, which enables a public body to disclose personal information to another

public body or a law enforcement agency in Canada to assist in an investigation

- (i) undertaken with a view to a law enforcement proceeding, or
- (ii) from which a law enforcement proceeding is likely to result.

They’d also like the legislation amended to provide for the disclosure of registration information without consent for law enforcement investigations, and they would like to be able to obtain health service provider information without consent for law enforcement purposes. So several recommendations there.

The Chair: Okay. We have a question or comment from Mr. Lukaszuk.

Mr. Lukaszuk: Yes. What registration information in specific are they asking for for law enforcement purposes?

Ms Robillard: They have not specifically identified. However, registration information is primarily information about an individual: their name, their address, how they can be contacted, home address, phone number, could include a personal health number. So presumably that’s the type of information they’d be interested in.

Mr. Lukaszuk: Thank you.

We’re not going to speak to the requests at this point; are we?

The Chair: Well, we can certainly make comments, recommendations. They would be welcome. The final decision will not be made today, but we’d welcome any comments or suggestions, Thomas.

Mr. Lukaszuk: I’m just finding it very surprising that such information would not be readily available to law enforcement agencies for the purposes of carrying out their work at the present time.

The Chair: Sure. I understand that.

Mr. Snelgrove: Is it possible to build a fence around information that is time or event dated? To use an example like this where they request this information from someone they believe may be involved in some type of activity and upon further investigation or research find out that it is not, that information can be then safely put back into the jar so that you’re not withholding it; however, it’s not forever released. It’s available during an investigation, and if the

person is found to be not involved, it’s deleted, removed, and that you can secure that.

Ms Robillard: I’ll speak, and then, Roseanne, you can certainly step in. The easy answer probably is that that would be very difficult to do. Any time you would disclose information to police for an investigation or in fact to almost anybody else who is going to use it, they would likely have their own issues and rationale for wanting to maintain that. So, for instance, if they did an investigation and there were no charges or there were charges, then there would be a need to retain that information to support their outcome, I presume, but I’m not intimately involved, obviously, in police work.

The Chair: Ms Gallant.

Ms Gallant: Yeah. I would concur with Wendy, and I guess that just to clarify your question, did you mean that the individuals who the information is disclosed to, so the police, would then contain it somehow? I wasn’t clear about which party.

Mr. Snelgrove: No, I mean return it.

Ms Gallant: Return it.

Mr. Snelgrove: Yeah. Return it so it’s not in their files and not kept.

Ms Gallant: I think that practically that would be probably not possible. As Wendy has indicated, once information has been disclosed, they have it, and whether they return it or not, you can never be sure that it has been wiped off a database or, you know, if it was a paper file, that it was given back. It would be not very practical, in my opinion.

The Chair: Dr. Pannu.

Dr. Pannu: Thank you, Mr. Chairman. The Edmonton Police Service submission raises some questions with respect to the fundamental intent which is associated with the coming into existence of the HIA, the Health Information Act.

The justification for the Health Information Act – and the records of *Hansard* related to the debate on the act some years ago would confirm that, I think – the intent was to make sure that the Health Information Act makes information related to health of individuals available to other health practitioners in order to make the health care system more efficient, to make health care provision more efficient, and to rationalize the procedures whereby health care practitioners share the information that is crucial to the treatment that a patient will receive. So the HIA provided necessary protections for the nonmedical use of the information collected on patients, on Albertans, you know, who render this information to practitioners in the health care field in the belief that information will be used primarily, if not absolutely exclusively, for their own interests.

I wonder if the request made here by the Edmonton Police Service in fact challenges that fundamental assumption, which was the starting point of the HIA, this legislation. If so, it raises lots of questions. So I’m raising this question for debate for the committee and for advice.

The Chair: Thank you. Comments, Wendy?

Ms Robillard: Absolutely. I mean, I think the issue about disclosure of health information to police forces is that of a delicate

balance. So at the time the legislation was drafted, there was a determination around what the balance should be, and now that the act is being opened up for review, we will hear probably a number of submissions, I would expect, that would deal with this question of balance. So it's clearly something the committee will need to deal with and something that we will need to come back and help the committee grapple with.

The Chair: Hector, you have a question, and then Thomas.

Mr. Goudreau: Well, thank you, Mr. Chairman. I guess that under Continuity there it says, "Hospital staff state they cannot disclose information," and then it goes on to say: location of the parties, contact information, names because of the HIA. It seems to me that we're going to have to maybe identify and make a distinction between some of this particular information, that really has very little to do with health, versus the actual health of the particular individual.

It seems that if the police want to know where a particular individual is, it really does not have much to do with the person's information. It's more to do with what the police are trying to accomplish and do. So I think there's a difference there, you know, where that particular individual is located versus his health, and I think that somewhere along the line we have to come to grips with that distinction.

The Chair: Thank you.
On this point?

Dr. Pannu: Related to it, yes. Mr. Chairman, I recall distinctly during the debate on the HIA that there was concern expressed by some members of the Legislature but also by a considerable number outside of the Legislature with respect to the uses to which information thus collected could be put once the information is collected on individuals and made available to – shared between or among, if you wish – health practitioners. There will be other parties who may be interested for one reason or another to have access to the same information. We were reasonably satisfied by the conclusion of the debate on HIA that the risk of such information being shared outside of the circle of health care practitioners was very low and that in fact it will not happen.

Now we're talking about that delicate balance that was struck three years ago and that maybe that balance is now being put in question by in this case the Edmonton Police Service. I understand that even at that time there was a concern that law enforcement agencies may in fact seek access to the information. I fear that what's requested here by the other submission is precisely that: that the agencies or institutions or groups outside of the health care field find that the information is there, and therefore they should have access to it in the broader public interest.

I want to caution and certainly draw the attention of the committee to this. This is a major issue, and it will merit detailed debate and discussion here. Perhaps we should alert Albertans to this possibility, that this kind of request has come before us and that if people have concerns, they should bring them to the committee.

The Chair: Thank you.

10:00

Mr. Lukaszuk: Mr. Chairman, first of all, I would ask the staff that they provide me with the full submission by the Edmonton Police Service. I'm definitely keen on reading that particular submission in its detail.

I agree with Dr. Pannu that Albertans should be aware of this

discussion, and I have a great deal of trust that Dr. Pannu will look into it so that they do become aware of it.

This discussion here is very analogous to one that we recently had in the Chamber relevant to Bill 204, which became the Blood Samples Act. The question arose: what is the balance between individuals' rights to retain their privacy as it pertains to their health status versus law enforcement agencies' ability to access that information to either (a) protect themselves from potential exposure to medical conditions or (b) to be able to carry out their work effectively and protect society as a whole from the criminal element? It's something that we will have to discuss in a great deal of detail.

I'm a firm believer that private information is just that: it is private and should be protected wherever and whenever reasonably possible. But when it comes to law enforcement agencies and their ability to do their work, very often I am much more lenient in bending my strict approach to those rules and allowing them greater access than any other agency, without exceptions, because of the fact of the kind of work that they do and the greater good that they do deliver to society as a law enforcement agency and also because of the changes in our society.

Dr. Pannu states that this challenges the initial spirit of the act as it was passed by legislators in the past, and I'm glad that it does, because if everything was implemented simply for the sole reason why it came into being in the first place, without sounding trivial, you know, we wouldn't be able to watch satellite television today because only the military would be able to use satellites because that's how they came into being and for what reason. But we do evolve and we do change the uses of bills, of acts, in a manner that's different from how they were initially delivered, and this could be a case which will have a bona fide purpose for changing the spirit of the legislation and allowing more extended access to police.

The Chair: Thank you, Thomas.

Dr. Pannu: I wonder how this request from EPS, Edmonton Police Service, squares with the provisions of PIPA and PIPEDA as to importance, one federal and one provincial act.

Ms Robillard: I can address PIPA. I did check that. In fact, the provisions in PIPA around disclosure to police services are very similar to those in FOIP. So that much I do know. I've not looked at PIPEDA specifically in relation.

Dr. Pannu: I would like to get some more detailed advice on that, Mr. Chairman.

The Chair: Thank you.

Wendy, do you have response or comments to the comments that have been made, which have been very valid comments? I think you referred earlier to the challenge the committee has before it to achieve a balance here. Certainly, points have been made on both sides of this, and the committee does have a huge challenge to achieve balance. So if you have any comments in response, we would welcome those.

Ms Robillard: I appreciate that. I don't really have any comments to offer now. I would like to have an opportunity – I've not read all of the submissions myself yet. So I think, you know, to suppose comments before we hear from everybody would be problematic. We have had ongoing discussions about these issues within the ministry, with our colleagues in the police forces, justice, et cetera. So, yes, we will help the committee bring in informed discussion and debate and bring some of those points forward.

Dr. Pannu: Mr. Chairman, it just occurred to me. I think Mr. Lukaszuk made a similar request with respect to getting a copy of one particular submission. Would members of the committee as a rule receive the full submissions?

The Chair: Mr. MacDonald has already requested that he receive all copies. Anyone else who would like that could so receive.

Dr. Pannu: I make the same request, Mr. Chairman.

The Chair: Right. So noted.

The committee did decide earlier at a meeting that summations would be made and we would deal with summations here, but if you want a copy of the full submission, that will be available certainly.

Also, I would suggest to the committee that if they have suggestions at the government level as to how we might be able to deal with this balance – you know, if you want to give it in writing, if you want to offer further suggestions as to how we might come up with what we would call a balancing act here, certainly that is your role. This is, I believe, one of the tough challenges the committee will have to deal with as we review this act.

Seeing no further comments, maybe we can move on to the next one.

Ms Robillard: Okay. Submission 11 was received from an Albertan.

The Chair: Oh, just a minute.

Yes, Mr. Lougheed.

Mr. Lougheed: Just to interject here for a minute, could we restate the organization of this presentation – I'm having trouble following, going from one kind of question and one submission to another – and what the purpose is of this particular part and how it's organized.

The Chair: So specifically . . .

Mr. Lougheed: For the presentation.

The Chair: Okay. Do you understand his request, Wendy?

Ms Robillard: I believe I do. I'll try and respond, and then I'll know if I did.

What we have done with the submissions that have been received to date is we have taken those submissions and we have summarized the key issues under the specific questions that were outlined in the consultation guide. Most people followed the consultation guide. There was a question, and they provided a response. We've tried to summarize those responses to the questions that they responded to. If there are only one or two or three questions noted, that's all they spoke to; they didn't speak to any others. So I did not omit any questions or any responses to any questions, but most of the submissions speak to some but not all of the questions that were raised in the guide.

Mr. Lougheed: Okay. I'd like to clarify again that for the submissions that were skipped over – like, we go from 4 to 5 to 10 to 11.

Ms Robillard: Those submissions were the municipal submissions that were summarized on a separate chart.

Mr. Lougheed: Okay.

Ms Robillard: So if you follow through, you will see that all 31 submissions are in fact here. Those municipalities, however, only responded to the ambulance question, so it was done on a separate chart.

10:10

Mr. Lougheed: Okay. I remember you saying something about that.

Now, because this is bouncing from question to question and so on, will you be providing an analysis of summaries as compared to each other and so on?

Ms Robillard: Yes, that will be done. In fact, when we concluded these summaries and prepared this draft for you, we'd only received approximately half of the submissions to date. So, yes, we haven't concluded the rest of the work, and we'll bring bigger pictures back to the table.

Dr. Pannu: What would the bigger picture include exactly?

Ms Robillard: We'll be looking at all of the issues that have been raised, all of the discussion that has been raised, and highlighting issues and areas for further discussion, consideration.

Dr. Pannu: Overlaps? Okay. All right.

Would you also be drawing our attention to how the submissions raise questions with respect to other existing pieces of legislation, not just HIA but other pieces of legislation?

Ms Robillard: Yes, we can certainly do that.

Ms Miller: If I could add, our intent is to do the policy analysis over the months of August and September. Once we've received all of the submissions, it enables us to do a thorough policy analysis of each submission as well as some of our learnings over the course of the three-year period. So we need that time to analyze them together, as you've pointed out, Dr. Pannu, in terms of their overlap and inconsistencies that have been brought forward and further information that is of importance to bring to your attention.

