Title: **Monday, October 5, 1998** Freedom of Information Review committee

Date: **98/10/05**

9:03 a.m.
[Mr. Friedel in the chair]

THE CHAIRMAN: Well, good morning, everyone. I think we're all here, all of us who are going to be here. I apologize for starting the meeting five minutes late. We'll adjourn five minutes early to make up for it.

The first item on the agenda is Approval of Agenda, and we have a request to make a change in the order. Clark advises that he has a fairly important meeting on the hook and he is going to be getting a call and will be paged from this meeting, so if we can move item 6 to item 4, just changing the order so that he can make his presentation.

MR. CARDINAL: Is that the adjournment?

THE CHAIRMAN: No. It's on the attachment. I'm sorry. It's the presentations. Other than that I believe everything is going to go as scheduled. With that change can we have a mover?

MR. DUCHARME: I so move the adoption with the amendment.

THE CHAIRMAN: We have a mover. All in favour? That's carried.

The next thing is the approval of the minutes of the September 21 meeting. The mover will be Gary Dickson. Any discussion?

MR. DICKSON: Mr. Chairman, I had a couple of points to make. I'm happy to move adoption of the minutes, but I just wanted to raise two things that I thought ought to be included. The first one is just on page 16, Peter Gillis' presentation on the Access Process and Fees. Peter had undertaken to get some information on the fee waiver experience. I think there wasn't a lot of information in B.C., but there was certainly some in Ontario. Whether we get it now or not is less important, but I was just going to say that I think we talked about that last time and that ought to be reflected in the minutes.

The other one is on -- it looks like the number has been changed -- page 19. I'm going to suggest one small inaccuracy. If you look at that middle paragraph, it says, "Discussion followed on the possibility of having smaller organizations identify." If you see that, Mr. Chairman. I went back to *Hansard*, and really what we talked about were all of the self-governing professions. I think we talked about the Law Society, the College of Physicians and Surgeons, and the other smaller groups as well. There had also been some discussion and I thought agreement that we were going to send an excerpt from *Hansard*, if not the whole thing, and a copy of the background briefing paper around self-governing professions to all of those groups I think with the hope, that we'd discussed, that might elicit some creative alternative solutions from those professions.

Those would be the changes. Now, other people may have a different memory, but I can refer you to the *Hansard* reference if it's helpful. I think that would make the minutes a little more true to what we talked about last time.

THE CHAIRMAN: Okay. Dealing with your second question, Gary, if we left the word "smaller" off the minutes, would that cover what you felt was the inaccuracy?

MR. DICKSON: Sure. It wasn't just the "smaller"; it was all of the self-governing organizations that we were indirectly inviting to be creative.

THE CHAIRMAN: Yeah. I don't believe the discussion was intended to isolate any group. This was to go to all of them.

Answering the second part of that question, I'm not sure how it's reflected in the minutes here, but the letter, an explanation, the background information that we received, the paper on self-governing professions, and the excerpt from *Hansard* went out on -- I believe I signed it on Tuesday, and it should have probably gone out Wednesday. So that in fact happened.

MR. DICKSON: Well, that's super, Mr. Chairman. Maybe that should be reflected, because that was one of the action things we decided to do the last time.

THE CHAIRMAN: Now, I kind of missed the point of your first question when you talked about some information that Peter Gillis was going to be researching.

MR. DICKSON: No. It was a small undertaking. Peter may have a different recollection.

MR. GILLIS: No. I undertook to do that, and in fact what I did is I looked at the annual report for Ontario, and the figures were not there. I've made an inquiry to the Management Board, and when I get the information, I'll give it to the committee.

MR. DICKSON: Good. Thanks very much, Peter.

THE CHAIRMAN: Now, is there an inaccuracy in the minutes reflecting that part? Were you suggesting, or was that just a question coming out of it?

MR. DICKSON: No. My sense is that I think in the minutes we're trying to reflect sort of the decisions made and follow-up action undertaken. That's the only reason I raise it. I'm happy to get the information when Peter gets it. Just so we can rely on this, a pretty complete summary of the stuff that was outstanding from the last meeting.

THE CHAIRMAN: Okay. Do you understand, Diane, what he was getting at? Can you make these amendments to the minutes appropriately?

