

Title: **Tuesday, September 1, 1998 Information Review Committee**

Date: **98/09/01**

9:05 a.m.

[Mr. Friedel in the chair]

THE CHAIRMAN: Okay. Let's call the meeting to order. The only reason we're a few minutes late is that I asked Diane to photocopy some information that was requested yesterday and that has just arrived and hadn't had a chance to be duplicated. Maybe we can have that handed out, Diane. I also have a letter from Bob Clark here, but there are copies for each of the members.

Just briefly, yesterday there were two requests. One from Gary Dickson – I believe it was Gary – asked for some statistical information on the number of times that the web site had been accessed for background on the review. Mike Cardinal had asked for a breakdown of the number of submissions by the various geographic areas of the province. While Diane is distributing that – I think everyone already has a copy of the geographical distribution – I guess we may as well proceed. It will only take Diane a minute to distribute that other information. I don't believe it's anything that we need to discuss. It's just for information.

The format of this morning's meeting, as we had mentioned yesterday, will be, first of all, that approximately half of the time allotted – and I'll say up front that we don't have to use an hour and a half. Bob Clark, our Information and Privacy Commissioner, is with us here and some of his staff. The purpose of the visit is that it gives him an opportunity to address concerns that as the commissioner he would have not only about the feedback we've received but just observations that he would have as an administrator of the act. We will be doing the same thing with the Department of Labour staff for the second half of the meeting.

Both of these offices have members on our technical advisory resource team. I guess to a certain extent a lot of this feedback would be ongoing, but I thought it would be advisable to have a more formal part of the meeting so they could actually make observations and comments in a grouping that would seem a presentation rather than fragmented.

This is not a situation where anybody is going to be grilled or anything like that. What I'm hoping it will be is more of a free-wheeling discussion of those kinds of concerns that you see Bob administering where there may be some pitfalls in the existing legislation, things that could or should be added to make things work smoothly and maybe certain things that might even be removed because they're a problem in the administration. The same thing, of course, will apply to the Department of Labour administration people shortly.

So without any further introduction, Bob, I'm going to turn it over to you. If you want to make some introductory comments before we get into questions and answers, then feel free to kind of control this part of the meeting in a way that you feel comfortable that your input has been available to the committee.

MR. CLARK: Okay. Well, thanks very much, Mr. Chairman. We welcome the opportunity to be present with you this morning.

I think you've just been passed a letter addressed to the chairman. Last time I checked, I think there were 14, 15 pages to it. I recall being in a situation similar to members of the committee. Years ago – I wasn't sure whether it was a privilege or a sentence – I sat on a legislative committee. At that time workers' compensation used to be reviewed every five years. Groups would come before you and have a presentation written in longhand and then read the whole thing to you. I quite frankly found that a little insulting, so I don't

plan to do that to you this morning. What I'd like to do is touch on some of our observations following a review of the summary that was provided to us by Alberta Labour the middle of last week. I think at the outset I'll say that Alberta Labour did a great job in summarizing a pretty wide variety of points of view.

Before I do that, I'd like to reintroduce to you Frank Work. Frank is to my left. Many of you will know Frank as the former Law Clerk of the Assembly. Frank is the person who on a day-to-day basis keeps the office functioning successfully and certainly is the commissioner's right hand in that area.

To my right is Lisa Wilde. Lisa is a recent graduate from the University of Alberta. She has worked for us for the past several months and just recently has come on full-time with the commissioner's office. The good parts of what the commissioner's office is doing, as far as the brief is concerned, are Lisa's doing. If there are problems you have with some of those parts, then you can look at me, but Lisa has done a great deal of work in this area for us.

Certainly I say to the committee members that I expect Frank and Lisa to take part in the discussion this morning. I should say to members of the committee also: don't be alarmed if on occasion you'll hear that the commissioner's staff and the commissioner have different points of view. That does happen, and I encourage it. So you'll get a wide variety of points of view when you ask us questions.

At the outset, can I just say this, Mr. Chairman. I think it's important for members to keep in mind that, starting tomorrow, schools in the province come under the FOIP legislation. October 1 hospitals and that whole area come under it. The 1st of January, universities and colleges come under it, and next October the municipalities come under the legislation.

I think it's very timely that we're having this review at this time, Mr. Chairman. One of the recommendations I note in my presentation to you is that I think there's a lot to be said for some regular review of this legislation. I think it would be a mistake if this legislation ended up being like the federal legislation, which has become very, very static, hasn't been brought up to date for years and years and years. I think that's one of the reasons why – I say it very candidly here – the federal Privacy Commissioner's legislation really isn't in keeping with the late 1990s in my view. You'll find in my presentation today that I take a pretty straightforward approach on a number of the issues with you. Sometimes you'll agree with me, and I'm sure there will be other times when you won't.

The first comment I'd like to make is that I think the presentations that have been made to you and our summary of them are that basically the principles of the legislation are well accepted and are appropriate. As I look at those general principles of the legislation, they incorporate to a very large extent what I call fair information practices. If there's really been a guiding rule that's included in the legislation but also every day in our office, it's that idea of fair information practices. I guess to summarize it, you basically use information for the purpose for which it's collected.

9:15

Secondly, might I say – I know members know this, but I'd like to just reinforce it – that 90 percent of all the requests on the access side that come to public bodies are resolved by the public bodies in their own framework, most often within 30 days or, with one extension, 60 days. Compare that to what's happening on the federal scene, where their inquiries on complaints have a one- to two-year waiting list. One thing that we've done, I think very successfully, is to adhere closely to that 30, 60, 90 days. Now, you can point to occasions where it's been longer than 30 or 60 days, but by and large one of our real successes has been to hold to that 30 and 60 days, to the extent where some members of the legal

fraternity have been less than pleased with the commissioner in saying: I'm not prepared to give extensions. I see no way under the act that I can give extensions unless it's very legitimate, and we've certainly held to that.

Once a complaint that comes to our office isn't resolved at the public body level, John Ennis and the other three portfolio officers are successful in resolving over 90 percent of those requests through mediation. They've done a remarkable job for us. Those figures are very comparable to those of Ontario and British Columbia. We likely do a bit better than they're doing in those two provinces as far as the percentage of issues that we're able to resolve.

As commissioner myself, we presently at this time have five orders that are in the process of being prepared. The last of those orders should be out by the middle to the end of October. That compares to a year ago, I guess a year and a half ago, when we had something like 16 or 18 orders and we were some distance behind. We've really caught that up quite considerably now.

One of the things that we do on occasion is hold a public inquiry. It isn't mandated in the act, but it doesn't say you can't either. By and large I've found those to be quite successful from the standpoint of putting the issues before me in public, with both the applicant and the public body being present. I think, quite frankly, it encourages a number of settlements on occasion before we get to the inquiry. On a number of occasions during the course of the inquiry I've said to people: "Lookit; you people are very close to a settlement. I suggest that you take a half-hour recess, and I'll reconvene in half an hour." On several occasions we've been able to get issues resolved that way. If that doesn't happen, then we finish the inquiry and issue an order. I think that process has served us well. I wouldn't want to see anything in the legislation – and I don't believe there were any suggestions there should be – for any changes to that basic process.

As far as the public bodies are concerned – and this really is on page 2 of my letter to the chairman – I understand what they're saying about having concerns how the act is going to impact upon them. My sense is that Alberta Labour and the various departments have done a lot of work in preparing public bodies for when their groups come under the legislation. I'm going to spend a considerable period of time, starting next Tuesday or Wednesday when Frank and I meet with the Calgary regional health authority, meeting with school boards, health authorities, universities and colleges, and groups like that at the senior level and talking about what's involved with the legislation, urging them to take a very commonsense approach to the legislation. What I'm really saying to you is that I understand the concern that various members of the MASH sector have put before you, but I really think it's important to give us a year or two or three to work through that so that we can see how the process has worked.

One of the things that I urge the committee to do – and I do this in the latter part of my brief – is to not try to define very precisely issues such as the public interest. In other areas there are groups that want you to, in my view, put somewhat of a legislative straitjacket on third-party interests. In talking to my colleagues across the country, I understand the desire to have things more precise, but what it does do is it prevents the public bodies and it also prevents the commissioner and the mediators from trying to work out some solutions that are on some occasions novel. They're different, but the system works. I really would discourage the committee as much as I can, Mr. Chairman, from taking advice that says: define the public interest more precisely, be more precise as far as far as third-party interests. I really would urge you to give the legislation another period of time to work in those areas, because I think it can work.

One of the controversial things that I've suggested in my presentation to you would be on page 3, and that deals with urging the committee to look at the recommendation of applying privacy legislation to the private sector. The background there. I know you're all aware the federal government appears to be moving in that direction. Whether they're going to be successful in doing that, I don't know, but that's the move that the former federal Minister of Justice announced I believe two or two and a half years ago. The target date to have that legislation in place is for the middle part of 1999. I know the Deputy Minister of Labour is able to comment on the negotiations between Alberta and the federal government in that area. But that's the federal timetable.

I would make one more comment in that area, ladies and gentlemen, and that is that the European Community has a privacy directive that covers the private sector, and that privacy directive is coming into place in the middle part of 1999. The gist of that privacy directive is that the European Community says that companies cannot deal within the European Community unless they have privacy legislation in place that is at least equal to what they have in Europe. Whether or not they will be able to force that upon North America I don't know. My sense is that Canada is anxious to move in that direction to do that so that it makes it easier for commerce to be done between Canada and the European Community.

If Alberta opts not to move in this direction, you should look at the implications of Alberta companies dealing with companies in Europe who are involved in the business of personal information. Those Alberta companies would have to then work out a separate arrangement satisfactory to the European Community before they'd be allowed to do business in Europe, and I think the committee should seriously consider the implications of that. It may be something, Mr. Chairman, that your committee may want to have a small task force or something look at, to look at the implications for Alberta business, because there are, as I understand it, an increasing number of Alberta-based businesses who are doing business in Europe, and I think it could be extremely difficult for them to deal with this directive unless there's some commitment nationally and in areas of principal jurisdictions provincially to at least the CSA standards. I raise that with the committee because I think it's a matter that others may not raise. I think it can have significant implications on the Alberta-based business community. The magic time, as I understand it from the European Community, is the middle of 1999 that that directive is coming into effect.

I have had some experience with some of the airline companies. I've listened to some of the airline companies talk about their negotiations, American airline or world airline companies centred in the U.S., where they've had to work out their own private arrangements with the European Community to enable them to meet that criteria by the middle of '99.

What I'd like to do now, Mr. Chairman, is move on rather quickly to the issue dealing with Alberta registries.

THE CHAIRMAN: Bob, before you do that, just one question.

9:25

MR. CLARK: Sure. Please feel free to stop me anytime. I've got about another five minutes and I'm finished.

THE CHAIRMAN: The comments you made about the European Community getting involved in this privacy legislation. Do you have any idea how the United States or the various states in the United States are reacting to that or may move?

MR. CLARK: Gary, my idea there is the U.S. is planning not to do

anything. Now, they're really saying that the Europeans won't stop doing business with America. My sense is that Canada is taking a different approach. You all know that Quebec does have legislation affecting the private sector in place in Quebec now.

John Ennis and I were at a conference in Montreal last year where we heard very pointed exchanges between the Europeans and the Americans. The Americans were certainly somewhat divided at that conference. My understanding from my contacts in the States is that they're still divided, but I'd be very surprised if the Americans move as far as the Europeans want them to. John, is that a fair assessment?