The Chair: Thank you very much.

You okay now, Rob? We move forward with 11? Very good.

Ms Robillard: Number 11, a submission from an Albertan. The first question that this individual responded to was around the scope of the act and whether it needed to be changed given the implementation of the electronic health record. This individual is expressing a concern about security in the HR area but has not made any further recommendations. He's raising an issue for the committee's consideration.

They also raised concerns around the individual's right to access. The question is: "Is the process for obtaining access to records appropriate?" The individual has indicated that the timeline, which is 30 days, is quite long and sometimes is too long.

They also go on to comment that many of the exceptions to disclosure in the act, the individual's right to have a full disclosure – they feel that there are too many of those exceptions and too many opportunities for custodians to refuse access to an individual. So the individual asked that the exceptions be rewritten in order to give the individual reasonable access but, however, has not provided any further direction beyond that.

Also, the individual raises concerns with the sections in the act around correcting or amending health information and again feels that that is heavily weighted in favour of not allowing the affected

person to have their information corrected or amended in the file.

The individual goes on to talk about fees and feels that the fees set out in the regulation actually limit an individual's rights in accordance with their ability to pay.

Finally, a question around whether the act should be amended to include stronger provisions to protect the confidentiality of genetic information. The individual says that genetic information must not be made available to anyone without the written consent of the owner or the patient. Very clear direction there.

The Chair: Questions? Comments?

Dr. Pannu: A question to Wendy. What does generic information refer to? Is it clear in the submission what's meant by "generic information"?

Ms Robillard: It's probably a typo. Yes. It is "genetic" information.

Dr. Pannu: Oh, it should be "genetic".

Ms Robillard: Yes. Sorry.

Dr. Pannu: Okay. All right.

The other parts of the summary here are certainly of interest. This person, Ms Dorene Rew, raises questions about reasonable access to individuals and timely access. The definition of reasonable in this case, it seems, includes timely access. Then later on here she has indicated in point 13 that reasonableness would also include, you know, the financial affordability as an element in the definition of reasonableness. That's, I think, an important question that is raised by this concerned Albertan.

The first question there, under 5. What's the opinion there, with respect to the question as asked, I guess: "Should the scope of the Act be changed given the implementation of the Electronic Health Record?" The act, I suppose. "If so, how?" Any reaction to that? Any response to this?

Ms Robillard: My take on the response is a concern around information and computer systems and the security of that information. It seems to be the issue that's being raised here.

Ms Miller: Dr. Pannu, are you asking what is Alberta Health's opinion of should the scope of the act be changed with respect to the electronic health record initiative?

Dr. Pannu: By all means, yes. That's what I was thinking.

Ms Miller: That is an issue that the government submission will table. That is a question that has certainly been debated a lot.

Today, as probably you are aware, people are provided access to the electronic health record if they're caught under the HIA. There are obviously other providers that provide health services that are not currently under the scope of the HIA, so this is a very complex issue. How far does the scope go, you know, has many issues to wrestle with, and I predict it will be another issue that will take considerable time for this committee to debate, so I don't think it's reasonable for us to take a position at this time.

Dr. Pannu: So it's a reasonable expectation, then, on the part of the committee to receive some detailed information on it?

Ms Miller: Absolutely. Yes. And it will be part of our submission,

meaning the government submission, because it is a question that continually comes to our attention.

The Chair: Linda, do you want to just elaborate a little bit on the government submission for the information of the committee?

Ms Miller: Sure. I can a bit, and Wendy can certainly do more if needed.

Our responsibility as Alberta Health and Wellness is to do the government submission on behalf of all of the ministries, including Alberta Health and Wellness. So we have amassed input from those other ministries that have chosen to give us some information. We have a number of issues, some of which could be classified as kind of housekeeping issues, issues that need clarification or simple omissions when the HI Act was drafted in the first place. There are a number of complex issues that we are raising. One will be around the police issue that was just debated as well as the whole scope issue as another example.

We've prepared the material in draft. We still need to, in respect of process, take it back to the other departments to ensure that we have captured their perspective before we submit it to this committee. Our intent is to be able to do that within the next week, and following validation by the other departments we will then be in a good position to present to the committee the government's submission.

At that time there will be some recommendations for some of the more straightforward items. With some of the items, likely scope being one and the police issue being another, our preference is that we don't make a final recommendation to the committee at this time until we've seen all of the input from the various stakeholders so that we can bring full relevant information to the committee for further deliberation before the government makes a final recommendation to this committee.

The Chair: Thank you very much.

Dr. Pannu: Is there a tentative date that you have in mind when the government submission will be available to us as a committee? We'd like to have some time to look at this carefully, so I need to know what the timelines are.

10:20

Ms Miller: Sure. Our anticipation is to have it ready in a week.

Ms Robillard: Yes. We'd like to get it to the committee before the next meeting date for sure.

The Chair: Thank you.

Mr. Lougheed: A question regarding this 30 days. Can you comment on the validity of that? I don't know how to read that statement that's there. If somebody is having a reaction to medication, they're not going to go through the Health Information Act.

Ms Robillard: Good question. I think your point is well taken. Obviously, any time an individual receives a health service, there's a continual flow of information back and forth. So you go have your checkup. What's your blood pressure? What are your lab results? You don't submit a written formal request for that kind of information typically. So, yes, that kind of information flows back and forth. The 30-day timeline in the act deals with a 30-day response time for a request for information, for a record. So the two points both exist: information is shared today, and there can be 30 days to respond to a request.

Ms Gallant: I would agree with Wendy. I just want to clarify that the 30-day timeline is for when individuals themselves make requests for access of their own health information for themselves. One would argue that they already know of their own allergies, and if they're in the health care arena, certainly a physician can access an allergy alert immediately. So it's true that if they're asking for their own information, the 30-day timeline is in place, but for the purpose that she speaks to in this letter, I would argue that that wouldn't be the case. I mean, if it's for provision of health care services, the information is available immediately and by fax or the quickest way possible when it's to do with allergy alerts.

The Chair: Thank you.
Yes, Mr. MacDonald.

Mr. MacDonald: Yes. If there is a breach of the Health Information Act, is the patient alerted, informed that there is a breach? I heard "sometimes," but yes or no?

Ms Robillard: I guess the question would depend on what the breach is and what action the custodian would take in relation to a breach and what the commissioner's office might suggest. For instance, somebody within a custodian organization could potentially identify the possibility that a breach occurred. An individual employee could come forward and say, "I'm concerned that something might have happened," and that custodian then is responsible to deal with the breach or the potential for a breach. So presumably they do an investigation and make a decision in terms of outcome. Frequently they would contact the Information and Privacy Commissioner's office and in discussion with the Privacy Commissioner's office would determine about contacting individuals.

But, yes, there are many situations in which breaches have occurred that may have impacted even numerous individuals, and in most cases that I'm aware of individuals have been contacted. Yes.

Mr. MacDonald: Is there a formal process when a breach occurs for the custodian to alert the Privacy Commissioner?

Ms Gallant: No, there isn't a mandatory duty under the act for them to notify us when breaches occur. However, we have been very supportive of those custodians who come forward and self-report. Also, at health sector meetings where we have a number of custodians at the table, we have informed them that in deciding whether or not to do an investigation, we would take into account their decision whether to notify individuals, and that is certainly an activity that the commissioner supports, that the individuals whose privacy has been breached are informed of that fact.

Mr. MacDonald: Thank you.

Ms Gallant: You're welcome.

The Chair: Did you have a comment, Roseanne?

Ms Gallant: I'm sorry. I just made my comment.

The Chair: All right. Sorry.

I suggest that maybe at this point the committee would like to break for 10, 15 minutes. We'll reconvene about 25 to the hour.

Thank you.

[The committee adjourned from 10:24 a.m. to 10:40 a.m.]

The Chair: Karen is handing out a full copy of the submission from the Edmonton police force, and with that, we will reconvene the committee. Before we start on number 12, Wendy and Linda are going to clarify process a little further and make some more explanations and suggestions.

Go ahead.

Ms Robillard: Thank you. What we have been doing this morning is going through the first of the submissions that we've summarized. As I indicated to you, we're still receiving submissions, so we have not summarized all of the submissions yet, obviously. We will summarize the submissions that we receive by end of day Friday for distribution to you and for review next week prior to our next meeting.

At that point what we will try to endeavour to do is to pull all of the responses to each of the questions together and to start to try and provide some input to you – Are most people in favour? Are there opposing views? What are the opposing views? – and then to start to look at some of the options that the committee can consider. So some people might be in favour of one suggestion; some people might be opposed. What are the options if we leave it the status quo? What does that mean if we change it? What does that mean?

So we will endeavour to do that work once we have the submissions in and summarized in their entirety. We haven't done it yet because we've not received all of the input yet, but this is foundational and the backbone to that subsequent work that will come to the committee.

The Chair: Thank you.

Mr. Lukaszuk: I just wanted to point out, Mr. Chairman, that I am now in receipt of the Edmonton Police Service's full submission in writing, and whenever it's deemed by you to be appropriate, I would like an opportunity to speak to this at length.

The Chair: Okay. Do you want to do that now, or do you want some more time?

Mr. Lukaszuk: I should have said: having had the opportunity to read it first.

The Chair: Okay. Perhaps later in the day, Thomas, we can take your comments.

Okay. Let's go with number 12. In view of what has been said and explained by Wendy, that she will bring all these together after she's received them and sort of categorize them by questions and issues, that may enable us to move forward. Not that we want to limit debate today, but, you know, what is said today is not final. We will still be considering comments and questions as we go forward within the context of all of the submissions.

I think it is helpful for us to go forward today and go through the other submissions and take your comments, because it gives Wendy and Linda an opportunity to hear your comments and incorporate those as they go forward making further policy recommendations. So let's go with number 12.

Dr. Pannu: Mr. Chairman, just with respect to Wendy's last comment about providing the committee with an overall picture next week, I hope that will include some reference to the different sections of the act that will require amending were those proposals to be heeded or accepted.

Ms Robillard: Yes.

The Chair: Okay. Thank you very much.

Ms Robillard: Okay. Submission 12 is from the Lethbridge Regional Police Service, and again their comments are focused on question 24 around “discretionary authority to disclose to police services without . . . consent.” They have suggested that the act be changed to enable “discretionary disclosure to police [to] be expanded to include the authority to disclose registration information to police seeking a warrant, subpoena or court order.” Further, they want to state that “in a circumstance where the police are conducting an investigation regarding a patient, they should, by written inquiry to the health care . . . custodian, be able to obtain basic personal information,” including “confirmation that the person was treated, when they were treated, the nature of injuries, and what treatment and procedures were carried out.” Lastly, they have indicated that they would like “health care providers [to] be encouraged and/or mandated to notify police with the same basic information when they treat a person whose injuries were caused in the commission of a crime.”

Submission 13 was received from Dovetail Partners. They’re a management consulting firm, and they were speaking specifically to the question in relationship to whether personal health information contained in an employee file should be part of the scope of the act, and their response is no. Again, they raise the issues that “PIPA and PIPEDA already govern such information,” that “adding another layer of legislation would be economically burdensome” and may even “create more confusion,” and “would implicate virtually every employer in the Province.”

Mr. Lougheed: Can we back up to submission 12, the last question there? Is that the same for a victim as for a perpetrator for injuries during commission of a crime?

Ms Robillard: I don’t believe they’ve differentiated whether it would be a victim or a perpetrator.

The Chair: Okay, Rob?

Mr. Lougheed: Yeah.

Ms Robillard: Submission 18 is from the Consumers’ Association of Canada, the Alberta arm. The Consumers’ Association of Canada identified many issues that they want to discuss further with the committee, so they’ve raised them as issues here. They have not necessarily in every case provided a specific recommendation but have obviously requested an opportunity to speak as well to the committee directly.