MRS. SHUMYLA: Yes.

THE CHAIRMAN: Okay. With that understanding can we have a motion to approve the minutes?

MR. DICKSON: I so move, Mr. Chairman.

THE CHAIRMAN: Okay. Gary Dickson moved that the minutes be approved with some amendments as per the discussion. All in favour? Nobody opposed? That's scary.

Okay. Item 4 is Presentation by Technical Team and Invited Guests. If you go to the second page, there are seven items on there which are going to be the essence of today's business. The first one is Exclusions, Section 4. Clark is going to be making that presentation.

MR. DALTON: Thanks, Mr. Chairman, and thank you for your indulgence today. I may or may not be called away, but in case I do, I'd like to be able to at least make the presentation.

Exclusions from the act are contained in section 4. That section essentially says that

> this Act applies to all records in the custody or under the control of a public body, including court administration records,

but does not apply to a listing of other matters. First of all, if it fits within section 4, that means that the act doesn't apply at all. What that means is that there is no formal access process for obtaining access to records and, secondly, that none of the rules of collection use and disclosure apply to any of the personal information that may or may not be in records of that nature. So it takes it out of the act entirely. There are no rules on privacy, and there are no particular access provisions allowing access to the records.

The items that are in the exclusion listing generally reflect policy decisions that were taken and reflect some matters of law; for example, information in court records. There has long been a process whereby people can go to the courthouse and obtain access to court records, subject to orders of the court saying: these records will be sealed, and you can't get at them. That's primarily what we were after there. There's already a process in place for access to court records, and because of the importance of openness in the courts the provisions of privacy have been set aside for a higher social policy of allowing people to see what's going on in the court system. So that's the reason they're excluded, primarily.

The records of judges of the courts. Just to indicate a reason for that being there, the argument is that records of judges are part of the administrative independence of judges, that we probably couldn't do anything with that in any event because of the independence of the judiciary. They have a sort of constitutional ability to be independent of the process. So it reflects the law on that point, I think. I thought it would be important to bring that to your attention. That also is then brought forward into a "personal note, communication or draft decision" of judges, and it's extended to people who act like judges and make judicial kinds of decisions on boards and tribunals.

There are a number of others; for example, records "in the custody or under the control of an officer of the Legislature" and relates to their duties. That means people like the Information and Privacy Commissioner, the Chief Electoral Officer, the Auditor General, and people that are officers of the Legislature who report directly to the Legislature. The theory there is that their reporting responsibilities are to the Legislature and that they respond to what the Legislature wants them to do. So this process is inappropriate for that purpose.

There are others, like records "in the custody or under the control of the Ethics Commissioner." We have to put this one in: where deputy ministers and other senior officers are involved, because they voluntarily give information to the Ethics Commissioner, and they're not required to do so. We wanted to give them the same protection as members of the House who are governed by conflicts of interest legislation, to have the same confidentiality of their personal finances and so on that is given to the Ethics Commissioner.

Some of the others: "a record relating to a prosecution if all proceedings in respect of the prosecution" aren't completed. You could see the reason for that. If a prosecution is ongoing, it would be inappropriate to have this process applied to them, but once the process is completed, then it falls back into the act, and the act applies in respect of not only access but also privacy. There are also the exceptions for law enforcement, which may or may not apply to the records of that nature.

9:13

The records in registries. Probably you'll hear more about this later, but the theory there was that a lot of these things were available in any event prior to the coming into force of the act. Our discussions with other commissioners across the country indicated that they were taking a very similar position: if it has been widely recognized that you could get this kind of information, then you should be able to get it under the processes that are now in place. In particular what we were thinking about were the privacy provisions of this particular act. If we were to apply some of the privacy provisions, a lot of the information wouldn't be available through the registries, and consequently that would stem the flow of information that was available prior to the coming into force of the act. So essentially it was a status quo in relation to the personal property registry, the motor vehicles registry, the companies registry, and the land titles registry. Also, all of those had sort of a process already in place for access to their information in any event.