MR. ENNIS: That's how I would do it.

THE CHAIRMAN: I'm just wondering if this wouldn't be something similar to metrification, where Canada rushed in to be part of that system and then the United States decided it wasn't very practical from their point of view. So now we're caught in the middle.

MR. CLARK: I think though, Mr. Chairman, I have an obligation to raise it with you so that it's one of the issues you explore during the course of the review, so that whatever position the committee takes, you understand at least the clouds as far as Europe is concerned.

THE CHAIRMAN: I can appreciate that.

MR. WORK: Mr. Chairman, as Bob mentioned, absent legislation, some of the larger American companies, because of the nature of their business, have to share personal information on a worldwide basis, like airlines obviously. If you're going to make a plane reservation to fly from here to Frankfurt, some of your personal information is going to move with that. Airlines, credit card companies, financial companies by their very nature tend to move people's information from – you know, they ignore borders basically. American-based companies in those lines of work, like Delta, which has the Sabre system for reservations, and American Express, have actually created privacy agreements that they've signed with the European Community. So American Express sort of has their privacy agreement which is kind of their governing privacy act that they have told the European Community they will adhere to in terms of handling the personal information of Europeans. On a spot basis that seems to be acceptable in Europe.

THE CHAIRMAN: I think we'd want to look at whether or not companies that are doing business in Europe and that would be affected by this have other options of compliance that would not preclude them from working there, being part of the system, unless this became totally universal. I think we have to look at the implications pro and con. I have to say at the outset that I am extremely leery of getting into the area of legislating in the private sector for this kind of thing. If it is absolutely essential that this is the only way that business could be conducted, then I would look seriously at it.

I certainly appreciate your comments, Bob, because they are heads up that this is happening, and any decision we make should be done in full awareness of the circumstances. But I can tell you that I am extremely reluctant to get into that area of, again, government intervention.

I see Gary has his hand up.

MR. DICKSON: Bob, just one thing I wanted to query. I under-

stood you to say that you thought Canada would at least have to meet the CSA standard. I wonder if we can just clarify. My understanding of the EU privacy directive was that what would be required would be legislated standards with recourse to some sort of a complaint resolution office. The CSA standard, of course, doesn't have any legislative underpinning. Is it your sense that right now, without modification in the EU privacy directive, if we just implemented the Canadian Standards Association, we would be compliant?

MR. CLARK: No. There would have to be some dispute settlement mechanism, as I understand it, Gary.

If I could move along. I've taken longer than I expected. One of the issues that was raised in the submissions to me – I'm slipping along now to page 8 – deals with the fees issue. Oh, I'm sorry. Page 4. I've just been advised that mine's double spaced and yours isn't. Anyway, it's the issue dealing with fees, the middle of that page. There's no consensus as we looked at the submissions you've got. My sense, by and large, is that the fee arrangement is working as well as it can. I think you should basically leave that where it is. I think there's discretion at the head of the public body. There's also discretion of the commissioner if there's an unreasonable burden placed on an individual and preventing that person from getting information. That's my sense there.

On the issue of rights to third party – and this would be on my page 9 and about your page 5. That's an area where I think the legislation, along with the test that we worked out, is working well. I'm sure most of you know that the greatest user of the access legislation in the past number of months is the private sector, more so than special interest groups, more so than elected officials, more so than other groups. One of the compliments our office has received from a number of the private-sector people is that when you compare the amount of time it takes to get information in Alberta to other jurisdictions in Canada, 30 days means 30 days, 90 days means 90 days, and yes, there are some exceptions, but we've been able to move things along briskly. It's certainly my intention as commissioner to keep that reputation, that we need to move things along quickly.

MR. CARDINAL: Just a question before you move on to your usage. I don't know if you're allowed to release this information, but I'm curious where the usage is. Is it Edmonton, Calgary, or rural Alberta?

MR. CLARK: My sense, Mike, is that the commercial usage would primarily be Edmonton, Calgary, although I don't have that figure. You may have that information in front of you, but I haven't got it. My sense is that a large number of individuals who make individual requests would be from outside Edmonton and Calgary. The corporate requests: a lot of them come through law firms. So on several occasions you don't know who the client is. We have no reason to need to know who the client is. On privacy issues they're from all over the province.

MR. CARDINAL: Okay.

MR. CLARK: On the question of protection of privacy, once again I'm of the view that I think the legislation is working well in that area. One of the issues – if you haven't heard, I know you will – is the issue of peer reviews. We're meeting with the Calgary regional health authority next week. People from the Calgary regional health authority are meeting with my staff on Thursday of this week dealing with that issue. I think right now the best thing

I can say to you is that we realize it's a serious issue. I understand some of the doctors in Calgary have refused to sit on peer review committees starting the 1st of September. I'd like to ask Lisa and Frank to comment on this. There are some people who think there should be a paramountcy provision made; others have suggested amendments to the Alberta Evidence Act; others, amendments to the health act.

Frank, you've been dealing with this on a day-to-day basis. Where does that one sit?

9:35

MR. WORK: Yeah. We met with some people from the Calgary regional health authority. I guess, as Bob said, it's a concern with physicians throughout the province, but it seems to have manifested itself strongest in Calgary, where the doctors have said: hell no, we won't go.

In a nutshell, doctors are concerned that when they sit on a hospital committee to review the actions of a colleague, under FOIP the proceedings of that committee will now somehow become available to the public. So if I'm a doctor at the Foothills and something goes wrong during a procedure or surgery, the hospital under the authority of the regional health authority will convene a peer review to look at what I've done and assess it.

Now, this isn't professional discipline, keep in mind. This isn't the college looking at me to see if I should be disbarred or whatever the medical equivalent is. This is an educational quality control kind of procedure. There's no liability attached to it, and there's no punitive element attached to it, but the doctors who participate in that are very concerned that in the course of what they want to be a very full and frank conversation about what went wrong, if the transcript from that or if the proceedings from that review were to become public, there could be liability issues. In other words, either the person who was unfortunate enough to have the procedure go wrong on them – touch wood – or their heirs might want to sue someone. They might very well want to know what the other doctors said about my procedure in this matter. I think I got that right.

MS WILDE: That's right.

MR. WORK: Okay. Thanks. Lisa's been dealing with the health technicalities.

So their concern is: how are those things going to be kept from public disclosure under the FOIP Act? Well, there are a few possibilities we've suggested to them. We're meeting with them again, as Bob said, Thursday. Some CRHA people are coming up here, and then Bob and I are going to Calgary to talk more generally with the board of the CRHA next week.

Well, where are we with solutions then?

MS WILDE: Well, one thing I'd like to mention is that the B.C. commissioner has dealt with this issue but in regards to college peer review committees. Now, this is the College of Physicians and Surgeons; it is not a hospital peer review committee. So there is a difference there. Regardless of that, some of the same principles still apply. The B.C. commissioner basically refused to disclose information under three exceptions. Now, they're akin to section 22 of our act, which is the "local public body confidences" exception; section 19 of our act, which is the "disclosure harmful to law enforcement" exception; and section 16, which is the "unreasonable invasion of a third party's privacy" exception.

Now, those exceptions could apply to a situation here in Alberta, but at this point in time we don't have enough information as to who is sitting on these committees, what legislation gives these

committees the right to speak with these doctors to review their conduct, and what sort of sanction these committees can actually impose on the doctors. Those are all important issues that we have to look into before we can come to a conclusion.

MR. WORK: So the next step is that the CRHA – I guess Dr. Brown is coming up. No. I've got the name wrong.

MS WILDE: Dr. John Garrell.

MR. WORK: Dr. John Garrell is coming up from CRHA. He's going to tell us how these peer reviews work. You see, as Lisa said, what we need to know is the information flow. Are there transcripts? Are there reports? Are there minutes? Who gets them? Are they actually documents that are under the custody and control of a public body so that they could be requested under the act? What do they contain? Are they verbatim transcripts, or are they summaries of what went on? Or maybe there's nothing. Who has the authority to constitute the review? Is it the CRHA or a department head? I think once we've sat down with at least this regional health authority and the doctors who are concerned about this, we will have one of two things. So by the end of next week we'll either allay their concerns or we will know what the solution is, what to recommend by way of a legislated solution if we can't allay their concerns based on the kinds of things Lisa just mentioned.

THE CHAIRMAN: Gary Dickson had a question on that issue.

MR. DICKSON: You wouldn't have seen the *Hansard* from yesterday, but in fact we had a discussion about peer review and addressing the Alberta Evidence Act.

MR. CLARK: You resolved that; didn't you?

MR. DICKSON: Well, except that the majority decision or the inclination yesterday had been to hold off and not deal with this on some kind of an urgent basis. I just wonder if I could ask whether you think there would be any value in the committee addressing this, because October 1 is the operative date from the point of the regions. I'm wondering if there would be any value in the committee addressing this on an urgent basis short of the final report.

MR. CARDINAL: Mr. Chairman, before Bob gets a chance to answer that, I'd like to comment on that issue as a member of this committee.

THE CHAIRMAN: Okay. Then Ron.

MR. CARDINAL: One of the issues we have to watch as a committee is we have a specific assignment. It's very clear as to what our mandate is, and unless the minister requests and changes and gets approval to change the direction of our committee, then we really have no authority to be addressing issues, regardless of how urgent they are. I think the minister is ultimately responsible to deal with issues of that nature. If the minister, you know, through cabinet or colleagues decides that they need to give us additional responsibility and immediately requests an answer within a short period of time, then yes, it's fine. But our mandate is clear-cut, and I think we should stay within our mandate. I don't want Bob to be put on the spot to respond one way or the other, because it's really not fair to him to have to respond to a question as to how serious the issue is. We know the issue is probably

serious, but the minister has that ultimate responsibility.

THE CHAIRMAN: Ron, did you want to comment, or was yours a different question?

MR. STEVENS: Mine's a related but different question.

THE CHAIRMAN: Okay. Maybe I will also before you do get put on the spot, Bob. My observation yesterday, when it was raised, was that this was more an administrative issue, because our mandate is to review and make recommendations on how the act and possibly the regulations around it would be amended. While we certainly would be influenced by things that go on around us as we're doing the review, that would be more part of a recommendation for remedial work afterwards. I don't believe that our mandate or authority extended to making suggestions on emergent and urgent resolution to a problem at hand.

MR. CLARK: My colleague tells me that we expect within two to two and a half weeks, three weeks to know where the issue sits from the standpoint of our discussions with the Department of Labour and the Department of Health and with the regional health authority. Mr. Chairman, if at that time it's my view that an amendment is needed to the act, then we'd put a supplementary submission in to you. I only raise it because it is an example of, I think, a number of the issues that local public bodies are going to be presenting to all of us over the next year as they get used to the legislation affecting them.

MR. WORK: We told the docs, the doctors – I've gotten into the bad habit of calling them that from a committee I was on. We told the doctors that we'll talk to them over the next two weeks. By the time we're done, we will tell them up front the extent to which we think these things are exposed under the act, and if we think the exposure is significant, we also agreed that we would propose to them what kind of legislative amendment might be needed to deal with it. As Bob said, I can't think of why they would object to that information being given to this committee, if that's your wish. I mean, whatever letter analyzing the thing we give them, Gary, if that's what you had in mind, if they're agreeable, we could pass it on.