In terms of the purposes, the definitions, and the scope of the act they had some concerns with relation to definitions, and they raised concerns with the implications of the current definitions of health information but didn’t say further what those implications specifically were. They talked about implications about extending the scope of the legislation or expanding the circle of information-sharing without knowledge or consent outside of the public health plan funding as well as extending that scope to private insurance companies. So they’re raising issues with that consideration.

Dr. Pannu: Wendy, would it be fair to say that point 3 on your summary really implies that the Consumers’ Association would be opposed to extension of the scope? Are the reasons implicit in the statements that you have summarized there? I don’t have access to the submission myself to read between the lines. I’m asking you, therefore, the question.

Ms Robillard: I’m not certain what the implications are in this situation. They wrote the letter, and in the letter they listed off in bullet form many issues that they want to speak to the committee about, and they say that they have implications, but they’ve not indicated whether they’re in favour, opposed, or whether they just want to speak to them. I’m not sure I can ascertain that.

Dr. Pannu: Okay.

The Chair: Question 3, Wendy. Under part 1 should question 3 not be health records, at the end of the sentence?

Ms Robillard: Yes. So you’re asking if the question there is in full?

The Chair: Yeah. Right.

Ms Robillard: Let me just check.

The Chair: It seems like it’s not quite complete the way it is.

Ms Robillard: Yes, it probably is not complete. We’ll go back and clarify that, but, yes, I think part of the question is missing there.

The Chair: Yes, Mr. Macdonald.

10:50

Mr. MacDonald: Thank you, Mr. Chairman. Has the Consumers’ Association of Canada, Alberta division, been given a tentative date to appear yet with an oral presentation?

The Chair: That will be dealt with on the agenda later today, Mr. Macdonald.

Mr. MacDonald: Thank you.

Ms Robillard: Question 6. The Consumers’ Association of Canada responded to the question about whether health service provider information should be included in the scope of the act, and there the answer is no. They feel that it would restrict public access to business information of providers, compromise care, provider accountability, and informed choice.

Question 11, the process for obtaining access to records, whether it’s appropriate or not. They’re raising an issue about concern with the fees. They say that the fees being used by some providers “to increase the expense and hassle of accessing one’s own medical records and information on treatment decisions” is disturbing to them. They would like the fee issue addressed.

In terms of the use of health information the question is whether they would recommend the expansion of the scope of the act to include what other purposes or set of responsibilities you would change to reflect the mandates of additional custodians. They’ve commented that there’s a

need to review and revise the stated purposes and languages of the Act to more accurately reflect its nature and enabling applications which have removed traditional citizen safeguards related to the privacy and confidentiality of medical records.

But there was no further explanation provided than that.

They also, if you notice on the next page, raised a number of other issues that didn’t easily fit into any of the specific questions in the guide: the “implications of rapid function creep in collection, use and disclosure of medical records through scope, practices, interpretations, and amendments in [the] past 10 years.”

They raised the issue about “the larger societal context in which these changes are occurring . . . and the limited ability of govern-

ments and citizens to control access to consolidated and centralized health records by third parties.” They talk about “the high costs and the lack of demonstrated risk/benefit/cost evaluations of initiatives undertaken and enabled under the HIA to date” and “the missed opportunities for using computerization and more limited electronic records and systems to work to the genuine benefit of patients and citizens.”

Dr. Pannu: This phrase or term “function creep in collection” is an interesting one. What exactly does it mean? We were talking awhile ago about how police services want to have some of this information available to them. Would that request come under this rubric or umbrella of function creep?

Ms Robillard: It could. I think function creep is typically used more in relation to use and disclosure of information. You know, once a custodian has information within their custody and control, then how will they use it, which is function creep. So if I collected it for this purpose, am I using it for a completely different purpose? Then disclosure is when a third party wants to use it for another purpose, and that could in fact be the police, yes.

Mr. Lougheed: Can you comment further on the last comment that they make here, the missed opportunities for computerization and so? It almost seems a contradiction to the other statements made preceding that.

Ms Robillard: I’m trying to make some assumptions about what they might be speaking to. In part it could be the fact that when we have information within computer systems, there might be more ability to aggregate or anonymize information for other uses as opposed to just using individually identifiable information. So the fact that you have something in a system might enable you to protect it and divulge it in different ways.

The Chair: Thanks, Rob.

Dr. Pannu: Mr. Chairman, I just want to make some concluding comments on this. I find the questions raised by the Consumers’ Association of Canada, Alberta branch, serious questions that we need to examine. The issue of function creep is the one that I expressed concern about. I’m glad I have language now in which to express it. It’s good language. My hon. colleague Mr. Lukaszuk did say that pieces of legislation aren’t written in stone, that they need to change and evolve as society changes. I think that makes sense, that all legislation needs updating, changing to reflect changed conditions.

One of these paragraphs here under Other, you know, on page 10 of the submissions summaries is an important one to keep in mind. I’ll just read this into the record. The Consumers’ Association submission summary says this:

The larger societal context in which these changes are occurring, including the increasing reliance on (unreliable) predictive testing and diagnosis to determine public and private benefits, and the limited ability of governments and citizens to control access to consolidated and centralized health records by third parties.

I think the second part of the statement is very, very important and should be a front point of this committee.

Societal context is changing such that we are losing control over information that appears in unconsolidated form in various places as mandated by pieces of legislation such as the one that we’re reviewing. It is this availability of the information and increasing demands on it through this so-called function creep that is a matter

of concern to me, and I think it’s a matter of concern to most citizens in this province and beyond. In our deliberations I think we should pay attention to this. This paragraph I think is an important reminder with respect to the real function that we have in this review.

The Chair: Thank you.

Mr. Goudreau: I agree in part with what you’re saying, but I don’t necessarily agree with the whole thing. There are some assumptions that are being made here, and there’s talk about unreliable predictive testing. We don’t know if they are reliable or unreliable. Then, as well, the limited ability of governments and citizens to control access has not been proven one way or the other. Certainly, it’s a concern and it’s an issue, but I’m not sure that we can jump to conclusions to indicate that it is happening.

The Chair: Thank you, Hector.

Mr. Lougheed: Just in comment, Raj, while you’re just speaking to it, I guess we’ll wait for their submission, but if you’re talking about looking for more reliability in testing and yet limiting information upon which to base that, it just doesn’t seem to make sense to me.

Dr. Pannu: It’s the second part of the statement that I thought was more significant.

Mr. Lougheed: But you can’t have one without the other.

The Chair: I would recognize Thomas.

Mr. Lukaszuk: I want to echo what Mr. Lougheed said, that there seems to be a definite flaw in logic.

Second of all, I think, then, it’s reasonable to conclude from the submission that the association objects to proliferation of unreliable resources, but by having said so, they probably would have no issue with proliferation of reliable and factual information.

Dr. Pannu: We’ll wait for the actual submission.

The Chair: All right; let’s go to 20.

Ms Robillard: Submission 20 is from the Calgary Chamber of Commerce. Their comments relate to question 7: “Should personal health information contained in [an] employee health file be part of the scope of the Health Information Act?” Their response is no. In fact, they feel that it’s unnecessary and could be detrimental to Alberta’s economic advantage due to “significant education and awareness challenges,” “significant administrative burden,” and “financial burden of compliance.”

The Chair: Okay. Submission 21.

Ms Robillard: Submission 21 is the Workers’ Compensation Board submission. Their response was in regard to the question “Should the scope of the [Health Information Act] be extended to include WCB?” Their response to that is no. They indicate that they are covered by FOIP and the Workers’ Compensation Act, that those pieces of legislation provide individuals with an ability to access their information or to correct or have decisions about that access reviewed. They don’t see any tangible public policy benefit for injured workers or employers. They think there would be substantial additional administrative burden, that imposing two sets of rules would complicate and delay the flow of information without public

benefit to the workers, employers, or the public. They raised concerns with regard to additional costs to the workers' compensation system and that those costs would be borne by the Alberta employers.

The Chair: Number 23.

11:00

Ms Robillard: The Alberta Heritage Foundation for Medical Research. The comments from this organization were linked to the question, "Are the research provisions in the Act reasonable, effective and operationally effective?" They indicate that health services research is dependent on access to information about individuals, and they feel that it's crucially important in the review that access to health information for research purposes "not be unduly curtailed" and in fact "should be facilitated as much as possible." As the act is reviewed, they think it should "maximize research investigators' access to anonymized, linked data in order to pursue research" to benefit not only the health system but Albertans.

Dr. Pannu: Again, without the benefit of having looked at the letter or the submission itself, I need to ask this question. Reference is made to research purposes there. Is it research purposes related to research in the field of medicine or health care, or is it any research?

Ms Robillard: Their comments, because they are comments to the Health Information Act, I assume are comments about research that requires access to health information that would be held by a custodian. Whether that research is health based, given that they're the foundation for medical research, I assume that, yes, it would be health-based research.

Dr. Pannu: But that's an assumption that I think requires some clarification and address.

Ms Robillard: Yes.

The Chair: Moving to number 24.

Ms Robillard: This submission is from Alberta Blue Cross, and they've responded to several questions. The first question is around the purposes, definitions, and scope, so they respond to the question about whether operators as defined in the Ambulance Services Act should be included in the scope, and their answer is yes. They feel that "all providers of publicly funded health services" should be caught.

Mr. Snelgrove: Mr. Chairman, there are many, many private ambulances also, so I'm not sure why they would use the term. If you're going to include ambulance services, then it shouldn't really matter if it's a link in the health system, privately or publicly funded. If I come in in an ambulance, I'm paying for it. Well, I guess not now but in the real world. So I'm not sure why they would use the term "publicly funded" if they're dealing with ambulances, but we can deal with that.

Ms Robillard: The next question, moving on: whether health service provider information should be included within the scope of the act. They're saying yes, that the existing protections within the legislation adequately protect health service provider information. So they feel that's fine.

On the question of whether personal health information contained in an employee file should be part of the scope of the act, the

response here is no. They are of the opinion that "the current situation where such information would fall under the authority of the Personal Information Protection Act . . . is appropriate." Again, they feel that there's another piece of legislation that adequately addresses that question.

They've responded to questions about WCB and about themselves in a similar vein. They say that in terms of the work that ABC does for Alberta Health and Wellness, the programs that they operate on behalf of the ministry, they're already an affiliate for those purposes, that with respect to group and individual plans – those are plans that are not funded by the department – they fall under the federal PIPEDA or the provincial PIPA, "depending on the nature of the personal or provider information involved."

They feel that "there is sufficient protection within the privacy legislation that currently applies to these benefit plans, and that the level of protection afforded is consistent" with that in HIA. They're suggesting that they shouldn't be covered. However, they go on to state that if a decision is made to extend the scope of HIA to include all health information in the custody and control of their organization, it should also be extended to include private insurers who offer comparable plans.

The last question in this section that they responded to is whether the definition of health information should be changed to include nonrecorded information. They suggest, in their opinion, that "the inclusion of non-recorded information in the definition of health information would be extremely problematic and would impose challenges and risks that far outweigh any potential benefits."

Dr. Pannu: Wendy, what would be nonrecorded information?

Ms Robillard: It would be information that an individual provided to a health service provider in care that didn't actually get recorded on a chart. So it could be other related health information that wasn't seen to be key in that interaction that it required recording, but the provider has that information in any event.

Dr. Pannu: The patient has no say over what's defined as unrecorded information, nonrecorded information then. I'm using the case of a patient as an example.

Ms Robillard: Yes.

Dr. Pannu: So it's the caregiver's understanding of what was said to her or him.

Ms Robillard: Yes, and the act does have some provisions about how that information can be used or disclosed. So it is protected even though it's not subject to the act in that if an individual requested information about them, they're requesting a record. So this is the question: what's the impact of including it beyond that which was recorded?

Dr. Pannu: Right. Okay.

Ms Robillard: In terms of the second part of the act, the individual's right to access their own health information, they have responded to the question around the process for obtaining access to records and have indicated that, yes, they think that from their experience the process is appropriate, and further they comment that the 30-day timeline is appropriate.