There are a number of others, and I can speak to those if people want me to, but primarily there was sort of a balancing of interests in relation to what should be under the act and what shouldn't, recognizing that there isn't a formal process other than what may have existed prior to the act for access to information and recognizing that the rules in respect of collection, use, and disclosure under the act wouldn't necessarily apply to things that weren't covered by the act. I've indicated a number of them. There are some others, and I can speak to those if you want me to, but I wanted to give you just an overview so that you got an idea of what the effect of it is, that it's outside of the act, and that none of the rules apply if it fits under section 4. Again, I wanted to show you that there was a balance between what should be under the act and what should be out of the act from a policy point of view.

So essentially that's my submission on section 4, the exclusions from the act, and if folks have some questions I'd be happy to attempt to answer them.

THE CHAIRMAN: Okay. We can go right to that. Does anyone have any questions of Clark relating to this presentation?

MR. DICKSON: I have just one question, Mr. Chairman. Clark, has section 4(3) been considered by the commissioner at all? I'm just trying to think. I don't think there's ever been any interpretation of that; has there?

MR. DALTON: Not that I know of. Perhaps John could help me here, but I can't recall that being interpreted. John?

MR. ENNIS: No, I can't, not directly. There are a number of cases before the commissioner on this point at this time.

MR. DICKSON: They're all outstanding right now?

MR. ENNIS: Yes.

MR. DICKSON: Thanks very much.

THE CHAIRMAN: Any other questions? If not, we'll move on to the second item, the presentation on registries. We have Laurie Beveridge here, Assistant Deputy Minister, and Barb Brooks with her making that presentation. This was the one, incidentally, that we had originally had on the last agenda but realized that we hadn't given these ladies any time to either prepare or make their time available, so they're here today telling us everything we need to know about registries and, I'm assuming, an update on the review that is going on in that regard by the Department of Municipal Affairs. Go ahead.

MRS. BEVERIDGE: Mr. Chairman and committee members, thank you very much for inviting us today. What I will do is give you a bit of background about the audit that was done by the Privacy Commissioner, and then Barb Brooks will give you a status report on the consultation process that's going on as we speak today.

Since the Freedom of Information and Protection of Privacy Act was implemented, as Mr. Dalton has mentioned, concerns have been raised with respect to the interpretation of section 4(1)(h), particularly as it applies to the use and disclosure of information in the motor vehicle registry. In May 1997 the Minister of Municipal Affairs requested that a privacy compliance audit be conducted of the motor vehicle registry. The disclosure of this information was of concern to our department, and the department did want to make sure that adequate privacy practices were in place. As Mr. Dalton mentioned a bit earlier, the disclosure of information in that particular registry has been historical. It preceded privatization. So with the change in interest in privacy with the FOIP Act being implemented, we realized that people would have some concerns about privacy.

The minister at that point felt that it was about time to have somebody come in and take a look at our disclosure practices. So a joint audit was conducted by the Privacy Commissioner and the Auditor General in the fall of last year. They took a look at not only our collection and use and disclosure practices but also took a look at our motor vehicle computer system to make sure it was secure, and they also looked at the management control processes that we had in place to monitor the private agents. It was a very thorough audit, and it went from early fall till I think late January of this year, when the results of the audit were submitted to our department.

The audit raised a number of important questions about the practice of sharing information in the motor vehicle registry with our stakeholders, and that includes lawyers, insurance companies, private investigators, businesses, civil enforcement agents, and quite a number of people who do business in Alberta. In an effort to educate people, we at that time produced a public booklet that attempted to provide answers to a number of the questions that the audit was raising, including the types of information collected, who has access to that information, and for what purpose.

The audit found that the collection of personal information in the motor vehicle registry is subject to FOIP legislation but that the use and disclosure are not, and I believe Mr. Dalton mentioned that earlier. While the audit confirmed that registries are operating within the terms of the present legislation, it was recommended that fair information practices should be applied to how this information is used. By fair information practices the Privacy Commissioner was recommending to us that we actually make registries subject to the use and disclosure provisions in the FOIP Act.

The findings also pointed to the need for more controlled enforcement and audit practices to ensure that the rules are adhered to by our stakeholders. So if we were providing information in accordance with the freedom of information act, we should be monitoring it and auditing it after the fact very, very closely.