Where this comes from is under section 51 of the act. The commissioner is allowed to give advice and direction under the act, so they have a right to ask for this, and the commissioner probably has an obligation to tell them how he thinks it's going to sort out under the act. As you quite rightly said, Gary, it's an administrative problem under the act, and that's how we're going to attack it.

9:45

THE CHAIRMAN: I think it would be appropriate if, as you're going through the process, something comes up that would suggest that an amendment might be appropriate. We've taken the stand that even though the call for submissions had a suggested deadline of June 30, anything that came to the committee's attention, literally up to the point where the ink was dry on the report, would be considered. So as long as we haven't got to that point and if you see something that might improve the housekeeping, we'd certainly appreciate that.

MR. CLARK: Could I just make two last comments really, really quickly and then any other item you want to raise. On page 6 of the letter to you, the second paragraph. Recently I did an order that dealt with WCB, and flowing from that, there'd been a number

of requests for me to review the same matter, virtually the same matter only for a different individual, and we've had extensive discussions in the office as to whether there is a way in which the commissioner can say: no, this matter has been dealt with. I'd like you to seriously look at making some changes to the legislation there that would clearly allow the commissioner to say: no, this matter has been dealt with. The commissioner would certainly have to be very satisfied the matter has been dealt with, but failing that, if someone really wanted to – and there's been a bit of a move on this in British Columbia – you can almost submarine the commissioner's office by making the same request from different people. That's just not good public policy administration, and it isn't the intent of what we're doing. I notice the Liberal caucus made that point in their submission, and I strongly urge you to seriously consider that.

The last comment I want to make – and it deals with the last paragraph on that page – deals with allowing the commissioner to delegate some of his responsibilities. With the MASH sector coming on, it's going to be important for the commissioner to be able to delegate some of the responsibilities. Clearly, ladies and gentlemen, the commissioner is still accountable. He's a person who's accountable to the Legislature, to the Leg. Offices Committee, to the elected members, and to the public. In no way am I trying to say that the commissioner shouldn't be accountable, but in practical terms it's important for the commissioner to be able to delegate.

Mr. Chairman, perhaps I should stop there. I've taken more than my half hour; haven't I? I apologize.

THE CHAIRMAN: Okay. I have Gary Dickson and Ron. Ron, you had your hand up first.

MR. STEVENS: Well, I had a question relating to that earlier.

THE CHAIRMAN: Oh, I'm sorry. I apologize.

MR. STEVENS: That's okay. I've got a good short-term memory, so I still think I've got a grasp of what I want to ask.

Dealing with the problem that you alluded to at the CRHA and the process you're going through, I was wondering if you could clarify for me that what you're trying to do is establish the facts surrounding this issue so that you can effectively publish an advance ruling or an order. Is that one of the options that you're looking at?

MR. CLARK: That's one of the options, Ron, that we can do. Another option is that at the end of the day, in two, two and a half weeks, we can say this matter may need, in our view, legislative amendment, that you should approach the Department of Health or the department of the Attorney General. But we're trying to give under that section of the act the best advice we can to the CRHA.

MR. STEVENS: Just so I have a sense of the dynamics of this. From where I sit, it sounds to me like you have set legislation and regulation, and you know what that is. It's a matter of finding out what the facts are surrounding this particular situation, which will allow you to make a ruling as to whether or not the protection that is being sought by these folks for peer review is in fact, in your view, available under the current legislation, and once you've come to that decision, then there may or may not be an issue that has to be dealt with legislatively.

MR. CLARK: Yes. And my responsibilities, I appreciate, stop exactly there.

MR. STEVENS: Right.

MR. CLARK: I guess I've asked you the question: would it be responsible on this office's part to simply say, "We don't have a solution," or "You're not protected," without attempting to help them move in the direction? I don't know. We try to do that on occasions.

MR. STEVENS: From my perspective it would be important for people to know what your conclusion was.

MR. CLARK: Okay. I'll take that under serious advice.

THE CHAIRMAN: Thanks, Ron.

MR. DICKSON: Kind of a process question, Mr. Chairman. We've been talking about Bob's September 1 letter and survey, if you will, of the submissions that have come in. Are we going to have a chance and is this the time we can go through the actual formal submission from the IPC, the one that goes through and talks about a series of amendments and changes? I've got a number of questions related to that, and I wondered if we're going to have an opportunity to do that or if this would be the appropriate time and forum.

THE CHAIRMAN: Well, I wasn't planning on going through the entire submission at this time, but I would say that since he's here, it would be a very opportune time to ask specific questions that you have. Otherwise, we may run out of time.

I'm assuming that the presentation, your letter of this morning, highlighted areas that you had specific concern about, Bob, relative to all of the submissions, that there may be concerns that you had on your own initiative that were submitted in the initial presentation, and at that time you wouldn't have been aware of what other ones came in. I'm hoping that we don't have to go through it point by point.

MR. DICKSON: Mr. Chairman, I can assure you. There are 16 specific recommendations, and there are only three or so I wanted to query. The first one has to do with page 7 of your submission, and this has to do with the issue of police services. I expect you'll remember that there was an interesting debate in the Legislature in 1994 around this issue, where there had been a question as to whether the police were adequately covered in Bill 18. There was an amendment ultimately accepted by the Legislature which is currently reflected. What's interesting is that I saw some material put out by Labour which suggested, questioned that the amendment was there but wasn't sure that the police weren't already covered before the amendment.

So now I'm just wondering if you can help us understand. We thought we had the police services caught in Bill 18 in 1994. The amendment was in to ensure that police services were caught. Now the suggestion is that we're going to have the police commission as one public body and the police service as another public body. I have some problems with that. It seems to me the commission has only one purpose, and that's the civilian control over the police service.

9:55

MR. WORK: Yeah. I don't think there's any question that police departments are subject to the act. I mean, that's a certainty, at least in our minds. What's happened is that the police departments are actually a little bit – we've had at least one and maybe two orders involving police information. As a result of those, the

police departments are very anxious about police commissions being their freedom of information authority, if you will. It's not a matter of anything wrong or anything not being covered. It's a matter of the police saying to us: could we please be regarded as a public body in and of ourselves so that we can deal directly with the public who want access to our stuff?

The way it would stand now, if I wanted to make an access request to the city of Edmonton police department records, I would make that request through the Police Commission, and then presumably the Edmonton Police Commission would have a FOIP co-ordinator who would receive my request. The Police Commission's FOIP co-ordinator would then have to go to the Edmonton Police Service and find the records and analyze my request in terms of the records. That information would come back to the Police Commission's freedom of information person and then out to me. The police are saying, you know: "Could we just do that ourselves? If you want police information, you apply directly to the Edmonton Police Service."

MR. CLARK: I also had a submission. I met with the chiefs – oh, it would be several months ago now. The issue was put to me squarely this way. What if we're doing an investigation of a member of the Police Commission? Should the Police Commission then be responsible for the handling of that information on a FOIP request, or in fact should there not be a separation of the police department itself and the commission? That was the issue that was placed squarely before me.

MR. WORK: So the bottom line is that I think it makes sense to us, what the police services are asking for, and unless we've missed something, I'm not sure that there's a downside to that. I mean, they're both still under the act.

MR. CLARK: They're both under the act; there's just a separation.

MR. DICKSON: If I could just make a follow-up comment. I guess the thing is that the police commissions even in the bigger centres maybe have a couple of staff people. I mean, it's really just a committee of civilians and a chairman.

MR. WORK: Yeah, they're small.

MR. DICKSON: So all of that's going to be done by the police service anyway. I mean, there wouldn't be a sort of FOIP co-ordinator. The police commission would ensure as the supervising body that the commission had a FOIP co-ordinator who would still deal with it, and it just seems to me – I'm trying to think. It's like taking a department or another public body and saying that we're going to deal with a particular hospital, for example in the Calgary health region, and this RHA is going to be a public body and say that a hospital over here is a subpublic body.

MR. WORK: There is a significant difference, I think, for the police, and that is that as it stands now, most of the decisions under the FOIP act are always made by the head of a public body, and that's whose decision is appealed to the commissioner. Presently, the head of the police public body is going to be the head of the police commission, not the chief of police. It's going to be the head of the police commission. I think what the police services are saying is: for our nitty-gritty, detailed, investigative-type information, we would like to have our guy, our chief, be the head of our public body.

Maybe an analogous situation is that the Department of Labour is responsible for the Workers' Compensation Board under the

legislation, but the Workers' Compensation Board is its own public body under FOIP, and the chairman of WCB or their delegate makes the FOIP decisions for WCB, not the Minister of Labour. The Minister of Labour makes the FOIP decisions for the Ministry of Labour. They're both still under the act. I don't know if there's much more to say than that, but I think that's our sense of where the police are coming from on that.

MR. CLARK: While we're talking about law enforcement matters, in my initial submission and I believe in the one today, too, I raised the question of: what about the RCMP detachments? Are RCMP contracts under the legislation, or are they not? I think that's something where we need some clear direction in the legislation. As you talk to the RCMP, they have several interpretations of that.

THE CHAIRMAN: I gathered from the submission that clarification was required.

Okay. Any other questions? Another one, Gary?

MR. DICKSON: Yes. The Ontario commissioner's office, your counterpart there, has been pressing for a law that would prohibit institutions from giving private-sector vendors exclusive distribution rights to government data if such an arrangement impaired the right of the public to access such information. This is sort of George Samoil's group, and they're overseeing practices in terms of government selling information. I'm wondering if that's a concern in this province, whether that's a matter that the office of the IPC has looked at, whether you've offered any advice to the information council around that.

MR. CLARK: Frank, you sit on the council.

MR. WORK: I'm not sure what kinds of things they'd be getting at, Gary.

MR. DICKSON: Well, presumably it would be that you couldn't have an exclusive monopoly to sell statutes of Alberta or regulations or orders in council or discussion papers if you're charging fees that would impair public access.

MR. WORK: We've generally taken the position – and I think that's one thing that this government is trying to do. Be proactive and then make stuff available. We're not particularly fond of exclusive rights to that if it means the cost will go up, because if it's expensive it becomes less accessible.

On the other hand, there are situations for some kinds of government information that is very expensive, aerial photographs for example. I remember there was a case where someone in B.C. made a FOIP request to get all the aerial photographs, and their complaint was the cost of this. The commissioner had to wind up saying: "Well, these things are just inherently expensive. I'm sorry that they're \$3,000 per square mile or whatever, but that's just the way it is. We don't expect government to eat that kind of cost."

Other than that, the registry stuff I think is still accessible at reasonable fees. Tax assessment stuff by the municipalities is still accessible, land titles, PPSA. The Queen's Printer, we wouldn't even give them an exclusive with the commissioner's orders. We told them: we'd be delighted for you to carry them for us, but we'll post them everywhere that we can. So the bottom line is that we're not aware of a problem, but we would not want to see cost be prohibitive to access.