They do however add one point of clarification that they think would be useful, and that would be that the 30-day time period would not begin until the individual provides the following informa-

tion: “name and sufficient information for the custodian to specify the individual, a clear description of the information being requested including the period” – so I presume that that means the time frame they’re requesting the information for – “and the objectives for making the request.”

So all of those components, they feel, would allow them to be able to respond in a more timely fashion to the individual.

Dr. Pannu: I think those suggestions are helpful with respect to the conditions under which that information should be made available and the timeline should kick in. Can these changes be dealt with through changes in regulations rather than the legislation?

Ms Robillard: I’m not certain. I assume that it would require a change in the legislation, but I’ll leave it to my colleagues at Justice to determine that.

Ms Veale: I believe, Dr. Pannu, it would require a change to the legislation in this case and not just the regulation.

The Chair: Also, I have a question from Mr. Goudreau.

Mr. Goudreau: I’m just wondering about the definition of the objectives in the way I read it here, and I’m not sure how it’s written in the act. I can appreciate the fact that, you know, they would need the name and the information that’s required being fairly clear. But on the objective itself, if it means to start a lawsuit and they don’t agree with that objective and then they say, “Well, we’re not going to provide you with the information,” or if the objective is to provide better treatment, then okay. I’m not sure if that definition is in place or if there should be an objective or not.

Ms Robillard: There’s currently no requirement to state an objective. Individuals aren’t required to provide that today. However, what I think this organization is trying to suggest is that if they have some level of understanding of why the individual wants the information, it helps them to actually make sure they get the information the individual is requesting. But I hear your point as well.

Mr. Goudreau: If that’s the case, yeah, that’s fine.

11:10

Ms Robillard: The next questions relate to the collection of health information. The first question is, “Is the duty to collect health information directly from the individual except as authorized appropriate?” They say yes. They feel that it’s quite appropriate.

The next question is on whether the requirement to inform individuals about collection practices is effective or whether it creates operational difficulties. They indicate here that “if the HIA were modified to move to an informed/ knowledgeable implied consent model from the current informed implied consent model, these issues would largely be addressed.” So they’ve said that health care providers sometimes make assumptions about how much the individual would understand. They feel that suggestion might clarify that.

Under Use of Health Information the question is around the expansion of the scope of the act, whether it should include other entities, and what purposes or set of responsibilities would change to reflect the mandates of additional custodians. They indicate that they have not recommended an expansion of the scope, but again if the scope were expanded, they believe that “it would be desirable to include an informed/knowledgeable implied consent model within the Act.”

They go on to discuss questions around the disclosure of health information. “Are the elements of consent appropriate?” They say that, yes, they are. “Should consent be allowed to be provided verbally to the custodian? If so, what are the implications?” They say:

Providing custodians are conscientious in explaining to the individual what information they are planning on disclosing and to whom, and are able to satisfy themselves that the individual has provided informed/knowledgeable implied consent, verbal consent should be acceptable.

Dr. Pannu: Does the HIA in its current form permit that?

Ms Robillard: No, it does not currently permit verbal consent.

Dr. Pannu: Okay.

Ms Robillard: The next question on disclosure is disclosure to police services without consent, and they state:

ABC may support disclosing registration information to the police for the purpose of obtaining a warrant, subpoena, or court order, provided the request from the police was specific as to the information requested, the individual(s) involved and the nature of the investigation.

They go on then to comment about disclosure of personal information to the police without a warrant, and they say that it “should require the police to have a substantive reason for requiring the information and enough information to ensure they are able to accurately identify the individual they are investigating.”

Finally, they’ve asked the committee to “consider how the inclusion of this discretionary authority to disclose registration information to police without consent within HIA would be made consistent with provisions of PIPA or PIPEDA as well.” So a consistency question in relation to that.

Dr. Pannu: On this point, question 24, the response, I think ABC is raising appropriate questions. One of the reasons that was given to have almost watertight guarantees that private health information not be made available to anyone beyond the health care circle was that the ability of the patient to share information about self to the caregiver, doctor, nurse, will be impeded if the patient knew beforehand that the information that he or she is sharing with the caregiver might leak outside, go outside the circle of care.

That’s something that’s, I think, exceedingly important. The fiduciary relationship between the caregiver and the patient is the key, and any piece of legislation I think needs to protect that relationship, because every piece of information that the caregiver needs to make the proper diagnosis and recommend treatment depends on the accuracy and reliability of the information given. If that information for any reason is withheld by the patient because he or she knows that the legislation may permit the use of that information outside of the circle of care, then the whole system is jeopardized.

That was one of the fundamental, I think, concerns during the debate on the bill, that that sacredness, the fiduciary nature of the relationship, must be maintained by the legislation.

Ms Miller: That’s an issue that we continue to hear from the providers.

The Chair: Thank you.

Mr. Lougheed: Well, almost a similar comment but from a little bit different side than the last comment. The nature of the investigation

that the ABC is asking to be provided: was there any expansion on that in your recollection of what you read? I'd be interested in how the police services would respond to that comment as well.

Ms Robillard: I don't recall that there were further comments explaining the nature of the investigation.

Mr. Lougheed: It seems that it may be more if they have to obtain a subpoena or such. They would have to explain the nature there but not beyond that, I would hope.

The Chair: Certainly, we could make available that full submission to any member who wanted the submission.

Okay. Thank you, Rob.

Ms Robillard: The next question they addressed was whether the act should "be amended to include stronger provisions to protect the confidentiality of genetic information." The response there was no.

Then there was a specific question in regard to "informed/knowledgeable implied consent model for care and treatment" and whether that was appropriate, and they said yes.

They moved on to comments in part 8, the general provisions in the act. The question was, "Is the list of substitute decision makers appropriate?" Their response is yes, but they went further to state that

the provisions of [the act] need to be more specific with respect to the obligation of the custodian to exercise due diligence [in ensuring] that the authority under which the alternate decision maker is acting both properly exists and has the necessary scope.

My understanding of that is that there are some situations where an individual might have authority to act on behalf of somebody, but it may be in a limited case. It might be just for financial purposes and not for health care purposes. So I think they're saying that there's an obligation, then, to verify that authority.

The next submission is from the Canadian Federation of Independent Business, and their comments are in response to the question: should personal health information contained in an employee file be part of the scope of the act? Their response is no. Again, they indicate that the Personal Information Protection Act adequately covers that information, so they don't think additional coverage under HIA would help. In fact, they suggest it that it would "add complexity to privacy issues by duplicating legislation that already exists" and add a burden on small business.

Dr. Pannu: On the issue of complexity that they refer to here, how much more complex would inclusion of that information from PIPA into the HIA make? How much complexity will be added to the work that the business organizations are obliged to do in order to provide this information?

Ms Robillard: I'm not sure.

Dr. Pannu: To me that's the crucial question. Complexity is not always bad. You know, to refine legislation, it may require more complexity. I question how much more burden it creates and whether or not that's worth having. That to me is the crucial question. I understand; I'm sympathetic to the question. The unnecessary bureaucratic burden on our businesses is something that must be avoided, and legislation should make sure that doesn't happen. But if there are some added benefits by requiring businesses to provide this information under HIA, that's the question. What are those benefits, and do they outweigh the costs? That's something that I think we need to address.

The Chair: A response to that, Wendy?

Ms Robillard: To be honest, I don't have a response today to that, and it would be very hard to determine, and it would be in part determined by the organization, the size of the organization, and how much employee health information they might or might not have within their files. So I suspect it would vary greatly between organizations.

11:20

Dr. Pannu: Is this the – I should know this; I met with them – Canadian Federation of Independent Business? Are they likely to appear before the committee so that we can have this clarification done at the time, or can we write to them to say what exactly it will entail in terms of additional burden to them?

The Chair: I don't see their name unless I'm overlooking it. They have not requested to appear before the committee, Dr. Pannu.

Dr. Pannu: So, Mr. Chairman, is it then appropriate to request in writing that they elaborate the nature of the complexity and the added burden that it might cause if the HIA . . .

The Chair: Would it be helpful to read their submission perhaps?

Dr. Pannu: First. Yes. That'll be helpful. Before writing the letter?

The Chair: Yeah. Maybe the answer's already there, you know.

Dr. Pannu: Well, I would have thought that the summary would have provided that answer; nevertheless, yes, the reading is important. Right.

The Chair: Okay. It's only then, if there are follow-up questions, that I think it's fair to ask for additional clarification.

Okay. Number 26.

Ms Robillard: The next submission is from Workplace Health International, and they were again responding to the question about whether personal health information contained in an employee file should be included in the scope of the act. They say yes, but they also suggest that the committee "sponsor a task force to conduct a comprehensive analysis, which identifies the needs and operational requirements of companies and occupational health professionals."

So some examples of the things they would like addressed would be the storage of employee health information in electronic format, the impact of the requirements in the Occupational Health and Safety Act and the WCB Act, the implications of defining occupational health professionals as custodians of employee health information, and a recommendation regarding the best "legislative home" and "practices for employee health information." So they're raising the fact that there are a number of places where this information is addressed in legislation.

The Chair: Do you have a question, Dr. Pannu?

Dr. Pannu: On the proposed task force and who should be included – "such a task force or sub-committee should involve appropriate government officials" and so on – I notice that there's an absence of any reference to representatives of employee organizations such as AUPE or others. I'm just curious as to the omission. If we were to take this proposal seriously, we'd have to ask: should others be included such as the representatives of employees? That's my only comment at the moment.

The Chair: Well, you know, if the committee decides they want to strike the task force, that's a question that would certainly be a fair question. We may be premature on that decision at this point.

Dr. Pannu: Indeed. I'm not seeking it. I'm just making an observation on the list.

The Chair: Okay. So noted.

Perhaps we could move to number 27 then, Wendy.

Ms Robillard: This submission is from the Law Society of Alberta, and again their response is in relation to the health information contained in an employee file and whether that should be covered by the act. Their response is no. Again they raise the Personal Information Protection Act as adequately covering that information today. They find that it would place a further burden on the Law Society and, in their view, also on law firms, and they do not feel that it is reasonable to "expect organizations, with limited resources, experience and time, to comply with intricacies of another privacy enactment, especially when current legislation already meets privacy needs."

Dr. Pannu: So, Wendy, would you say that this submission in this respect is similar to the one by the Canadian Federation of Independent Business, that in some ways it's making the same point?

Ms Robillard: Yes, I would say that they're making many of the same points.

The Chair: Thank you.

Let's go to 28 then.

Ms Robillard: Number 28 is the Canadian Life and Health Insurance Association Inc. submission. They spoke to a couple of questions. The first question was around the expansion of the scope of the act to include other government departments, local public bodies, and any other entities that have health information. Their response here is no; they don't support "the broadening of the application of the HIA to include life and health insurers." They talk about a triplication of regulation, so again talking about other legislation that they're bound by, both nationally and provincially.

The other question they addressed was whether HIA should be amended to "include stronger provisions to protect the confidentiality of genetic information." They indicate that the "developments in the area of human genomics are undergoing constant, rapid change," so it's "not clear just how prudent it would be to put specific detailed rules in place at this time."

Mr. Snelgrove: There's a very good term that's come out of that statement that is exactly where we seem to be going, and much of this is triplication. We used to laugh about duplication a generation ago. We're at triplication now, and we're just debating what the term for 'fourplication' will be down the road.

Dr. Pannu: Quadruplication.

Mr. Snelgrove: Exactly. We hopefully pay attention to triplication.

The Chair: Thank you, Lloyd. Good point.

Mr. Lukaszuk: Mr. Snelgrove touches on an important point. There's a theme developing from all the submissions that I'm noticing. Many of those who submitted indicate that many of the

aspects that this act addresses are already addressed by other legislation, being federal or provincial. Is there any way that the department could provide us with some kind of an analysis on those submissions showing where there is duplication, triplication, or even quadruplication so that we can address this issue now effectively and not burden the public sector and private sector with having to deal with four or five different bodies every time they plan to do anything?

The Chair: Good question.

Ms Robillard: Certainly, we can. I think that most of the cases where these questions have arisen are in regard to scope and in regard to employee health information, so yes.