Following these recommendations, the minister publicly released a report on April 22 of this year and indicated that Alberta registries would begin action on 16 of the 21 recommendations immediately. Five of the recommendations, those dealing specifically with the protection of privacy of information in the motor vehicle registry, we realized had extensive legislative policy and financial implications to businesses, government, and registry agents across the province. So, as a result, registries put in place a detailed plan to consult on those five issues.

Barb, who is co-ordinating this entire consultation process, will now just let you know exactly where we are in terms of consultation.

9:23

MS BROOKS: Thank you, Laurie. Upon the release of the report in April, Municipal Affairs engaged the services of PricewaterhouseCoopers to assist us in the consultation process and to conduct a third-party review of the five recommendations which required detailed study. The implications of full implementation of these recommendations and how the proper balance between protection of privacy and good use of information can be reached will be the subject of their report to the Minister of Municipal Affairs. Before we took specific action, we needed to fully assess the implications and options available to us.

The first step in the consultation process was to meet with those stakeholders who had a clear interest in the recommendations contained in the report. The intent of the stakeholder consultation was to begin to pull together information that would assist registries in answering the following four key questions. What information from the motor vehicle registry should be public? What information should be shared with some organizations but not with others? What information should never be shared? What happens if we put tighter restrictions on information that is currently available?

In order to extensively involve stakeholders, including registry agents, registries sent out a copy of the report and asked for participation in meetings and/or to provide written submissions. Numerous meetings were held throughout the province in the late summer with representatives of insurance companies, civil enforcement agencies, bailiffs, collection agencies, private and public parking companies, adoption services, private investigators, corporate security, lawyers, registry agents, and consumer groups. The workshops allowed participants to discuss the implications and issues regarding the five key recommendations and to offer alternative standards that would indeed comply with the intent of these recommendations.

The second step of the consultation process involved talking to the public through six focus groups that were held throughout the province. These groups were set up to discuss privacy concerns directly with representatives of the public and to determine situations when disclosure of an individual's personal information is acceptable and not acceptable. I might just add at this point that the key definition that we use regarding personal information is: name; home address; gender; physical description, i.e. height, weight, hair colour, eye colour; and date of birth. That is the description and the definition used for personal information in these consultations.

THE CHAIRMAN: Excuse me. Did that include address?

MS BROOKS: Yes, it did include address, home address.

These focus groups were held during September, and those results were used to form the basis of the Angus Reid telephone survey that we are now embarking on, where we will be speaking directly to 800 Albertans. This step three was considered very critical because it would allow us to validate the attitudes and perceptions identified in the public focus groups and to determine, again with great accuracy, the key issues or concerns the public has regarding privacy of information regarding motor vehicle registry information and to identify key segments or areas of the population where concerns are more pronounced. This telephone survey work is actually commencing this week, tomorrow, and the

results will be available to us by October 20.

The next steps in this overall process are that Pricewaterhouse-Coopers will be presenting a consolidated report which will provide recommendations regarding new access standards and policies based on results of the consultation process that I've described to you. The report is expected in early November. Upon acceptance of the recommendations, registries will conduct a thorough review of the legislative implications of putting in place new access standards. This review will include the preparation of a submission for review by this committee. Registries envisions declaring the policy changes and new access standards to the public and stakeholders in early 1999. Full implementation scheduling will be dependent on legislative and operational requirements being met.

So, in essence, this in a nutshell has provided you a brief summary of what we've been up to since April and the release of the report and our consultation process. We certainly invite any questions that you may have.

MR. DUCHARME: Thank you for the presentation. I was just wondering: would it be possible for you at this time to share with us some of the concerns that were expressed, let's say, through the focus groups that you had?

MRS. BEVERIDGE: Actually, we haven't really compiled those concerns yet. I mean, I know from having sat in on several of the groups that they are concerned. They're concerned about the impact on their businesses and general things, like if they can't get information from us and have to go through some sort of a court procedure to get an order to get the information from us, that that could jam up the legal system. So there were concerns of that nature that were expressed. But in terms of actually getting them all compiled, we won't know what the final implications are till PricewaterhouseCoopers releases its report in November.

MR. DUCHARME: Thank you.

MR. DICKSON: You gave us a long list of stakeholders, of businesses and organizations, that have an interest in accessing that kind of information. Can you be a little more specific in terms of how many consumer groups, what consumer groups you involved in your consultation?