MR. DICKSON: One last question, Mr. Chairman, if I might. I

wonder if you can just offer some comment on what I see as a bit of an issue. You've made a recommendation that self-governing professions ought to be included in FOIP. On the other hand, when it comes to motor vehicle registries, you've said that what we want is a level of protection of privacy, but they can do that under the Motor Vehicle Administration Act. Now, the Law Society has made a pretty powerful submission that says in effect: "We'll have a parallel setup. I mean, within our own rules and our own statute, the Legal Profession Act, we'll ensure that fair information practices are respected. We'll ensure there are access provisions and adequate protection, and we'll do that under our act." Other people made the recommendation too. The net effect of the two recommendations is that we would say to motor vehicle registry offices and so on, "It's okay to do that under your own act," but to self-governing professions we're going to say, "We're going to bring you under FOIP." You may not agree there's a conflict there, but it just seems to me to represent two fairly different kinds of approaches. I think there are compelling arguments on both sides, but I'd be interested in any observation we've got around them.

10:05

MR. CLARK: I never looked at it that way, to be very candid with you. We looked at the issue of motor vehicles information, and at the end of the day it came down to us saying: lookit, let's apply the freedom of information practices to that particular piece of legislation. To be very candid with you, Gary, at least in my deliberation on the issue I didn't look at the consistency issue across the board. You may very well have a good point, one I'd like to consider, but it isn't something that – I didn't notice the inconsistency at the time. I'm not prepared to admit or to say today that it's an inconsistency, but it's something I'd like to think about.

MR. DICKSON: Well, it's our problem, not yours. It's one of the things we're going to have to wrestle with at the end of the day. Certainly there are going to be groups that have a very keen interest, and I anticipate the argument.

MR. CLARK: Lisa I think perhaps has anticipated some of the arguments.

MS WILDE: Yeah, I just have one brief comment regarding that. It's not that we don't want the registries to come under the act. I mean we would love for all the registries to come under the act and be subject to the principles under the act. However, the problem with the registries is that there is currently a process in place. The legal and business communities currently use these registries to access information, and they usually receive that information under very short time lines. Now, if these registries were brought under the act, the time lines would increase substantially, and it could virtually halt commercial transactions in the province of Alberta to a certain extent. That is why registries were sort of singled out, and we suggested that the Motor Vehicle Administration Act and other pieces of legislation deal with each of these registries separately.

MR. WORK: Yeah. It was like if it's not broken, don't fix it. I mean for land titles you go and you get your title search. It works and it's quick. Well, it used to be 10 minutes when I was practising law if you sent a student down, but it's different now. [interjections] It's now an hour? Okay. And, you know, personal property security registry. I mean these things have their own access regime, and they work.

MR. CARDINAL: How come the bill is so high then?

MR. WORK: Well, I had to think about what to do in the first place, you know, and the meter was running while I was thinking. So I mean the process is there, and they work.

I'm not sure, Gary, what the Law Society is suggesting they'll do. If they're suggesting they'll set up a registry of complaints of people who have complained to the Law Society about lawyers and you can go and do a lawyer search like a title search – say Gary Dickson, who's lodged a complaint recently. I mean, I can't imagine why they'd want to do that.

MR. DICKSON: If I can, Mr. Chairman. I've had the opportunity of reading the Law Society brief. You probably haven't; we haven't seen it. I use that as one example; there are other professions who may make a similar claim. They go through it in great detail and talk about all the different access provisions that exist in the legislation and the practices in their code and bylaws. It's their argument, and they're saying in effect, if I can paraphrase: "We accept fair information practices. We accept that people should be able to access. We accept the responsibility we have as a self-governing profession, but this is the way we're dealing with it, and what we don't need is another overlay of bureaucracy and so on."

MR. WORK: The one thing they're missing though – and their process may be very good. I mean the bottom line is that if a profession is important enough to the public that you folks have seen fit to legislate it – doctors, lawyers, health professions – then our submission is that it's important enough to be accessible and accountable. It seems to follow that if it's important enough to be governed, it's important enough to be accessible and accountable. They may well have very good processes by which they are accountable to their clients and to their public, but the one thing they're missing – and you mentioned it yourself, Gary, with respect to the Europe/U.S. situation – is an independent review.

Okay. If I go to the Law Society and I want to know how the Law Society dealt with this bad lawyer I had an experience with, at the end of the day it's the Law Society or the benchers who are going to tell me what I am and am not entitled to, rather than an independent party. I think that's the one ingredient they can't provide under their own system. Their own system may be really good, but that's the one missing thing.

MR. DICKSON: It's also missing from the registry offices, isn't it?

MR. WORK: Well, yeah. But, see, for the registry offices the legislation says what's available, like under the Land Titles Act it lists all the things you can have. There's not much discretion at work there. Under the PPSA when you go to do a search – you're going to buy a car and you go to do a search to see if there's a lien on the car or a mortgage on the car – the act says what the registrar can give you: the serial number, the name of the owner, the name of the bank. There's not much discretion at work there. It's not like the registrar can say, "Well, Mr. Friedel, I'm not going to tell you who the owner of this car is." So I don't think there are many things you need to appeal under the Land Titles Act, PPSA, and so on, whereas with the Law Society there might be.

MR. DICKSON: Thanks very much for the explanation.

THE CHAIRMAN: Okay. Are there any other questions or comments or observations?

MR. CLARK: Please keep in mind, Mr. Chairman, that what we've

done is we simply went through the submission Alberta Labour supplied us. We haven't gone through any of the submissions in a great amount of detail. Can I be so frank as to say we're busy. If there are certain submissions that you've got questions about and you want our reaction on them, great, but it wasn't my intention to have the staff go through every submission even if they were available to us. John, I know, is a resource to you people, but it wasn't my intention to go through every submission and comment on every recommendation. If that isn't appropriate, now is as good a time to tell me as any.

THE CHAIRMAN: No. That was my understanding as well, that you have staff members that are involved in the technical committee. They would become aware of certain issues as they arose. And my earlier invitation was that up until the time the report is tabled, if you have some concerns from the administrative point of view or any point of view that you have on these, we would certainly welcome them, because probably along with some people in the Department of Labour you would be more cognizant of this act than anybody else except maybe Gary Dickson. I think he lives with it.

MR. CLARK: Alberta Labour have to live with the day-to-day challenge. We get the 10 percent. That's a part of our responsibilities. We have other responsibilities too.

THE CHAIRMAN: Frank, you had one last comment you wanted to make?

MR. WORK: Yeah. I don't know if there are more questions. The commissioner already mentioned this, but I'd like to underline it sort of from the point of view of someone who's more concerned in detail with the kind of nitty-gritty of the law. I understand you're hearing from government departments later on, and we anticipate you will get a lot of requests: please make this clear; please make this exception to disclosure more specific; please make this more certain. They may have some legitimate concerns. I know so-called briefing books have been a huge concern among the civil service, and I'm not saying their fears are groundless, although there is an access argument there, an accessibility argument.

The point I wanted to specifically make to you is that when you're asked to make things more specific, to make things clearer, the downside of that is you will take away the commissioner's ability to be flexible. Lord knows it is impossible to predict the kinds of access requests you get. I mean, it's anything under the sun. To the extent that you recommend to the Assembly that they word very specific, detailed kinds of provisions regarding what is and is not available under the act, the more you do that, the more you reduce the commissioner's flexibility and his ability to adapt to new situations.

So just a plea for some temperance when you get what we anticipate will be many requests from the government to tighten up the act, so to speak. From our point of view, flexibility is very good. Even though people don't like it because there is a degree of uncertainty inherent in it, we think it's a good thing to have.

Thank you.

10:15

THE CHAIRMAN: I have Ron and then Gary.

As to your comment, I'm assuming what your cautioning is that if there is a situation in the act where clarity is required so there's no misunderstanding as to what the intent is, that should be clear, but don't try to dot every i and cross every t to the point where one



size fits all, cookie-cutter kinds of rulings are expected and there's no discretion and no room left for common sense after that point.

MR. WORK: Thanks for taking 30 seconds to say what I took five minutes to say. I appreciate it.

MR. STEVENS: Bob, I know in your opening comments you made a reference to public interest. If I heard you correctly, you said to leave it as it is, that it's working okay from your perspective. Yesterday I asked a question which was basically that I need more help with this particular issue. People are asking for a clarification of what public interest is. Gary Dickson said that there were a couple of decisions from your office which would clarify that, and I believe they will be provided to me.

MR. CLARK: I wouldn't say "clarify," but they will help. It's kind of a work in progress I think.

MR. STEVENS: Yes. All right. I take it this is one of these areas that from your perspective is better left open so that when you have specific fact situations, you can comment on those, and over time you envisage that there will be better understanding of how the public interest aspect works in this legislation.

Having said that, then how does your office or how does the process, if it's beyond your office, work so that people who have this public interest issue before them as part of dealing with this legislation on a daily basis get informed and educated on that issue, if it is based on decisions out of your office?

MR. CLARK: We have tried and perhaps can do a better job of circulating the two or three orders that have dealt with this. In one of the very early orders I think we set out 12 or 14 I wouldn't say principles but indicators, at least, as to how the commissioner's office would look at whether it fit the public interest section of the act or not. We try to get those out to as many groups as we can. We've touched on that in our annual report. That's basically the approach we've taken to date.

My recollection – Frank, please correct me if I'm wrong here – is that we're the only province in Canada that has a section this broad in the legislation. We're pioneering in this area, not as fast as some people would like us to but faster than others would like us to, which maybe isn't all that bad. We've attempted to get this information out in the hands of as many groups as we can. If you have any suggestions for us, please help us along in that area.

MR. WORK: Part of our dilemma was – section 31 of the act that Bob's talking about says that the head of a public body has a responsibility to tell people about public interest things. Now, you'll notice the police are using this section quite a bit, where they're giving notice that a certain individual is being released from custody on a certain day, and the police under this section 31 will either tell specific individuals who they think may be at risk or they'll tell the whole community. So what's happening – and I think Ron's question was headed in this direction – is that the police are the ones that have to make this public interest decision. It's the police that have to decide: Frank Work is being released today; is it or is it not in the public interest that we tell people that Frank Work is being released from prison today? They're saddled with that task under the act.

I remember the first time the commissioner dealt with it was to say, well, maybe that's as it should be, because under the act most heads of public bodies – now, that will change a little bit with the MUSH/MASH sector – are like ministers. Maybe that's the way it should be. I mean, maybe those elected people are in the best

position to say what is in the public interest as opposed to the commissioner. I think the commissioner has taken a very credible run at giving guidance on public interest, and then Justice Cairns helped that process along in an order he adjudicated for the commissioner. But at the end of the day if anyone has to wrestle with that octopus, maybe it should be the people closest to the public, which would be heads of public bodies, whether they're ministers or reeves or chairmen of school boards or what have you.

MR. CLARK: What I'd do, Ron, if it would be helpful, is get Lisa to put together the work we've done in that area and make it available to you so that you could reflect on that.

MS WILDE: I actually have three orders along with me here today, so I'll give them to you after.

MR. STEVENS: Thanks very much.

MR. CLARK: Just a very specific example. We just had a complaint come to the office within the last 10 days about an individual who was being released and he was named by a police force. This individual is complaining that he should not have been given such attention. One of the portfolio officers is now investigating that complaint. In addition to talking to that person, he's talking to the city of Edmonton and the city of Lethbridge police departments and will have to come to some conclusion in responding to this request and investigation.

THE CHAIRMAN: Okay. Gary.

MR. DICKSON: Yeah. We have pretty strict time limits in the act now in terms of when you apply for a review by the commissioner. You mentioned Justice Cairns. You remember when we had the adjudicator. When we're in that situation – hopefully it doesn't happen very often – it's usually important and the time limits go out the window. We wait for a request to go to the Minister of Justice, who then goes to the Chief Justice to appoint somebody. I mean, we could be looking at a five-, six-month delay. It was quite long on the Premier's Hong Kong itinerary thing from a couple of years back.