One more point that the Canadian Life and Health Insurance Association addressed was the issue around disclosure of information "without consent to third party carriers for the purpose of payment." They strongly support that suggested amendment.

The next submission is from the Insurance Bureau of Canada, and they responded to the question on the scope of the legislation, whether it should be expanded. They suggest no, that the scope "should not be expanded to include property and casualty . . . insurers as custodians." They go on to say, "They are not part of the publicly-funded health . . . sector" although they do "collect and use health information for adjusting and settling insurance claims" but that providing health service and treatment is not the focus of their organization. They pay for services; they don't provide them. They are currently subject to PIPA and to PIPEDA, and they feel that those two statutes "provide the required protection for health information."

They go on further to note that Manitoba, Saskatchewan and Ontario health information protection laws do not directly apply to them.

They went on further to comment on the amount of fees set out for an individual accessing their own health information, and they state that fees have been charged that they believe are "in excess of both the spirit and intent of the legislative provisions providing the ability to charge fees." They state that "the fees are not intended to generate revenue for the custodian." They feel that "insurers should not be asked to apply a higher fee than would be charged if the individual made the . . . request directly."

They also commented on the elements of consent. They feel that the elements of consent are appropriate. They go on to comment that many insurers have already amended their forms to meet the section 34 requirements. However, they note that "some health service providers are very reluctant to disclose information even when they are given a properly signed consent [form] from the individual," and they suggest that "this situation might be improved by further discussion and communication by the Commissioner with the parties."

11:30

They raise another point, regarding Alberta automobile insurance system reform. They say, "It is uncertain at this time whether these reforms to the automobile insurance system will require the collection by the Minister of additional information, including perhaps health information." They would like to propose that we keep the committee advised of developments with the view of making a further submission once this issue has been clarified.

The Chair: Yes, Mr. MacDonald.

Mr. MacDonald: Yes. I have a question in regard to this submis-

sion. When the insurance industry insists that they are not part of the publicly funded health care sector that provides health services and treatment, which is of course the focus of the Health Information Act, how does the health care levy that the insurance industry pays work if they are not part of the publicly funded health care system? I'm of the opinion – I could be wrong, Mr. Chairman, and I'd certainly appreciate information from other members who might know specifically what that amount is for the health care levy – that it's certainly in excess of \$30 million, if not \$54 million annually.

Ms Miller: Are you talking about Alberta health care premiums when you say levy?

Mr. MacDonald: No. I'm talking about this levy that is applied when I am initially injured in a traffic accident and I have to go to the hospital; right?

Mr. Snelgrove: Can I ask the relevance of that? What difference does that make to this committee?

Mr. MacDonald: Because the insurance industry, Mr. Snelgrove, is insisting in this submission that they are not part of the publicly funded health care system.

Mr. Snelgrove: They're not.

Mr. MacDonald: But we are paying them a levy.

The Chair: Thomas, do you have clarification here?

Mr. Lukaszuk: Mr. Chairman, perhaps the Justice department is in a better position to address this, but Alberta Health subrogates itself to personal injury claims or civil litigation that may occur from any motor vehicle accident or any other tort case and then is reimbursed duly for any and all costs by the underwriter. I'm not aware of any levy that you're paying for the provision of those benefits. Those benefits are not covered. Your care following a tort case is not covered from the public purse, as I understand it, but it is covered from the costs subrogated from a claim.

The Chair: Okay.

Mr. Snelgrove: There is a predetermined fee that Mr. MacDonald talks about that the insurance companies pay as an agreed amount to Alberta health care. Instead of negotiating every injury and every accident to the full amount, they agree to a claim, and you are very close with this \$54 million. That's a contract agreement outside of anything that we're dealing with.

The Chair: Also, Evelyn, did you have some light to add to this subject?

Ms Swanson: I think it's been adequately covered now. The levy is a levy of the department on the insurance industry, so we do recover expenditures on patients who've been injured in auto accidents.

Mr. Snelgrove: It's not related to individuals.

Ms Swanson: Yeah. It's an aggregate levy.

The Chair: Good. Okay. Thank you to those who commented. Wendy, go ahead.

Ms Robillard: Thank you. The next submission, number 30, is another submission by an individual Albertan, and this individual has responded to many of the questions in the act.

So the first is around whether the purposes in the act are appropriate or not, and the individual says: yes, they are.

Should the scope be expanded to include other government departments, local public bodies, and any other entity that is not a custodian and has health information in its custody and control? The individual says, "Yes" very clearly.

"Should the scope of the act be changed given the implementation of the Electronic Health Record?" Again, yes. They have concerns about who obtained the records, for what purpose they were obtained, that that information should be available to be known to and to be made available to the patient upon request. "With the electronic age and the lack of proper security controls in the Internet, accountability and consent is a paramount principle."

Dr. Pannu: Wendy, on the response to question 3 by this individual, it contradicts the position taken by the Insurance Bureau of Canada; right?

Ms Robillard: Uh-huh.

Dr. Pannu: I think it's interesting to see these two positions; you know, one by an individual, one by a business organization. I think I just want to put on record that we need to look at the arguments on each side, some of which are coming through here in the submissions.

The Chair: Absolutely. It should be one of the fun debates.

Ms Robillard: Question 6 is, "Should health service provider information be included within the scope?" They say, "If the question is that [health] service provider information should be included under . . . HIA so as to not allow this type of information to be given (sold or otherwise) to non-custodians, the answer would be an obvious yes."

Should personal health information contained in an employee file be part of the scope of the act? Again they answer yes. The rationale is: why should any of these individuals be excused from the principles of the act?

Should the scope of the act be extended to include WCB? Again, yes. In fact, all insurance companies should be bound by the rules. So the answer, again, relative to Alberta Blue Cross is yes.

On the question about the definition of health information, whether it should include nonrecorded information, again the answer is yes. The individual indicates that if you look at the court process, "not only is documentary evidence relevant, but non-documentary evidence is also a standard of evidence. So the principle should apply there."

Under Collection of Health Information, "Should custodians be permitted to collect information about the individual's family health history without the consent of the family members where necessary to provide health care to the individual?" The individual says no, that that information should not be collected without the consent of the family member, and even goes so far as to state that "if the family member is dead, then it is too bad. The illness goes with him or her to the grave."

"Is the requirement to inform individuals about collection practices effective or does it create any operational difficulties?" The response the individual provides is that "the patient has a right to know what the custodian is doing with the information. So from a patient's point of view, no difficulty is too difficult."

Comments on the use provisions in the legislation. Is it appropriate to use the information without consent for the authorized purposes stated in the act? The individual states, "Probably not. Unless disclosure as to the nature, use and purpose is made to the patient, how does the Act follow the principles of privacy and confidentiality?"

Should the listings of authorized uses be expanded, restricted, or modified? "From a patient's point of view and with the introduction of EHR . . . it should be expanded."

Going into the part on disclosure. "Are the elements of consent appropriate?" Yes. Is verbal consent appropriate? No, and he provides some rationale supporting that.

Are the discretionary disclosures without consent listed in the act reasonable and appropriate? The individual says: unless there are examples of abuse, that probably if there are examples, then they should be examined.

"Should the discretionary authority to disclose to police services without the individual's consent, be extended to disclose basic registration information to police services for . . . providing a warrant, subpoena or court date?" He's very clear here: no; the police have current capacity to obtain information and that they should follow that.

The next question is around a proposed amendment to reference the triplicate prescription program. The individual disagrees with the amendment on the basis that it's a program and is concerned that you might want to do this with other programs. Secondly, if it's already enabled, why would you include it?

The next question is around stronger provisions to protect confidentiality of genetic information. Yes, the individual would like to see stronger provisions.

On the question about informed implied/knowledgeable consent, whether that's a reasonable model for care and treatment in Alberta health, the individual states that "it would appear [to] not be adequate," suggesting that hanging a poster is not adequate from a patient perspective.

"Are the research provisions in the Act reasonable, effective?" The individual says that that would "depend upon what empirical evidence of unethical breaches have been reported to the respective bodies."

11:40

Duties and powers of the custodian. "Are the duties and obligations on the custodian appropriate and reasonable?" He raises concern here with the potential for increased risk as a result of the electronic systems. This is an area where the individual feels that discussion and resources should be in place, as opposed to some other questions that have been raised in the act.

Do you have any suggested changes to the commissioner's powers in the act? "Yes." He goes on to state that "the powers of the Commissioner must extend to all holders of health information," to any entity who "obtains, retains, or holds health information," whether in paper or electronic form.

In terms of the general provisions, "Is the list of substitute decision makers appropriate?" "Yes." "Are the offences and penalties appropriate?" He says no and suggests increasing those significantly "to a maximum of \$50,000,000." Then in terms of disclosure without consent to third-party carriers for the purpose of payment, the individual says: no; they should have to obtain consent.

Dr. Pannu: Mr. Chairman, I just want to go on record thanking Robert Hyland, a citizen and individual who has taken his responsibility as seriously as he has in responding in detail to most of the questions that were asked here. This information should be very

helpful to us. I think it's refreshing to see that we have among us people who would take this kind of time, pay this kind of attention to a matter as important as the one before the committee; that is, a review of the HIA, the Health Information Act.

The Chair: Very good.

Other questions or comments? Okay.

Ms Robillard: The last submission that we're going to talk about today is from the city of Edmonton, and they've responded to three questions. The first is the question of scope and whether the scope should be expanded, and their response is no. The city of Edmonton does not want the "expansion of the HIA to encompass . . . information held by local public bodies."

They go on to state that "with the exception of the City of Edmonton Emergency Response Department, no City department indicated that they would benefit from increased sharing of health information," and consequently they are concerned that expanding the scope to include municipalities "would result in few tangible privacy benefits." They also raise the concern about "increased costs, confusion and administration" if they would have to apply to HIA as well as FOIP.

On the question about whether health service provider information should be included within the scope of the act, their position is that, no, these bodies are already subject to the privacy provisions of the FOIP Act and so should be excluded.

Should health information contained within an employee file be part of the scope of the act? They say: no; those bodies are already subject to privacy provisions in FOIP and should be excluded from HIA.

Two more questions from them that they responded to. Should Alberta Blue Cross be subject to HIA? They suggest: no; they should not be.

"Should the definition of health information be changed to include non-recorded information?" They say no. Their rationale is that it would be "untenable because of the difficulties associated with proving or disproving the existence of non-recorded medical information," that it could add "administrative burden of addressing requests for access to information, particularly if an applicant believes that non-recorded information [is] in existence and the organization holding the records is not aware of [the] information."

The Chair: Questions or comments?

Mr. Lougheed: They had no comment about ambulance services?

Ms Robillard: They provided a separate comment from their emergency response department, which I already talked about, and they also supplied a separate comment in response to the letter that was included in the municipal piece. So we actually had three separate submissions from them.

The Chair: Thank you very much, Wendy, Linda, and Evelyn, for taking us through those 31 submissions. Thanks to the committee for good comments and questions and, certainly, to those who have taken time to respond. As has been pointed out by a former committee member, certainly I think we need to recognize people who take the time to respond to the questionnaire and to the guide. So thank you to all of you.

We are about halfway through the agenda, although I don't think the next half will take too long. My suggestion is that we break for lunch at this point, and we could come back early if you want to, or we can go till 1 o'clock.

Mr. Loughheed: Early.

The Chair: Come back at 12:30? Is that agreeable to everyone, to come back at 12:30? Do we have agreement on that?

Hon. Members: Agreed.

The Chair: Okay. We are adjourned until 12:30. Thank you very much.

[The committee adjourned from 11:46 a.m. to 12:33 p.m.]

The Chair: I am going to call the committee back to order. I trust that everyone had an enjoyable lunch and thank those responsible for providing us the lunch.

Moving to item 5 on the agenda, Requests to Appear before the Committee. Karen, would you like to discuss this item with us, please.