Have you got some suggestion in terms of how that can be nailed? I don't know how you tell the Chief Justice that he's got to appoint somebody within 15 days. Do you understand my concern? You must have given some thought to a practical way of making it less open-ended, respecting the independence of the judiciary but making sure that if you're the applicant, you don't forfeit all of those rights, if you will, or time limits and things like that when you end up in that kind of situation. How do we deal with that?

MR. CLARK: We've tried to grapple with that. I mean, the best thing that we can do is for me to make my decision as quickly as possible, that, yes, I'm going to ask for an arbitrator, to get that request to the Minister of Labour, who's the minister responsible, and then really, Gary, to a very great degree the next step is for the minister to discuss with his colleagues, I suspect, and then ask the Chief Justice for an appointment.

I understand your frustration as an applicant, Gary, but at the end of the day I think it was a very worthwhile process. Albeit it took longer than you would have liked it to, I think you enjoyed your time before the member of the bench and the chance to question the Deputy Minister of FIGA, I believe it was, at the time. I thought the member of the bench's decision, Mr. Justice Cairns, was very good.

MR. DICKSON: It was a great process, but I'd like to mine from it whatever useful lessons we can learn.

MR. CLARK: The useful lesson I've learned is that it's incumbent upon me to make a quick decision, a reasonable but quick decision, if I think an adjudicator should be appointed, to get that information to the Minister of Labour. I don't know if the Legislature can tell the government how fast to move on something like that. I'll leave it with you good people.

10:25

MR. DICKSON: The other thing is that there have been a number of specific submissions made, and if you haven't had the benefit of seeing the text of the 110-odd submissions, there were nine of them that had specific recommendations for your office. I can maybe mention them, and if we don't have time now, if you can by letter in some fashion share that . . .

MR. CLARK: Sure. Mention it and share it with John.

MR. DICKSON: The Canadian Press suggested: why wouldn't we do what they do with the federal access commissioner's office. You could provide an advocate, not unlike WCB has, an advocate to assist people in terms of seeking a review. It can be quite intimidating to watch two lawyers from the Department of Justice with their big briefcases show up for an inquiry.

MR. CLARK: My sense is the portfolio officers do that now.

MR. DICKSON: Okay.

MR. CLARK: Mr. Ennis, if they're not, will you have that at the next staff meeting?

MR. ENNIS: Portfolio officers do have an obligation to equip people to enter that process on an even field. That's one of the functions we have.

MR. DICKSON: The Alberta Civil Liberties Research Centre made a number of suggestions. One was to extend the period to launch a complaint to six months from the current time period, and they had some other recommendations about a client having the right to be present wherever possible. I'd encourage you to access that particular submission, Mr. Commissioner, because it's quite detailed. Maybe your office could advise us if you agree, disagree, how you respond to those. There were also some submissions from Don Wilkinson, a private investigator, the School Boards Association, and the Environmental Law Centre. So hopefully you get a chance to look at those recommendations and respond.

Thanks, Mr. Chairman.

THE CHAIRMAN: One last call for any more comments.

MRS. TARCHUK: Actually, just a comment. I think that this has been very informative and invaluable to our process. I really appreciate all of the clarification that we've got.

THE CHAIRMAN: I think the time was well spent. We had indicated earlier in our plan of how we were going to deal with this, that the two groups, your office, Bob, and the Department of Labour in the administration of it, should be at a meeting with the committee, more of a discussion basis than simply a presentation basis, which the written submissions afford, and I do appreciate

your coming down. I apologize that it was done on relatively short notice. As the process was unfolding, in particular as we were delayed somewhat through summer holidays and the timing of how the submissions came in, it was a little bit unco-ordinated, from my point of view, and you on very short notice were able to come in.

I'm not sure if it's appropriate, but I know that you've been off for medical reasons for the summer, Bob, and that things are looking fairly good. I want to extend the committee's best wishes, and hopefully the remainder of the recovery will be very rapid and soon you'll be back there having to pound the beat again.

MR. CLARK: My doctor tells me I'm going to have real difficulty not appearing pretty regularly for work after the 15th of September. I got a clean bill of health on Friday, so it was a very good weekend. Thank you.

Once we see the government's submission, it's my intention in one form or another to have a chance to comment in some areas, and I'd be remiss if I didn't say that the Deputy Minister of Labour has been – really the relationship between that office and our office has been excellent. The fact that we're only across a back alley and that we have to face the other fairly often I think works to everybody's benefit. I'd be remiss if I didn't make that point very, very clearly to you, Mr. Chairman.

THE CHAIRMAN: Okay.

Pam Paul had a comment?

MS PAUL: Yes. Thank you, Mr. Chairman. Just an observation. I'm really pleased that you brought up the comment with respect to the meeting taking place on October 1 dealing with health care. My colleague Gary Dickson mentioned it yesterday, and even though it may not be on our immediate agenda, it is a critical, pivotal situation that we have to look at as a committee, whether it's a directive from the minister or not. I mean, we would be very naive not to recognize that we have to be the forerunner or somebody that is in the know as to what is happening.

Also, the comments, Bob, that you made with respect to the request from the legal perspective. It's interesting because you mentioned the police in Edmonton plus Lethbridge, and as you know, that sort of puts my flags up and my antenna. I would be interested perhaps in a follow-up. I have no idea what the process would be. If an applicant goes before you and makes application of complaint with respect to, let's say, the police department and maybe the penitentiary in Lethbridge or the police in Lethbridge, if another person is involved, a third party, is there any notification?

MR. CLARK: Yes, by all means.

MS PAUL: Okay. Thank you. That just put flags up at my head right away because of my own situation.

Also, I enjoyed your presentation and what you had to say. You're looking well, and I'm pleased things went well for you over the summer and hope to see you back here before us again.

Thank you.

MR. CLARK: I'm told it's never good for a legislative officer to appear too often before a committee.

MS PAUL: Oh, in this case it's different.

MR. CLARK: Thank you very much.

THE CHAIRMAN: Thanks again, Bob and Frank and Lisa.

The next session is going to be very similar in format. We have with us Peter Kruselnicki, who's the Deputy Minister of Labour. Peter, I'm going to ask just for convenience maybe that you move around to one of the two chairs at the end of the table. It'll be easier for you to see the participants here.

Excuse me a second. I suppose the ladies from *Hansard* are wondering how they can catch all this on the record. Maybe we should take just a two-minute break. I'm assuming that after an hour and a half, some of the coffee that's been used up may want to be disposed of. So we'll adjourn for two minutes but come right back.

[The committee adjourned from 10:33 a.m. to 10:41 a.m.]

THE CHAIRMAN: Okay. I'll call the meeting back to order.

Peter, do you know everybody around the table?

MR. KRUSELNICKI: I'm not sure I've formally met . . .

MS BARRETT: Pam.

MS PAUL: We haven't formally met. I'm Pamela.

THE CHAIRMAN: And do you know the rest?

MR. KRUSELNICKI: I think so, yes.

THE CHAIRMAN: Okay. I won't go through the process of describing what we're going to do. You sat through it, so why don't we just give you an opportunity to make some observations. Feel free to share the commenting and the question-and-answer role with your staff, as Bob did, and just move right into it.

MR. KRUSELNICKI: Well, thank you very much, Gary. We're going to have a split presentation. I'm going to talk about some of the general aspects, and Sue Kessler is going to talk a little bit more about the day-to-day administration. It's timely to maybe reflect on the administration of the act because we are nearing the third anniversary of the act's proclamation.

The legislation has been administered by Alberta Labour since March 1997, and previously the responsibility was with Public Works, Supply and Services. During our presentation we're going to provide you with some statistical information about how the act is being used and being administered by the various departments. We're going to provide you some details about the infrastructure which is in place to administer the act and to extend its coverage to local public bodies as well as describe the costs associated with that infrastructure. Finally, we'll discuss some initiatives from both inside and outside Alberta which may affect the future directions of the act. One of them that we'll briefly discuss and that I, hopefully, can provide you some insight into is the federal government initiative on privacy in the private sector.

Maybe before I go further, I'd just mention that the government submission is expected about mid-September, so I'm not going to be commenting on what that submission will be at this time.

As far as access to information activity in government, we do have a formal request process, but we consider that an avenue of last resort. We try to handle most of the requests outside of the act. Basically, information inquiries are being handled on a day-to-day basis by all departments through web sites, staff, RITE operators, communications offices, libraries, et cetera.

From October 1, '95, to June 30, '98, there's been a total of 3,833 formal FOIP requests; 1,344 of those pertain to general records,

2,476 pertain to personal information, and there's been 13 requests for correction of personal information. On what we call the top six list, if you like, of who gets what, Family and Social Services got the majority of the requests during that period, about 51 percent, or 1,949 requests. Compare that to Alberta Labour, which got about 3 percent of the requests, or about 133 requests, in that period. As you probably are aware, the nature of the requests varies considerably from, for example, executive vehicles to even grizzly bears. We feel that, as Bob mentioned, the principles have been well accepted by the public, and they're using it where they deem it's necessary.

Maybe just to comment on some of the things Bob was mentioning about the use by the public, 2,789 requests, or 73 percent, were from the general public, 446 requests were from business, and 292 requests were from elected officials. So we feel that it's a good indicator that the act is working reasonably well and that information is being provided on a timely basis.

THE CHAIRMAN: Peter, one thing just occurred to me though. In the breakdown of where these requests come from, are they all similar in complexity, or is there any way of indicating if certain types of requests are much more complicated or onerous than others? I'm just wondering if a request from an individual would normally be for a very specific piece of information and if maybe from the media or someone else it could be a much different type of request that would take a lot more time, maybe a fishing trip expedition, these sorts of things.

MR. KRUSELNICKI: Gary, it depends on what the party is interested in. I obviously can't comment in much detail on the other departments, but from the Labour perspective we get a number of requests from lawyers on, say, occupational health and safety issues. We've had the general public ask for information on a number of issues that we've been involved in. So it really depends on the complexity of the issue and how long it takes to respond to it, the number of records involved in trying to satisfy the request. I don't think there's a pattern, if you like.

THE CHAIRMAN: I'm not asking for more detail. I was just wondering if there was something that might have been obvious. Okay. Go ahead.

MR. KRUSELNICKI: I was just going to maybe comment on, give you a little bit more detail on some of the things that Bob was mentioning. In the '97-98 fiscal year 76 percent of all our requests were completed within the required time frame of 30 days. A further 14 percent of requests were responded to within the 30 to 60 days, and only 10 percent of the requests took more than 60 days to respond to.

Bob also mentioned the use of mediation or discussions with the Information and Privacy Commissioner's office and their portfolio officers to help address any concerns without getting into a more formal process, and that's been very successful in helping better define what the requester is asking for. It helps us and the party clarify what their requirements are and get those requirements addressed.

Some of the reasons for the 10 percent of the requests that took longer than 60 days, which include third-party consultations, are the large volumes of records to review – and our department has been involved in a number of those – and a large number of requests to handle simultaneously. So any one of those factors could add to the time frames, and we're very sensitive to it. As you're aware and as Bob mentioned, the act is being put in effect for the various other public bodies, and our expectation is that

these public bodies, once the act applies to them, will also demonstrate the same kind of commitment to expedite requests that they receive and handle them very efficiently.

The act isn't just about access; it's also about privacy. We don't compile much data on the privacy initiatives that are occurring at the present time, but we know that there are many major initiatives under way right now. Bob mentioned the registries initiative. I know that there's been a privacy impact assessment on the government's Imagis project. I know that Health is also conducting some assessments on its Wellnet activities.

Gary, I'm just going to stop right now because I think I'm going to ask Sue to talk about our resources to give you a flavour about costs involved in administering the amount of staff. She'll talk a little bit about our framework and our network that we've got across government and also talk about the role of her organization in the day-to-day administration. At any time if you'd like to ask us any questions about what she's saying or what I'm saying, then please feel free to just interrupt us.

Okay. Sue.

10:51

MS KESSLER: Thanks. The level of commitment that has been demonstrated to the principles of FOIP requires quite an extensive network of resources. Alberta Labour, of course, administers the act centrally for the province. Alberta Justice also provides a considerable amount of support to this program in terms of legislative drafting, legal opinions, and assistance to departments with inquiries. So there's quite an extensive amount of legal work that's required.

Other government ministries require resources to process the access request to comply with the privacy requirements as well as to work with the commissioner's office, both in mediations and in inquiries. So there's quite a heavy workload from the government ministries' perspective. Of course, there is the office of the Information and Privacy Commissioner – and I think Bob spoke to us about that this morning and the types of activities they're involved in – and last but not least the court system, for both adjudication and judicial reviews. So there's quite an extensive amount of resources required to administer this program.

On an annual basis we ask government ministries to provide us with the direct costs of FOIP so that we're keeping track of how the program is being administered. These direct costs include the budget that's directly for the FOIP administration as well as the number of FTEs. In 1997-98 the ministries advised us that these direct costs were \$2.6 million with 49.5 FTEs, but they project this fiscal year that the expenditures will rise to \$2.9 million with 52 FTEs, so it's incrementally going up.

These figures are only estimates. They have no real way of getting exact costs. For the most part FOIP is being distributed throughout departments in terms of the responsibility, so the costs are only approximate, and they don't include any of the indirect costs, which include legal counsel from Justice, all of the actual costs from the individual program areas to dig out the records and to make the decisions. They don't compile the costs of privacy compliance by all the program and service areas, and they also don't count costs for all the improvements that are required for their records and information management practices. So beyond FOIP there's a whole bunch of indirect activities that are associated with the FOIP program that aren't costed.

The resourcing of both Labour and the Information and Privacy Commissioner have also been increasing over the past few years. We've done a cost estimate for the fiscal year 1998-99, and we estimate that the total direct cost of FOIP is \$5.5 million, with 73.5 FTEs devoted to it. So the resources are considerable. As a matter

of interest, from October 1, 1995, to June 30, 1998, \$80,000 has been collected in fees. That's a comparative feature there.

I'd now like to switch over to talk about the role of Alberta Labour and the role of my branch in administering the program on behalf of the minister. We have a budget of \$935,000 this fiscal year and a staff of nine, and they're truly wonderful and dedicated employees to be doing all the work that was assigned to us yesterday. We also use very skilled contracted resources quite extensively, and that's how we get a lot of this work done as well.

One of our key roles is to develop legislative proposals, and I guess very heavy on our agenda this year is the support to this committee and the subsequent work that we will be doing to prepare documentation for the spring session. Pretty much our number one agenda item this year is to do that.

MRS. TARCHUK: Did you tell Peter about your bonus?

MS KESSLER: My raise, yeah, and of course he agreed to it.

Our second key role is policy analysis and development. I shared with you yesterday a copy of our policy and practices manual. It was quite a massive undertaking to update it, as the commissioner's orders have influenced the direction of the interpretation of the act, as well as to incorporate some of the needs of all of the MASH sector that is soon coming under it. We had to incorporate language in here that would be applicable to the various sectors, and of course they're all very different. So it was quite a challenge, and we've managed to keep it in one book, but I'm not sure what the next version is going to look like. If the commissioner's orders continue to come out, we could be looking at quite a massive thing. We also expect that we're going to have to update it in 1999 or the year 2000 to reflect the spring legislative changes as well as a number of issues that arise in the MASH sector. So this is a continuous work. It's a work in progress at all times.

We also provide a number of guidelines and have a FOIP web site. We've developed a number of guidelines this year specifically to help the MASH sector in implementing FOIP. We've discovered that each sector has its unique issues. For example, we found that some of the school jurisdictions were concerned about kids not being able to have Valentine's Day anymore because they wouldn't be able to send valentines. I think that collectively we've saved Valentine's Day, and we'll move on to another issue to save. So these are the challenges we face on a day-to-day basis, and so far we've been relatively successful.

A third major role we have is training. It's quite an extensive role. We think it's really important to ensure that all the FOIP staff and all of these bodies know what FOIP means. It's quite a complicated piece of legislation, and when you see policy manuals like this associated with it, you realize it's not something you can pick up in a day. So we've got quite an extensive training program. The growth of our training program has been extensive over the last year. Last year we trained 611 participants. This fiscal year already we've had 32 courses and trained 785 people, and we're only partially into the year. We expect to train around 2,800 people by the year-end, which we see as about a 400 percent increase or so. So people out there are being trained, and the demands for training are just absolutely amazing. We can't keep up with it at times.

We've customized training programs for all the various jurisdictions, so we've recognized that a one-size-fits-all model doesn't work. We have them for school jurisdictions, postsecondary institutions, health bodies, local government, and police services. We're holding courses all over the province in major centres: Grande Prairie, Vegreville, Drumheller, Lac La Biche, Peace

River, Lethbridge, and a whole bunch more. This also isn't just an Edmonton and Calgary training program; it's truly getting out to where the MASH sectors are. We're also looking at the training needs of some of the other local bodies such as public libraries, Métis settlements, irrigation districts, and the list goes on. So FOIP already applies to or will apply to a large number of groups, and they're quite diverse.

In addition to our formal training, we are involved in planning an annual FOIP conference, which gets together most of the people involved in FOIP on an annual basis. I know the first time the commissioner came and saw the 500 smiling faces, he was totally amazed that there were actually 500 people that were interested in FOIP. It almost seems to grow every year.

Another role of ours is the co-ordination of FOIP co-ordinator networks. We have groups of all these FOIP staff meet on a regular basis. The government group has been meeting since about 1993 and meets about nine to 10 times a year. You'd think by now we wouldn't have to meet anymore, but it seems that every time a commissioner's order comes out or a tricky request comes in, there are always things for us to talk about, so we continue to meet.

We've also established the networks for the local bodies: school jurisdictions, postsecondary, the health sector, and a few of them. These networks are really important to create an awareness of FOIP and really to get the buy-in of those FOIP people to the tasks at hand. In the first few meetings of the school jurisdiction network it was amazing. We almost felt like we were going to get buns thrown at us. They really weren't too happy about the work that was being imposed on them. But at the last meeting that we held with them last week, before the act came into effect, they were all very confident. They were thankful for all the work that had been done and were really pretty keen to start the task at hand. We've seen quite a reversal in the attitudes, so we think those types of networks are very important.

11:01

One of the other important parts of FOIP is the Alberta Directory, and I don't expect that a lot of you have had a chance to go through this in great detail. This is a book which describes the kinds of records that there are in the government of Alberta. This particular version was put together in 1995, when the act came into place. It's a very labour-intensive document to put together because each government department has to do a survey of all the records they have and condense it down and provide it to us, and we have to put it together in this fancy little book. The requirements of that in the legislation are now being extended to the local bodies. So it's starting out as a book this size. When we put the education sector and the school jurisdictions and the hospitals and everything else in, it's quite a massive undertaking to do it. We've decided that a technological solution is about the only way that we can possibly handle it. We're looking at quite an innovative Internet-based data collection tool as well as the development of a database, and that technology development is in our strategic plan this year. We're working towards getting that built so that we can streamline the next edition of the directory in 1999 and the year 2000.

Aside from that, we do a lot of Ann Landers calls. We are on the phone quite a bit with both the local bodies as well as some of the public. Some of them range from five-minute calls to others that can be a whole lot longer than that.

MR. CARDINAL: Are you on the radio? What time?

MS KESSLER: Not yet. No, I haven't been on *Rutherford* yet.

We do a lot of presentations to a variety of groups and organizations. We're also the bean counters of FOIP, I guess. We prepare these lovely statistical reports on a regular basis. The minister is required to do an annual report, so we compile that as well. We recognize that it's going to be quite a challenge as the MASH sectors start coming in. We understand from our counterparts in other jurisdictions that collecting statistics from the local sectors is very, very difficult indeed, so I guess we have our challenges ahead.

While we're proud of the achievements that we've done and the support that we provide, I think it's fair to say that our resources are pretty much stretched to their limit, so I would beg you to consider that as you think about some of the implications of some of the recommendations in the days to come.

So I'll flip it now back to Peter to talk about what else is happening in the activities of FOIP.

MR. KRUSELNICKI: Thanks, Sue. I'll just maybe touch briefly on the public submissions. Obviously I haven't had a chance to read the 120 or so individual or organization submissions, but we think the response indicates that there's a good level of interest in the review of the act. I think there's good feedback from some of the submissions that I have seen and looked at. Being a professional engineer, I'm obviously a little sensitive to the self-governing organizations' submissions, as Mr. Dickson has suggested. I've taken a look at the engineers' submission.

Obviously there are a number of proposals to seek to clarify the intent of the act, and we think that these need to be carefully assessed for their viability and impact on the intent of the act. I know that Sue and Peter Gillis and our staff are going to try to provide the best technical expertise that they can to assist you in your assessments during your deliberations and help to prepare a number of background papers and the related research to those issues that get raised.

We are working with Health and Justice very closely on the Evidence Act, the peer reviews that were discussed with the commissioner. We are obviously very sensitive to that and treating that very seriously, and hopefully we can try to address some of those concerns as quickly as possible.

One point. Some of the comments in some of the issues that are raised in the public submissions may not require legislative solutions but some clarification or dialogue. So I would just make that comment.

Finally—I mentioned it previously—you can probably expect to receive the government submission, which we're co-ordinating, I would think around mid-September.

I'd like to maybe just provide some closing comments about some of the initiatives we're looking at which hopefully will mean that the FOIP program could operate more effectively. One of the things I've talked to the FOIP co-ordinators about is the concept of sharing services, and that is something that I think is incumbent upon all of us: to be cost-effective in any program delivery. For example, we've partnered with our personnel administration office where we provide their FOIP services back to them. Hopefully, other organizations will look at some kind of a shared model where it's cost-effective, not just in the Alberta government but in local bodies, regional health authorities, municipalities, where it makes some sense.

Other things have an impact or a bearing on FOIP. Obviously Mr. Stevens is working on the committee, the health information act initiative, and we're working closely with Health to look at what the implications to FOIP are. The continuing improvement of information management practices and systems I think is something that we all have to look at, and Labour are represented

on the province's records management committee. We're working closely with the office of the chief information officer and Public Works on information resource management activities. I think it's very evident to me that you have to have good information and records management practices in place if you're going to fulfill your commitments under the act and be as cost-effective as you can.