Mrs. Sawchuk: Thank you, Mr. Chairman. The members have a copy of a list. It shows nine agencies, bodies, stakeholders, whatever term you want to use, that have requested an opportunity to appear before the committee. I think I mentioned this morning that we didn't put any type of restriction on when those types of requests had to be in, so there might still be some agencies who have made submissions already who might come back and say: could we also appear before the committee? So the list could potentially get bigger, but that is what we have right now.

Mr. Goudreau: Mr. Chairman, I'm just wondering: what is the normal time allocation for presentations before the committee?

The Chair: It's up to the committee.

Mr. Goudreau: You know, certainly on the other committees there must be a suggested guideline in terms of how long they can present to a committee.

The Chair: Karen, would you like to comment on that?

Mrs. Sawchuk: Mr. Chairman, I did go back and research the FOIP committee. It was very similar in the type of format. That committee had provided a 30-minute time slot, 20 minutes for presentation and 10 for questions and answers. It appeared to work okay. I think that actually we only had one group that ran a bit over in time. Most of them, if you notify them in advance what their date is going to be and how much time they're permitted, gear their presentation to that. So that's what the FOIP review committee did: 20 minutes for presentation and 10 for question and answer.

Mr. Snelgrove: That was what you would use as straight across the board. An example, I guess: if you were to bring together three major police forces from Alberta to come in and talk about their issues, that to me is going to be a lot bigger issue than an individual who has their – I mean, they're all important, but I think that especially around the issue of police and the hospital issue, whether that can be done in half an hour, I don't know.

The Chair: Well, a good point. Certainly, I think the committee has to have some latitude, you know, and I think that as we schedule these, we probably sort of take into consideration that some may need a little more time.

So I guess we have two issues before us as a committee. Number

one, I'm assuming – if I'm incorrect, tell me – that everyone would agree that when we schedule these that want to appear for a public submission, we would allow them to do that.

Hon. Members: Agreed.

The Chair: Okay.

So then our next question is timing. Twenty minutes? Ten? Thirty minutes total? With some, you know, asking our committee staff to maybe schedule so that if there was one that might go a little bit over, we wouldn't schedule back to back.

Karen, do you have any comments on how you might see us scheduling these groups over the next 30 days?

Mrs. Sawchuk: Mr. Chairman, one of the issues that was discussed this morning was that when the committee had set their meeting schedule back in June and they set aside dates in September, we referred to those dates as dates for oral presentations, but there's really nothing that precludes the committee from hearing from some of these agencies now. You're not making decisions now, but if, time permitting and if it works with the scheduling, we could hear from some of these agencies now, then it frees up the staff from Health and Wellness to work on other summaries, to work on these option papers, you know, that type of thing.

So what I had discussed briefly with the chair was that we could actually have some submissions on August 24, which is our next meeting date. This is just an idea we're throwing out. If we had any outstanding action items, we could deal with them in the morning. For the balance of the submission summaries, following the amount of time it took us this morning to complete 31 of them, assuming that we'll have about that many again, we could complete those in the morning also, and then we would have the afternoon. We could hear some of the oral presentations.

One of the requests to be heard was from the Information and Privacy Commissioner, and he has asked for I believe the 24th.

Ms Gallant: Well, originally, he said the 25th, but he's agreeable to the 24th if that's suitable to the committee.

Mrs. Sawchuk: Yeah. He wanted one of the August dates.

Ms Gallant: Because he's out of the country.

Mrs. Sawchuk: He's out of the country in September. So, theoretically, if the committee was agreeable to that, we could fit in four or five oral presentations on the 24th.

Mr. Goudreau: Well, I would agree with that. I guess the only concern I would have is that the groups that anticipate appearing before the committee may or may not be ready for August 24 or 25. If they are ready and are prepared and feel that they are going to be justifiably heard, then why not?

The Chair: Thank you. A good comment.

Dr. Pannu: Mr. Chairman, with the two hearings that Karen referred to that could be held on the 24th or 25th, if we could have them scheduled for one day, the same day, the 24th or 25th, that would be good, because if only half an hour is what we are allowing, technically, for these presentations and questions, then all we need is about an hour and a half on a certain day for these two hearings to be held. I prefer the 24th. I had indicated to the committee I think sometime in June that I am hoping to take some time off at the end of August and the first week of September.

So when I look at the dates here, September is fine, but I'd certainly make sure that I can be present on the 24th. If we can schedule these two hearings then, that would be good.

The Chair: So your preference would be August 24 for August submissions?

Dr. Pannu: For this. Yeah.

My second, Mr. Chairman, is on the length of the hearings. I think 20 minutes is a reasonable amount of time for presenters. I'm not sure if the 10 minutes that we're allowing ourselves is as generous. There are eight of us on the committee, and divided by eight, it gives you a minute and some seconds each, although all of us may not ask questions. But then you ask questions, you get answers, and you don't want to rush people that you have asked to come before you and give you information during these 10 minutes. We need to be really flexible with the 10-minute period, I think.

12:40

Mrs. Sawchuk: Mr. Chairman, we could do it so that we had a 20-minute presentation, which is what we have to notify the presenters of, and then we could make sure that we have an additional 20 minutes scheduled in between one submission and the next. Then that way, it gives additional time for the members if it's needed, and if it's not needed, well, it's just a bit of a break to get ourselves organized before the next group comes in.

Dr. Pannu: I would appreciate that, if you can make that kind of arrangement.

The Chair: Well, absolutely. You know, I believe we just try to facilitate the committee and the presenters and get the job done and won't cut off at exactly 30 minutes if there are still good questions. Eight or 10 questions from the committee might be a bit of a stretch without duplication, but if there are, fine.

Dr. Pannu: We can be quite creative, Mr. Chairman.

The Chair: I realize that. Yes.

Mr. MacDonald: So I'm hearing here through consensus, Mr. Chairman, that we are going to schedule August 24 for submissions in the afternoon, the afternoon of August 24 for potentially any oral submissions.

The Chair: We have been hearing that. Is that okay with you, Mr. MacDonald?

Mr. MacDonald: That's fine. I will make every effort to be here.

Mr. Goudreau: My understanding was, as well, that if we had to go on to August 25 for additional submissions, we would accommodate that as well.

The Chair: It would be helpful if we could.

Dr. Pannu: I won't be here. I will have difficulties.

The Chair: Yeah. We understand that.

Mr. Goudreau: I guess one of them, as we talked at length earlier, was the policemen and their associations, and I'm surprised that they have not requested to appear before the committee. Are we in a

position to invite them to expand on their proposal? The fact still remains that they have not requested to appear. I'm just wondering if as a committee here the issue is significant enough that we should not ask that they come before the committee.

Mr. Lukaszuk: I would like to second that. I think that this issue, as Dr. Pannu identified and I did as well, is of vital importance, and perhaps some significant policy changes may occur as a result of our deliberations. I would personally want to ask them questions, and if that's not afforded in the committee format, I will definitely be contacting them on my own prerogative and speaking with them relevant to their submissions.

The Chair: Very good, Thomas and Hector. Would your suggestion include both Calgary and Edmonton police forces or any other police force that wanted to submit?

Mr. Goudreau: Well, there is an association, and maybe through that association they may amass, you know, certain of the feelings of all police forces.

Dr. Pannu: Mr. Chairman, it's fine with me if the committee wants to invite police representatives, whether one organization or three different groups, so long as we think this is a good use of our time to do so. I think it's a good principle to identify and establish. As a matter of fact, there may be other submissions which also merit similar invitations being sent out. So I guess we should keep that in mind, that if we single out one group, it may be seen as . . .

The Chair: If the committee wants to invite another group, that's the committee's prerogative.

Dr. Pannu: Right. We'll go through the submissions carefully and express our interest.

Mrs. Sawchuk: I was just thinking, Mr. Chairman, that maybe when we contact initially the Edmonton Police Service, since they had the first and largest submission, I believe, and then followed by the Calgary Police Service, we can just make it clear that it appears there are some similar issues that are affecting this whole group which the committee had specific questions on. That might differentiate it from all the other submissions where the issues are very clear or it's not something that's maybe as contentious. I don't think we have to worry too much about alienating any other group. Anybody who has contacted us – and we had a lot of phone calls. Probably with over half of the submissions we received, we got phone calls first from the groups, and, you know, we did let them know that they were able to make presentations before the committee.

Dr. Pannu: That's a good point, but my concern was not about alienating other groups. My interest is more in committee members having the opportunity to make a decision to ask others to come if we so choose.

The Chair: If there's consensus on the committee, then certainly. Mr. MacDonald, did you have a comment?

Mr. MacDonald: Yes. I was just going to make a suggestion. I didn't think we needed to do this via a motion, but I was going to urge the chair on behalf of all the members, at least present here today, to write a letter inviting the police services to make an oral presentation if they so wish.

The Chair: Okay; will do. Everyone agrees with extending the invitation to the police association? Okay.

So we've clarified basically the time of presentations, questions, that we will at least start presentations on the 24th and maybe will even have to go to the 25th with a couple, depending on how that works out. It's difficult to say at this point.

Did we miss anything on this item?

Mrs. Sawchuk: No. The only thing I thought I'd mention is that when we do scheduling, we thought we would include the full submission for all the members for the parties that are coming in. It's more than likely that they're also going to bring additional information when they come before the committee. Then the other thing, too, is that we were a bit late getting materials out to the members for this round of meetings, and we will definitely have this information out the week before. So you will have a good idea of who will be attending, you'll have a copy of their initial submissions, and it'll give you a bit better idea of what you'll be dealing with that day.

The Chair: Good. I think we're clear on the intent of number 5 without further motions.

Mrs. Sawchuk: Yes. I think we're okay.

The Chair: Okay. Thank you for your input on that item.

Number 6. We have some questions that were submitted, and we have to discuss those. So on the disclosure of health information outside Alberta, Wendy, would you please cover that item for us.

Ms Robillard: Okay. That item was tabled. I think it was sent out in the packages as a follow-up from a question raised by Mr. MacDonald at the last meeting, and it was in relation to the USA PATRIOT Act and the impact that has on the Health Information Act. These issues were raised in British Columbia in October. The American act came into place in October of 2001. The issues came up within British Columbia last year.

The concern with the USA PATRIOT Act is that it can be invoked against any person, business, or organization in the United States, so they can actually ask to obtain information from large databases without a named cause. Those organizations who would be requested to provide the information are not afforded any opportunity to challenge the order before complying with it. Further, you're not allowed to speak to anyone about the fact that your information has been called.

As the note indicates, the orders would not be served directly on Canadian corporations. However, if a Canadian affiliate of an American corporation were to be served, it could be asked to disclose the records. So it raises an interesting legal question. Any potential conflict between an Alberta privacy law, such as HIA, and the laws of another country raise complex international law issues, and I don't think we fully understand where that might end up. As Mr. MacDonald mentioned this morning, the B.C. Privacy Commissioner has announced that he will examine the implications of this. He has called for submissions to him, and as we've heard this morning, he had intended to provide comments in August, but he has extended the comment time. So that's somewhat different.

What we've done in terms of our custodian organizations is make sure that they're aware of these issues, make sure that they enter into agreements on the basis that the information is dealt with in accordance with the Alberta laws. We're continuing to monitor the case, and we'll consider the report and recommendations when they become available.

12:50

The Chair: Mr. MacDonald, further questions?

Mr. MacDonald: Yes, Mr. Chairman. I would like to express my gratitude to the committee and to Wendy for compiling that response. I have circulated a letter to the members of the committee. After talking with the commissioner, or looking at their web site yesterday, I thought there should be a similar initiative here in this province in light of the fact that this committee is looking at the Health Information Act.

The Chair: Mr. MacDonald, the letter that you circulated: is that this letter, addressed to the commissioner?

Mr. MacDonald: Yes. It certainly is the letter that I faxed to you yesterday.

The Chair: And all members have copies of that; do they?

Mr. MacDonald: For all members present I dropped one off, I think. If I missed someone, I apologize.