The other thing that we've taken the lead on recently is addressing the privacy legislation in the private sector and dealing with the federal government and their plans to introduce privacy legislation for the federally regulated private sector. Now, we haven't seen what they're proposing. I have spoken to the Deputy Minister of Industry Canada, who's leading that initiative, and they have committed to provide us with a draft of what they're going to do. I'm expecting that within the next couple of weeks. They're looking at some kind of a legislative approach. They have mentioned the CSA code, I believe, but short of that, we haven't got the details on what they're going to do. I think our approach in the province is that once we have that, we'll be consulting with stakeholders on what they're proposing to do and what the impacts are to Alberta business.

I'd just like to close by saying that we are committed to the goals of both access and privacy, and we're looking forward to the final deliberations of your committee. We do appreciate the opportunity to come here and talk to you about what we're doing in Alberta Labour and across government. If there are any questions, I'd be pleased to try to address those or Sue can address them right now.

THE CHAIRMAN: Okay. Thanks to both of you.

Before I get into questions, given the fact that you're here today, Peter, I think it would be appropriate for me as the chairman to extend on behalf of the committee our appreciation for what Sue and Charlotte have done to supplement Diane's work. This is a fairly horrendous task, and the resources of the Leg. Assembly Office could not possibly have kept up. I don't think Sue anticipated the amount of workload that we were going to dump on her. Until about this time yesterday she had quite a healthy tan, and she got really pale when she saw not only the workload but the time line that I suggested we were going to do it in. She lobbied for about a half an hour for a pay increase. Actually she didn't. Both of them have been extremely accommodating, and I wanted to say this in front of you, Peter, because I realize you're the superior officer and all of that. When the time comes, due recognition would be appropriate.

MR. KRUSELNICKI: Well, I do appreciate that, Gary, and Sue has mentioned it. It is a small group. It's probably one of the smaller central FOIP groups for a jurisdiction that's providing that level of service, but we do have a very good support network out there and have retained some good contracting services to help us, so it's a balance. I do appreciate the work that Sue and Charlotte and their staffs have done and you as. You've got a pretty tight schedule with a lot of work to do. Thanks for those comments.

11:11

THE CHAIRMAN: Okay.

Denis is first on the list.

MR. DUCHARME: Thanks for the very informative presentation. Just for clarification – I'm hoping I understood you correctly – I believe, Sue, you mentioned that you had a budget of \$2.9 million with 49.5 FTEs.

MS KESSLER: That's across government.

MR. DUCHARME: Okay. I'm just wondering, with the inclusion of the MASH sector now, what the projected impact on budget and staff is.

MS KESSLER: We have no figures at all on the costs to the MASH sector itself in terms of the number of FTEs that they have set up and what it's costing them. I guess the costs to government in terms of our supporting them have been absorbed by us as well as the other departments that deal with the MASH sectors, like Municipal Affairs and Education, but in terms of the resources of the local bodies themselves, we don't have any figures.

MR. DUCHARME: Thank you.

THE CHAIRMAN: Gary Dickson, then Ron.

MR. DICKSON: Thanks, Mr. Chairman. I've got an observation and then a couple of questions. The observation is that as somebody that's had occasion to use the act from time to time since it came into force, I'm always very impressed with particularly the work of the FOIP co-ordinators. I think that's probably the best evidence of the excellent training, the kinds of materials that have been put together: the Alberta Directory, the sessions. Although I have a very different experience with sometimes ministers and deputy ministers, when it comes to FOIP co-ordinators, I think for the most part they work very hard to try and meet the principles set out in section 2 of the act. So I think it's a tribute to the work that's been done, particularly by Sue Kessler's unit, in terms of training, preparation, and ongoing support. As I say, I'm not sure that some of the more senior people in all departments have quite got religion yet, but certainly FOIP co-ordinators do a good job.

The issues. Firstly, in terms of the annual report, the report is one of those things, when it's tabled in the Legislature, that allows us all to get some sense of how something is working, in what areas it's working particularly well and those areas where it's not working so well at all. The annual report that we've seen that's produced by your section, Peter, would be so much more helpful if you were able to identify by department who the information misers are. I mean, we know that there are departments that have very high – what do we call them? – rejection rates. Some other departments do an excellent job in terms of responding to requests. It would be, I think, very helpful if the report were able to contain some performance information where you can actually compare departments in terms of not just number of applications but number of applications that are successfully concluded and those by mediation and so on.

Incidentally, the other thing, the mediation I think works really well, and the FOIP co-ordinators I hope get some feedback from my experience and a lot of other applicants. The mediation part works really well. So that's positive.

Have you looked at putting more information in the annual report? I know you have the statistical information. It would be helpful to know how many applications are deemed abandoned after a fee estimate goes out. This is something I've raised before, and I know there's some argument that, oh, that information isn't tracked, but that kind of information I think would be really helpful. Can I ask what would happen if we were to specify in the act some of the elements of the annual report so there isn't just the requirement to table the annual report but we were to identify the six or seven key elements that Albertans would want to be able to evaluate performance?

MR. KRUSELNICKI: Well, maybe just to address that. Every time you add information to any document across, say, the Alberta

government, you're going to add cost. How much that would cost I don't know. I'm not even sure, Gary, if all the information you're asking for is currently tracked. I don't think we track the abandoning of requests for example.

MS KESSLER: We have it at a global level. We don't have it at the specific level, and even departments don't track the reason for abandonment because most of the time they don't know. Someone simply loses interest in a request, and as much as they try to determine whether or not there's still any interest in it, they don't want to appear intrusive to the point of asking the person why they're abandoning their request. So we don't have that information.

MR. DICKSON: If I can, Mr. Chairman. There's another thing, and it relates to the infamous regulation 200/95, when cabinet declared that certain elements and certain statutes and regulations were going to be paramount. I'm not sure how it's going to work, and I'll give you an example. Sections 33(4) to (9) of the environmental protection act are going to be paramount over FOIP. Those are the sections where they set out the powers of a director and the procedure the director has to follow when responding to a request that information remain confidential. But once the director makes the decision, which is what those sections say that are paramount, once that's been exhausted, are we then back under the FOIP act? Is the decision shielded from FOIP? Can the applicant ask the Information Commissioner to review the director's decision?

It's an interesting issue. It hasn't been tested yet in front of the commissioner. I'm interested in the thinking of the department in terms of the consequential things that happen, because you only made paramount a specific section with a very narrow power. I don't know whether I'm being clear at all in terms of what I'm asking.

MR. KRUSELNICKI: I'd have to look at what you're talking about, Gary, and have our folks look at it with Justice to provide some comments on that specific aspect. I certainly wasn't aware of those specific questions. I don't know if Sue can address them right now.

MS KESSLER: We are preparing a document on paramountcy which will talk about the paramountcies that are currently in effect, and we can certainly address that with Justice.

MR. DICKSON: There may be other people with questions. I could come back later.

THE CHAIRMAN: Okay. Ron's on the list.

MR. STEVENS: Well, I can tell that Gary is very proud as the forefather of what clearly is a growth industry in this province.

Denis asked a question of you, Sue, that I'd like to follow up on, and that is: are you planning on recovering information as to the number of FTEs and the cost associated with the MASH sector involvement input?

MS KESSLER: It's something we hadn't actually contemplated doing, but I guess it is something we can contemplate doing.

MR. KRUSELNICKI: I think we probably will, Ron. We have to look at other aspects as well, because there are some benefits in the legislation. I mentioned improved records management practices, greater awareness of why you're keeping information or creating records. So I think that there are some benefits, you know, that

should be looked at along with that and just to see what the impact is to the rollout as it occurs. So we're going to be sensitive to that, yes.

MR. STEVENS: My sense is that there are a number of people who question the cost and benefit of this, and I raised this yesterday. It seems to me that it's quite appropriate for government to indicate what the cost is, and Sue, you went through a great deal of that. I also think it's appropriate from time to time, particularly in legislation like this, to articulate clearly what the justification is. I'm not questioning that there's justification. I just think it's important to underscore what that is. I don't know. Perhaps I'm remiss in reading carefully the annual report, but is that something that your annual report deals with?

11:21

MR. KRUSELNICKI: On cost?

MR. STEVENS: Cost and justification. The benefits, if you will.

MR. KRUSELNICKI: I don't think we've stressed so much the benefit side, but there obviously are some benefits to the legislation. I know from our department's perspective that we really do look at it and embrace the legislation and the intent of the legislation. As I mentioned to you just privately, if you can handle a request in three days or a week, obviously you're going to be more cost-effective than if you handle it in two or three weeks or 30 days. So, you know, we've looked at it. We don't try to look at the deadline of 30 days; we try to handle things as they come in as practically as we can. That way you're being cost-effective, and you can actually minimize your costs that way. I think that's the kind of message we're trying to get out through the FOIP co-ordinators, and even to handle things outside the act if you can, because it's obviously better to handle them outside the act if you can provide the same kind of information.

I agree with Gary's comment about the FOIP co-ordinators. They've been a great group to help vet things through, get information out. We're very sensitive. You asked Bob the question about how he gets information out. Well, we also have the same kinds of initiatives and systems, and we try to get the information out there as quickly as we can so people are aware of what's going on. But we can look at the whole cost benefit and cost assessment. The first place we start, though, is to see what those costs are going to be and then look at where the improvements have been over the past while.

MR. STEVENS: Just one other brief question if I may, Mr. Chairman. The 2,800 folks that got trained this past year or so . . .

MS KESSLER: That we're projecting to train.

MR. STEVENS: Oh, that you're projecting to train. Are they from the MASH sector?

MS KESSLER: Yes, they are. Mostly municipal government.

MR. KRUSELNICKI: But there's still ongoing training within government as people change jobs and require some updating of what's going on. It just doesn't stop, even within government. FOIP co-ordinators change and staff change. There's still activity there as well.

MS KESSLER: We also find that in government a number of the program areas are starting to send some of their senior officials to

learn about privacy and how it will impact their business units. So it's beyond just people involved directly with FOIP.

MR. STEVENS: Thank you.

THE CHAIRMAN: Gary, I presume you haven't exhausted your list yet.

MR. DICKSON: Well, I just didn't want to monopolize the question time.

Just further to the exchange that we just heard. You remember the former Information Commissioner in his annual report two years ago, John Grace, had suggested something really interesting around fees. His recommendation was that having a fee based on per hour for search time rewards inefficiency, bad information management practices. His thesis and recommendation was that you'd be further ahead to go to where you simply pay per page or whatever in terms of the volume of the product, the amount of information produced. I'd be interested in your comments. I mean, that's very different than the way we do it now in Alberta. When you think about it, if you're a department and it takes six hours to locate and retrieve a document because you've got bad information management practices and the department next door can find it in half an hour because they've spent some time with archivists and records managers, in each case why wouldn't we build in some sort of reward and reward the one department and not reward the one with the sloppy practices?

MR. KRUSELNICKI: Well, I guess that's what my job is as Deputy Minister of Labour from an administrative perspective outside the FOIP act: to make sure that we're being as cost-effective and efficient as we can. That's why we try to handle the requests that come in as quickly as we can and not stretch it out, if you like. There's a real incentive throughout all parts of the organization to make sure that we have a good records management and information system in place and that we get that information out. So it's incumbent upon all of us that are running departments and administering areas to make sure that those records management practices are good. Can we get better? I'm sure we can, but we continue to stress in our department that that's something we strive for, Gary, so I'm not sure that the fee structure would drive that the way you're suggesting. I don't know.