It's interesting. This issue was discussed by two government members in question period – or not this issue but the issue of the transfer between jurisdictions of health information – between the minister of health and a member from Calgary, where the Peter Lougheed hospital is, Mrs. Fritz's constituency; anyway, in the northeast section of Calgary where she sits as a member of this Assembly. On May 5 she asked the hon. minister of health a question in regard to outsourcing of health care and the implications of this, so it's an issue that has come up in the Assembly. It's certainly come up in British Columbia since we've talked, when the commissioner's office in British Columbia indicated that there was an overwhelming response in that province in regard to outsourcing of health care services, how it affects health information and other personal information.

I think it would be prudent for this committee to endorse my letter. I would ask and I would be prepared to move a motion that the committee show support also for this initiative and that we get the Privacy Commissioner, Mr. Work, to investigate this, perhaps in conjunction with Justice officials, just to see exactly where we stand on this issue, because it's evident that we are moving quickly in this province to outsource more and more health care delivery. Some of that is going to jurisdictions outside this country, particularly America.

The Chair: I do have some comments, Mr. MacDonald.
Thomas.

Mr. Lukaszuk: Thank you, Mr. Chairman. I appreciate the concerns that the member may have or may construe to exist. However, this committee has no jurisdiction over directing the Privacy Commissioner to investigate or not investigate or do research on any matter at all. The Privacy Commissioner is independent of this committee. He's an officer of the Legislature, and if he or his office deems it appropriate to investigate any collusion that there may or may not be with any piece of U.S. legislation here, his office will do that on his own prerogative.

I think the scope of this committee's work is limited to that of reviewing this particular act. Having done so and having passed the changes into legislation, if they indeed collude or are ultra vires to any American legislation, then the commissioner can do that out of his own prerogative.

The Chair: Thank you, Thomas.

Dr. Pannu: Mr. Chairman, I think the matter raised by Mr. MacDonald in his August 11, 2004, letter to Mr. Work, office of the Information and Privacy Commissioner of Alberta, is an appropriate one. We know that a sister province is certainly doing this kind of work, or the Privacy Commissioner of B.C. to be specific, has already undertaken to do this kind of examination. It would be entirely appropriate for us as a committee of the Legislature, of which Mr. Work is the officer, to ask Mr. Work to address the same sorts of questions that are being addressed in B.C.

In fact, in my view, having this matter come before us and brought to our attention, it would be inappropriate for us not to have this matter thoroughly addressed and addressed by the one appropriate person, which is the Information and Privacy Commissioner of this province. There's no conflict.

There's no reason to assume that this committee has no authority or interest in asking the Privacy Commissioner to address that question. We are a creation of the Legislature; so is the commissioner. So I don't see any problem in terms of jurisdictional disputes or powers of this committee. This committee is very much within its right to make such a request, if not issue an order, and all we are doing, I think, in this motion that is likely to be proposed here is to make a request to the Information and Privacy Commissioner to undertake a similar investigation for the purposes and use of this committee.

The Chair: Thank you.

Before I take Thomas' comment, Health and Wellness or anyone else? Roseanne, do you have any comments to make here, or Health and Wellness?

Ms Gallant: I would maybe just first comment that I'm not aware of the letter that has been spoken to, the August 11 letter.

The Chair: Do you not have a copy?

Ms Gallant: No. That went to Frank. So I'll be happy to read that in a minute.

The Chair: Okay. While you're reading it, does anyone from Health and Wellness want to comment here?

Ms Miller: We haven't seen the letter either, so I don't think we could comment until we've read the letter.

The Chair: I apologize. Certainly, let them have my copy.

So, Thomas, while they're reading the letters, would you please give your comment.

Mr. Lukaszuk: Thank you, Mr. Chairman. I just briefly read the letter, and two things arise. First of all, what the Member for Edmonton-Gold Bar is asking us to do is basically reinvent the wheel. I would suggest that it would be much more prudent to wait and see what the commissioner from British Columbia comes up with without having two commissioners doing the same kind of review at the same time relevant to the very same issue. It looks like the British Columbia Legislature is well underway already, so why not wait and see what they come up with?

Second of all, I think the Member for Edmonton-Gold Bar is assuming that Alberta's Privacy Commissioner, Mr. Work, is not a prudent one. He has received a letter now from the member, so he

has been sensitized to the issue that perhaps he may want to consider a review of this particular matter. I'm sure he quite diligently reads the *Hansard* of this particular committee's proceedings, so now having read the transcript of this discussion, he will be resensitized to the Member for Edmonton-Gold Bar's concerns. He will be appearing before the committee, so the member will have ample opportunity to ask him questions relevant to that particular matter.

Again, to restate the obvious, this committee, even if you want it to, has no right or jurisdiction to compel a commissioner to carry out any investigation. It is a function of his own office or the Legislative Assembly. This is not a Legislative Assembly; this is a legislative committee, a subcommittee of the Legislature.

The Chair: Thank you, Thomas. I think those are very valid comments.

I notice Mr. MacDonald has a comment. Roseanne, do you have comments?

Ms Gallant: Well, I just recognized that the letter was written yesterday. Therefore, I anticipate Frank would receive it today or tomorrow. I'm not sure if it was delivered to him. Was it faxed to him?

Mr. MacDonald: We faxed it to him yesterday afternoon.

Ms Gallant: Okay. So then he's probably aware of it, and I guess I would concur with Mr. Lukaszuk that in his oral presentation he would perhaps address your request. He may choose to do so earlier. I have not spoken to him about this letter.

1:00

The Chair: Thank you.

Mr. MacDonald, you did want to make a comment.

Mr. MacDonald: Yes. Well, this certainly is a very important issue, and I would remind all members of this committee that this is a committee that was appointed by the Legislative Assembly, and it has considerable powers. All committees that are appointed by the Legislative Assembly have considerable powers. I would remind members in the Public Accounts Committee, which is a similar committee, that there was an initiative made and that another independent officer of the Legislative Assembly, the Auditor General, compiled a report on BSE.

Albertans have every right to know if they are being protected from foreign laws. Wendy has stated in her response that this is a complicated issue. We should be addressing it, and this gives us an ideal time to address it.

Another point is that the commissioner, contrary to what Mr. Lukaszuk has said, in section 84 of the Health Information Act has the ability or the authority to "engage in or commission a study of anything affecting the achievement of the purposes of this Act." So the hon. member is inaccurate. The Privacy Commissioner certainly has the ability, and I'm asking members of this committee to not only endorse that letter but vote for a motion to ask the commissioner to conduct a review of this matter.

The Chair: Mr. MacDonald, are you making such a motion?

Mr. MacDonald: I will make a motion now, if you would like, Mr. Chairman, certainly.

The Chair: Certainly, that's your prerogative.

Mr. MacDonald: Okay. Well, I will make that motion then. The motion would read that

the letter dated yesterday, August 11, 2004, to the office of the Information and Privacy Commissioner of Alberta by the member for Edmonton-Gold Bar ask the Privacy Commissioner to conduct a similar review here in Alberta as has been initiated in the province of British Columbia by their Privacy Commissioner and to make the findings of that study public before the select special Health Information Act review committee issues a final report.

The Chair: Thank you.

Before I call on members to speak to the motion, I'm going to recognize Mr. Snelgrove and Thomas. Both had their hands up before I called on you.

Mr. Snelgrove: Mr. Chairman, now that it's a motion, that's fine. We can deal with it. I think Mr. Lukaszuk's point about the B.C. commissioner's dealing with this now – it makes no sense to restudy that. It also makes no sense to start to bring this committee into every other aspect of security and transformation.

To suggest that someone might not want to go get medical service because of changes in other legislation is ridiculous. We just need to deal with the huge task we have here, and I think Mr. Work will deal with his job in the very capable way he does, and we don't need to be involved in either one.

The Chair: Thank you.

Thomas.

Mr. Lukaszuk: Thank you, Mr. Chairman. Well, the Member for Edmonton-Gold Bar has argued my point better than I, perhaps, could have by stating the fact that a section of the Health Information Act clearly outlines that the commissioner has the jurisdiction to undertake any review or investigation that he chooses to do.

I would challenge the member to find a section in that particular act stating that a special select committee has the authority to instruct or direct the commissioner to conduct any investigation. It is very important that the commissioner be independent, and I'm sure the Member for Edmonton Gold-Bar would be the first one to climb onto a soapbox and scream that the commissioner ought not to be influenced by any other committee or any other powers of government in his ability to freely determine whether to investigate or not to investigate or affect the outcome of any investigation.

The member makes allusions to another special legislative committee, being the Public Accounts Committee, and how powerful this committee is in relationship to that one, and he has been on numerous occasions reminded in various ways of the limitations of such committees and the abilities of chairs to direct other bodies to do certain things.

I would suggest to you, Mr. Chairman, that even though he may be very well intended, this is definitely out of the jurisdiction of this committee, and we have no authority to vote on this motion because we have no authority to compel anyone to do any investigations.

The Chair: Mr. MacDonald, do you want to close debate now? We've got a couple of issues here.

Mr. MacDonald: I would like to certainly clarify another inaccuracy from the hon. member.

The Chair: Okay. For clarification.

Mr. MacDonald: The act specifically states – and this is under

General Powers of Commissioner, section 84. I would provide a copy so you can read it and perhaps understand it.

In addition to the Commissioner's powers and duties under Divisions 1 and 2 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure its purposes are achieved, and may . . .

“And may.” That's very important, hon. member. It's not “shall”; it's “may.” So the commissioner has the power to do this. There is a big difference between shall, may, and has.

Thank you.

The Chair: All right. Mr. Lukaszuk raised the point that we don't have the authority as a committee to deal with this motion, so I'm trying to clarify that.

In the meantime, you did have another point, Thomas, to clarify Mr. MacDonald's comments. Then I'm going to go to Dr. Pannu.

Mr. Lukaszuk: Well, I'm confused whether the Member for Edmonton-Gold Bar is arguing my point or his point, because his last comments are arguing my point exactly. Let me put it differently. Section 84, subsections (a), (b), (c), (d), all the way to (i), indicates that the commissioner has the right to do that very same investigation that you're asking for. I am not saying that the Privacy Commissioner has no right to do that investigation. By all means he does. The alphabetical subsections of the section tell you when and where he can do it, but what I'm trying to tell you is that this particular committee has no jurisdiction in compelling him to do so.

If he chooses to do so having read your letter, he is well within his right to carry on. If, as per subsection (a), he is instructed by the minister to do so, he is well within his right to do so. The only point of contention here is, Mr. MacDonald, that this particular committee doesn't have the right to compel him to do so. He may very well do it having read your letter or having read the transcript or having heard from you when he appears over here, but we can't make him do it.

The Chair: I agree. We certainly could request that he do so, but we could not force his hand.

Dr. Pannu: I'm puzzled, Mr. Chairman, as to why the word “compulsion” or the need to compel or the intent on the part of this committee to compel the Information and Privacy Commissioner to conduct such an investigation has come up in the debate, premature at this stage if this committee hasn't decided to make a request yet.

The Chair: Right.

Dr. Pannu: That request has not been entertained formally by the Information and Privacy Commissioner. He has not refused that request, so from where does the need to compel him to come before the committee come? So it's a red herring. I must say this: that's not the issue. The issue is whether or not this committee believes that it is its obligation, in fact, to have those important questions addressed.

There is a foreign law in place. There are corporations with, you know, foreign origins and registrations operating in this province. They may come into the picture in the delivery of services. Is it not the responsibility of a committee appointed by the Legislature itself – this committee, that is – to in fact take that question seriously, ask the commissioner to look at it, and see whether the commissioner is in a position to do so? If the commissioner is not in a position to do so, we'll hear about it, but at this point it's premature to talk about compelling or issuing a subpoena or something.

All we are doing is making a request to the commissioner to address this issue that, in our judgment, needs to be addressed for the

purposes of the committee's own review that we are undertaking. In my view, I'll feel that I've neglected my duty not to have this question properly addressed as part of the review committee.

The Chair: Thank you.
Thomas.

Mr. Lukaszuk: Thank you, Mr. Chairman. Again, I want to thank the member, Dr. Pannu, for arguing my point in turn just as eloquently as the Member for Edmonton-Gold Bar has. The word "compel" is not a red herring or a herring of any colour. The Member for Edmonton-Gold Bar has written a letter to the commissioner asking him to carry out an investigation. The commissioner, I assume, hasn't had a chance even to read that letter nor respond to that letter, definitely. The Member for Edmonton-Gold-Bar obviously underestimates his own ability to persuade the commissioner to do this investigation if he already requires a higher authority, being this committee, to request that the commissioner do so. I'm finding it very surprising that the Member for Edmonton-Gold-Bar would not await the commissioner's response. Maybe this letter will be compelling enough for him to do so. Why get this committee involved in this when it's out of the jurisdiction?

1:10

The Chair: Thank you, Thomas.
Would anyone else like to speak to the motion?

Mr. Goudreau: Well, just a quick comment. Certainly, I agree with Thomas. Let's give the commissioner the opportunity to respond. He is coming before this committee sometime, August 24 now, I believe. Let's see what he has to say before making additional requests of him.

The Chair: Thank you, Hector. All right. Anyone else want to speak?

I'm going to ask Mr. MacDonald for his last comments to close debate. We have the motion on the floor, so I guess we will deal with the motion. We haven't been able to get parliamentary advice on jurisdiction here, but I assume that the committee would have the right to deal with this motion requesting the commissioner to do this. So, you know, I think that's in order. We'll just leave it up to the committee to decide on the motion when we call the vote.

Do you want to now close debate, Mr. MacDonald?

Mr. MacDonald: Yes, please, Mr. Chairman. In closing debate, I would just like to say that it is my view that this committee, as a creature of the Legislative Assembly, has the ability and the authority to further endorse my request to have this matter studied by the Privacy Commissioner in this province, not in another province. That's all I have to say. Parliamentary committees have a great deal of power, and in this province sometimes that power, in my opinion, is underutilized. But I look forward to the vote on my motion.

Thank you.

The Chair: Thank you, Mr. MacDonald. Okay. Everyone understands the motion, I believe.

Mrs. Sawchuk: Mr. Chairman, I didn't have a copy of this, so I'm following through, I believe, the wording of Mr. MacDonald's motion from the last paragraph in the correspondence that was sent to Mr. Work: moved that the Select Special Health Information Act Review Committee request the Information and Privacy Commissioner to conduct a similar review to that conducted in British Columbia and to make the findings public before this committee issues its final report. Now, the part that I'm missing that I need to

be clear on, Mr. Chairman, is referring to – this is where I'm lost. I'm not sure what the study was in B.C.

Mr. MacDonald: A similar review to the one initiated on May 28, 2004, by the B.C. Privacy Commissioner to examine the implications of the USA PATRIOT Act for British Columbians' personal information involved in the outsourcing of public services to U.S.-linked service providers.

The Chair: Well, we want to clarify what we're voting on.

Mrs. Sawchuk: Okay. Let's try this again, Mr. Chairman.

Moved by Mr. MacDonald that the Select Special Health Information Act Review Committee request that the Alberta Information and Privacy Commissioner conduct a review similar to that issued on May 28, 2004, by the B.C. Privacy Commissioner examining the implications of the USA PATRIOT Act on British Columbians' personal information involved in the outsourcing of public services to U.S.-linked service providers.

There you go, Mr. Chairman. I'm not sure that that's much clearer. I was here, there, and everywhere.

The Chair: Mr. Lougheed, are you okay with the motion now?

Mr. Lougheed: Go ahead and ask the question.

The Chair: Okay. The question has been called. Again, by show of hands, all in favour of the motion by Mr. MacDonald? Opposed? The motion is lost.

Dr. Pannu: Mr. Chairman, the vote is going to be recorded by name?

The Chair: Sure. We can do that.

Ms Inions: I don't have a view on the motion, but I'm wondering if I could make some comments that might assist in this issue, just some comments about the PATRIOT Act and the legislation. I'll be very brief.

The Chair: Okay. The vote has been taken.

Ms Inions: This is not to affect the vote. This is just information for the committee. I specifically didn't want to be part of lobbying one way or the other.

The Chair: Okay. Very good. Go ahead.

Ms Inions: First of all, I would comment that the Privacy Commissioner was aware of this issue early on and actually issued a press release on this and, I believe, spoke to the deputy minister of health about this as well. So there was some early thought and attention and awareness. It's my understanding that the commissioner is keeping a watching brief in this area, is watching developments.

The B.C. commissioner, as you know, has undertaken a very detailed analysis, review, and comment in this area. He's asked for national and international submissions and quite a good-sized budget to go along with that effort. There is large involvement, enormous interest in this area because this issue, although it involves a B.C. union, could affect any province, any jurisdiction in Canada. But that's a substantial amount of work, and it looks like the issues might be very similar, no matter which jurisdiction you're in.

As well, the Canadian Bar Association is doing a very detailed analysis in this area that you might take advantage of. I'm not sure

when their work will be in, when their submission will be done, but that was a very large amount of work on that particular issue due to concern with the Canadian Bar Association as well.

I also know that there are a number of groups in the U.S. who are actually lobbying against that act. So there is a huge debate even within the U.S. about the appropriateness of that act.

That act could trigger anything from international trade agreements to domestic legislation like the Health Information Act. One of the provisions in HIA is a transborder provision, that we already have. The thing this committee, I would think, really needs to apprise itself of is: how does it link into this piece of legislation? In the regulation there's a requirement on custodians before they disclose information that crosses a border. They're very tough provisions, and that's the kind of provision that already exists. If you think that needs to be strengthened, that's an issue before the committee.

Secondly, there are provisions, not just in HIA, that allow disclosure pursuant to an enactment. This is all being disclosed pursuant to the USA PATRIOT Act, which requires a warrant and a subpoena and a court order to produce the information, and the laws of a foreign jurisdiction. Once it crosses a border, it's not just HIA. It's under PIPEDA, the federal legislation, if it's personal information involved in a commercial activity, which it could well be in these kinds of situation. PIPEDA clearly allows that kind of disclosure. We certainly can't change the wording of PIPEDA. But, for example, disclosure is allowed for carrying out an investigation relating to the enforcement of any law or gathering intelligence for the purpose of enforcing any such law, not just a Canadian law.

So that's just some background on the issue.

The Chair: Thank you very much, Ms Inions, for that clarification.

Following those comments, Thomas, I think you had a question or comment.

Mr. Lukaszuk: Just so that I can enhance my understanding, Mr. Chairman, through you I'd like to ask the Member for Edmonton-Gold Bar. It sounds like this is a pretty extensive review that the commissioner in British Columbia has undertaken, and it looks like he will be involving many jurisdictions throughout the country, and it's something that may take a significant period of time. So my question to the Member for Edmonton-Gold Bar is: is it his intention, then, that we would hold our report until such time as we redo this investigation in Alberta? It sounds like it could even be a matter of years perhaps.

Mr. MacDonald: Mr. Chairman, when I talked to the commissioner's office late yesterday afternoon in British Columbia, they indicated that there was a substantial interest in this process. They were going to report in the middle of August on this matter, but since there was such interest and a long line of people who were interested in making submissions to the commissioner, they have extended the deadline I believe until the end of September, September 30. So, certainly, it is of interest to the citizens of British Columbia, and I would think we are doing the citizens of this province a disservice because this government is increasing privatization of health care and the citizens of this province have every right to know who has their information and why.

1:20

The Chair: Thank you.

Moving to 6(b), Roseanne, would you like to take the committee through this item, please.

Ms Gallant: Sure. This was in response to Mr. Lukaszuk's earlier

request for a privacy impact assessment. Last time I was only able to provide the template, and I said that I would try and secure permission from a custodian for a completed template.

I've done that through the Alberta Cancer Board in that they've provided their part A and part B to this committee, but there are a number of caveats, so I've provided all of you with the letter that I provided to the chair just so that you would have those caveats in front of you as you reviewed it. So if there are any questions based on that, then I would hope that would satisfy that request.

The Chair: Are there questions?

Thank you very much, Roseanne.

Ms Gallant: You're welcome.

The Chair: Seeing none on that one, I'll move to number 7, and, Mr. MacDonald, you said that you had some other items under Other.

Mr. MacDonald: Yes, Mr. Chairman, but we dealt with it under item 6(a), so at this time I have no items to bring up.

The Chair: Right.

Thomas, did you want to deal with that other report now? You mentioned earlier that you might like to take some more time on the police subject.

Mr. Lukaszuk: Yes, Mr. Chairman. No. That wouldn't be appropriate. If and when we have the police before us, I can then ask them the appropriate questions, and if it turns out that they don't appear, then perhaps I will ask you for a grace of five minutes so I can speak to it.

The Chair: Did the committee get copies of the transmission from Dr. Mitchell? Did you all get copies? Okay. So I'm just tabling that for the committee's information and to go to Wendy and her people as consideration as we move forward, as another submission. Okay.

The other item that I felt I perhaps should make the committee aware of is an e-mail we received from Ms Blakeman, a member of our committee, expressing some concerns about a couple of things. She's concerned about the difficulty with attending meetings during the summer and so on and so forth. Then she says that she feels like there needs to be a wider range of individuals speaking to the committee and gives the name of someone who we might approach. I have given that name to our people, and they are checking that out. We don't know who the person is, but I'm just making you aware that Ms Blakeman has expressed some concerns that we need a wider range of presenters and individuals briefing the committee and, again, the subject of difficulty in making meetings in the summer. We as a committee realized that we had that challenge, and certainly I acknowledge the problem that it's been and appreciate very much those who are making the efforts to attend.

Are there questions on Ms Blakeman's e-mail?

Okay. Date of Next Meetings. You have the dates proposed there through September 14. We did want to do some more meeting dates today. Reluctant to do that with some members of the committee not being here. Perhaps we can leave it until the 24th, but we do need to have you to bring your calendars at least at that date because we do need to schedule some more meetings. Any other comments or suggestions on meeting dates?

Mr. MacDonald: Mr. Chairman, in light of the fact that the meeting on Tuesday was sort of cancelled at the last minute, are these dates,

the four here that are on the agenda, now chiselled in stone? There'll be no more cancellations?

The Chair: Yes, Karen. Would you like to respond?

Mrs. Sawchuk: Mr. Chairman, I believe that the dates coming up now are pretty well spoken for. We've got documentation and information in. Now it's the work to get done to go before the committee. The problem with Tuesday was that the deadline was a week ago Friday, and basically 94 per cent of the submissions came in on Friday, so there was nothing for staff to work on. We were assuming that more would have come in earlier and they didn't, so they basically were working full guns on the weekend.

The Chair: It was my decision to cancel the meeting on Tuesday because of the reason that Mrs. Sawchuk has mentioned, and, Mr. MacDonald, in view of the situation I felt it would be better to not bring the committee in when we didn't have a full workload and a full agenda. I trust that did not cause serious problems. I did it.

Mr. MacDonald: Okay. So I can safely assume that these four dates – August 24, August 25, and September 13 and 14 – are going to be ...

The Chair: Carved in stone as much as it is reasonably possible, humanly possible to carve anything in stone.

Mr. MacDonald: Thank you. Unless otherwise advised.

The Chair: Yeah. Right. We don't anticipate any changes, Mr. MacDonald. We don't.

So, Karen, have we covered everything?

Mrs. Sawchuk: Yes.

The Chair: Wendy, do you have any final comments?
Linda?

Ms Miller: No. Thank you.

The Chair: Roseanne?

Ms Gallant: I was just wanting to clarify. Am I clear from the discussions at today's meeting that Frank would be asked to then present the afternoon of the 24th and he'll be advised of the time by yourself?

Mrs. Sawchuk: Yes. I will be contacting these parties this afternoon and tomorrow morning, Mr. Chairman. We'll be following it up in writing.

Ms Gallant: Thank you.

The Chair: And you will also prepare a letter to go under my signature to the police?

Mrs. Sawchuk: I will indeed.

The Chair: All right.

Again, thank you very much to everyone, committee and staff, for your support today and for the work we've accomplished. I would accept a motion to adjourn. Yes, Mr. Snelgrove. All in favour? We're adjourned.

[The committee adjourned at 1:27 p.m.]