MS KESSLER: We also have fee waiver provisions, and I do know that many government departments are using waivers when it comes to records management that may not be ideal. So they're taking those things into consideration when they are assessing fees.

MR. DICKSON: The problem – and it's evident in some of 115 submissions – is that we're not doing an adequate job in terms of advising people of the fee waiver provision and how they access that, and that's a complaint that surfaces in some of the stuff.

The other related . . .

THE CHAIRMAN: If I might, though, before you get into that, Gary. We're not particularly pressed for time, but some of these questions are very directly related to the administration of the act. While I don't want to curtail any discussion, you know, that might be helpful in making a long-term opinion on amending the act, I wouldn't want to use up the time if there are any questions relating to the submissions themselves or things that we might want to consider as recommendations and observations from the department on those submissions that came in, so that we don't find that at 12 o'clock we have to cut it off and have missed that. As I say,

I realize some of this that you're asking might relate to how the act may be changed, but if we could perhaps focus on the act itself for a bit.

MR. DICKSON: Well, can I ask a question about section 28, which is a very specific provision? There is a lot of concern, and this is in a number of the submissions, Mr. Chairman. This is the provision that if information is going to be published within – what is it? – 60 days, then that's an exception in terms of responding to a request for information. What problems would there be in terms of putting on a cost constraint? You appreciate the scenario, I suppose, that I'm worried about. If the chief information officers' group decides that they can market a particular report, a piece of information for \$1,500, but the actual cost to produce it may be \$150, it's pretty easy for the department then to say: "Well, we're going to produce this, yeah, for \$1,500. But that brings us within the section 28 exception; therefore we're saying no to your access request." Why not build in a qualifier so that you could only exercise section 28 if the information was going to be available at the same or lower cost than you could get it under FOIP?

MS KESSLER: Well, we are going to be dealing with the exceptions to disclosure in further detail as we go through the submissions. I think that might be an item that we can look at further, and we'll discuss it at that point.

THE CHAIRMAN: Other questions?

I might also add – I realize I haven't given you any warning, Clark – that if there are any observations from the Justice side of it and as a member of the resource team, if we run out of questions here or if you have any observations you'd care to make, we'd certainly welcome them. Not having warned you, I don't want to put you on the spot, though, of feeling that you have to make recommendations at this point. I certainly want to invite you either now or as the meetings progress, other meetings, to feel free to step in and give us any observations or comments that you have.

11:31

MR. DALTON: Thank you, Mr. Chairman. I was sort of saving myself for when we get into the detail of the submissions and so forth later on. I can assist in the sense that I developed the act in the first place and can say why certain things are there and why they are not, and then I can also give some observations on various other things.

I also can say that I know this committee has decided that they're not going to deal with the issue or have put it aside for the moment, in any event, but I am a commissioner for Alberta for the Uniform Law Conference, which dealt with the issue of privacy in the private sector. Indeed, we dealt with that in August of this year and decided to defer it till next year till we looked at it further again, because many of the jurisdictions had a great deal of difficulty with the draft that was put forward to us. So I thought maybe I could get that bit of information to you at this point. Other than that, I thought I'd just hold off until such time as there's some more detailed discussion.

THE CHAIRMAN: Okay. Certainly. As I say, feel free to chime in at any point where there is something that you have some concerns about, because while we probably have given more recognition to the Department of Labour and to the commissioner's office in terms of administration, we realize that the Department of Justice plays a fairly vital role too.

MS BARRETT: Well, I would be kind of interested in hearing an



outline, if you'd be prepared to offer the verbal analysis, of the Uniform Law Conference. Or do you want to wait to do that when we get into it as well?

MR. DALTON: Well, I'm not sure it's part of the agenda here. I'm not sure what you're asking of me: the draft bill that was before us?

MS BARRETT: Yes.

MR. DALTON: The draft bill that was before us I could provide to members if they wanted to see that. It's very complicated.

MS BARRETT: I don't think so. I'm in retreat already.

MR. DALTON: I think maybe that's one of its downfalls.

MS BARRETT: Okay.

THE CHAIRMAN: Only lawyers and statisticians would be interested in that kind of information.

MS PAUL: Gary would do it.

MS BARRETT: Gary will volunteer to do it.

MRS. TARCHUK: Well, just kind of on that point. I thought that Bob's comments regarding the inclusion of the private sector were kind of interesting. If you look at our submissions, very few people commented on it, and in fact the private sector didn't comment at all on any notion that the private sector be included. So it seems to me that obviously a much broader discussion among Albertans needs to take place on that entire issue.

I'm just wondering. When you give your presentation to these hundreds of people involved with the MASH sector, do they ever get beyond discussing their own sector and have some comments or want to get into some broader discussions about the possibilities of where this act could go?

MS KESSLER: Well, I think a number of them are reading what's happening in the federal government and are wondering whether or not that would ever come to play in Alberta. So there is some curiosity.

MRS. TARCHUK: Any strong opinions, or just curiosity?

MS KESSLER: No, we really haven't heard a lot of opinions. I think there's more that's been coming out in the health sector related to the health information act from the private sector, but we haven't heard a lot.

MR KRUSELNICKI: Janis, just maybe to follow up on that. I have talked to a number of organizations that are federally regulated, Telus and a number of others. They are aware of what's going on, so they have staff working on that policy side, but I would say that the companies that aren't federally regulated probably aren't as aware of what's going on and sort of that natural, potential extension. So that's why consultation would have to really take place to create that awareness of what this would mean and why it's needed or what's needed. This is the first time I've heard that the legislation is too complex, so I guess we'll wait and see what the next step from Industry Canada is.

MR. ENNIS: Mr. Chairman, if I can add just a dimension that hasn't come up yet in that discussion. It seems that much of the initiative towards private-sector privacy protection is being driven by the need to establish a means of having electronic commerce, and that's of course why Industry Canada is taking the lead. The European directive is part of it, of course, and we've discussed that, but the very pressing problem of how you establish strong electronic commerce systems is probably as much or more a motivator for the private sector to establish standards of privacy protection.

THE CHAIRMAN: The other thing that we have to be careful of. The role of this committee is to review the act and certainly to look at the scope, but if we are going to increase the scope in any way, we have to be very cautious that the people who would be implicated would become aware in sufficient time and would have an opportunity to react. We made it fairly clear when we looked at the terms of reference that this was an area we were going to look at, but I don't think anybody believed that it was a significant part of the mandate of the committee to deliberately go out and expand the scope.

MR. DICKSON: Not everybody thought this.

THE CHAIRMAN: I appreciate, Gary, that you did make your views on that very clear. But if we are going to expand into any area – let's say, just for a silly example, we were going to say that all dog groomers were going to be coming under the effect of the act. I'm sure dog groomers would want an opportunity to react and say, "Well, look, this is our point of view."

MS BARRETT: That is a pretty funny example.

MRS. TARCHUK: It's the private sector.

MS BARRETT: I know, but dog groomers in particular.

THE CHAIRMAN: Well, I didn't want to pinpoint any who may be offended or otherwise.

So I'm just going to caution that while we certainly have the opportunity to look at this, I would not feel that we should be jumping in with both feet and making, you know, significant changes unless we intend for the feedback process and the reaction to extend significantly. One of the things that could happen, if there was a significant feeling that we should move in that regard, is to send out a warning signal, if you like, much as other legislation is sometimes tabled and then left there for a time for public feedback. That might be something that would be considered. I'm personally, as I said earlier this morning, very reluctant to get into the area of regulating the private sector to this extent. Just so my personal views and my cautions as to how we might proceed with this are considered and that we do look at the time lines we've set and realize that there probably are some restrictions as to the level of detail we might go into in private-sector regulation.

Pam, did I see your hand up, or was it just sort of Gary behind you?

MS PAUL: It's Gary waving behind me.

MR. DICKSON: I wanted to ask, in terms of the last annual report, the number of requests that could be satisfied by information that was already being made available by the public body. Was it 11, 13 percent, something like that? I don't have a copy of the report here. It seemed fairly modest, and I guess I'm interested in what kind of a strategy or plan your department has to increase that. We always talk about the act as being the most expensive, last resort way of answering Albertans' need to have access to documents. So I guess the challenge is: how does this government do better in terms of identifying the kind of information or records people want and then making it available without having to go through all the foofaraw of a FOIP application?

MS KESSLER: Gary, if I could explain to you what that figure means. That figure does not include all of the day-to-day activities and inquiries that are going on right now that are dealt with outside of the act. Those figures only include what starts out as a formal request for access to information which becomes dealt with outside of the act because the FOIP co-ordinators in their duty to assist determine that a FOIP request isn't required and they're able to handle it that way. So I think the number of requests being dealt with outside of the act is tremendous. We have no numbers, but that is a very small portion.

MR. KRUSELNICKI: I was just going to add – I mean, when you talk about making things accessible, the policies and practices manual is going to be on our web site. It's going to be available on CD-ROM. If somebody wants to buy a printed copy, they can buy a printed copy. I mean, we're trying to either put many things on web sites or make it accessible in our libraries, et cetera, so people can access it in an easy way. We continue to try to do that and anticipate what people might be interested in. So we are trying to do that, Gary. We're trying to make it as accessible without having to go through that formal request process. If somebody sends us an E-mail note or gives us a call, we can refer them to our web site

or our library, et cetera. We're trying to do that in as many cases as we can.

11:41

MR. DICKSON: I appreciate that, but when you talk to the environmental advocacy groups and people who tend to be regular users of FOIP, a very frequent comment or reaction is that a certain number of reports are available, but it's often stuff that's not of such high demand, and a lot of the things that Albertans, the people we're working for, want to see aren't publicly available. I don't know what sort of strategy you develop to ensure that every one of those public bodies is working as hard as they can to not just make documents available by volume but identify the things where there seems to be significant public interest, public demand, and make those available outside FOIP.

THE CHAIRMAN: I think we're starting to stray a little bit in terms of the relevancy and the review of the legislation. It's looking to me like we've exhausted the questions. One last opportunity, but assuming that to be so, Peter, I'd like to thank you for coming out this morning and taking part in this review. Again, thanks to your staff and all the other technical staff, not the least of which is Diane. Among other committees that she co-ordinates, the time we've spent on this one and the schedule probably caused you to lose some of your summer tan too.

I think with that, I'll call for a motion to adjourn.

MS PAUL: So moved.

THE CHAIRMAN: Moved by everyone.

MR. STEVENS: Mr. Chairman.

THE CHAIRMAN: Just hold on a second before we do that. You said to schedule meetings, but I believe we covered that yesterday.

MS BARRETT: Yeah.

MR. STEVENS: Yesterday I promised to provide members of this committee with the report and recommendations from the Steering Committee on the Health Information Protection Act. I have done that. I certainly have no desire to go through that in brief or in detail, but I do want to just point out that members now have that. There definitely are aspects of the recommendations there which impact on what we're doing here as a committee, and I think people should take the time to look at it and draw their own conclusions.

THE CHAIRMAN: Okay. There are three members of this committee who are also or were members of Ron's committee, so I'm assuming that as the process evolves, we'll make sure that we don't either duplicate or cross threads with the recommendations in there.

When I called for the motion to adjourn, six of the seven people here moved. As the chairman I was the only one who wasn't able to, so I'm assuming that means everyone is in favour of adjournment.

[The committee adjourned at 11:44 a.m.]