MS BROOKS: I can speak to that. We did not include the consumer groups in the front end of the consultation because indeed they were seen as part of the group that we wanted to consult with when we were trying to get a pulse for the public perception of this. Just recently we had a meeting with Wendy Armstrong and her board president to get their feedback on how we were approaching the actual public consultations. So that was one of the main thrusts in terms of the input of the consumer groups, to get a feel for how we were reaching out to the public.

In terms of the nature of the involvement of the other groups, we very much tried as much as possible to go through the associations and the representative bodies of these groups and, you know, put it on them to come and speak to us. We felt we had good representation, and where indeed we felt the voice was missing, we tried to pursue that individually.

9:33

MR. DICKSON: I appreciate the response. Would the Consumers' Association of Canada, then, through Ms Armstrong be sort of the sole group that you consulted with who would be independent of information consumers? We know all the groups, the lawyers and insurance companies and private investigators, that require information for their business purposes, but in terms of talking to people who would not have that same vested interest, who would be speaking more broadly in terms of public interest, I am wondering if there is anybody you've consulted with other than Wendy Armstrong. That was more on a process issue rather than on a substantive policy issue.

MS BROOKS: When we took the advice of Pricewaterhouse-Coopers in terms of how we best get a representative voice of the public, we discussed in great detail how we do that, and that was why we randomly selected the focus groups and got an initial feel from those focus groups as to, I guess, the voice of the public and then felt it was very important that we drill down further in terms of this survey work that we were doing. There was no other option laid out to us in terms of a way to get the voice of the consumer to the table, neither through the Consumers' Association nor anyone else. We'd always be open to ideas on that, but we weren't really given any. I guess we felt we were going out directly to the public to hear the voice of consumers.

MRS. BEVERIDGE: Actually, I just wanted to add one thing to this, Mr. Dickson. I believe that we did, though, invite -- I just don't recall which consumer group. There was another small business group, and maybe there was another. I just honestly don't remember the name of these groups, and they declined actually to participate. I could get you the names of the groups if you wanted to know.

MR. DICKSON: Yeah. I'd be interested.

MRS. BEVERIDGE: Okay. Sure.

MR. DICKSON: Mr. Chairman, if I could just ask one other question. The focus groups, I was initially thinking, were just people selected at random, members of the community, but then something else you said suggested that at least one of the focus groups was made up of people who actually buy the information or routinely access the information. Can you help me understand what the mix was there?

MS BROOKS: Yes. I'll clarify. The first step was to speak to people with a vested interest -- and we're identifying them as stakeholders -- such as that long list that I presented and Laurie reiterated in terms of insurance companies, lawyers, et cetera. That was phase 1, if you will, to collect information from the people who had a vested interest in our potential recommendations. Then we started what we're calling the public research phase of this project, and that was where we went to the randomly selected focus groups, followed up now by the telephone survey of 800 Albertans. So we saw those as very distinct and did not mix the two; i.e., we didn't have members of the public in with the stakeholder group, even though obviously the public are stakeholders. We delineated those two.

MR. DICKSON: Okay. Thank you.

MR. STEVENS: Thank you very much, Barb. Did you say you were planning on preparing a report for this committee?

MS BROOKS: Yeah. What we know is that there are obviously grave concerns in terms of the timing of any legislative changes that may need to be made to indeed put in place new access standards for registries, and we're aware that this committee is

probably very interested in terms of any legislative impact, whether that be to FOIP or to other acts. So one of our key steps when we have in front of us the recommendations would be to conduct an analysis of what the legislative impacts are, and I guess we're feeling that this committee would be interested or would be wanting to be involved in that discussion.

MR. STEVENS: The current timing that we have I think involves an anticipated report being available from this committee by the end of November, and at this point in time our last committee meeting is scheduled for November 9. So I guess the question is: having regard to our timing, is it likely that the report with the analysis that you're referring to might be available prior to our last meeting as scheduled?

MRS. BEVERIDGE: It might be. We can certainly try and speed it up. As long as we get the recommendations as expected the first week in November from PricewaterhouseCoopers, I think we could do that legislative analysis, at least a preliminary analysis, very quickly.

MR. STEVENS: Okay. Thanks very much.

THE CHAIRMAN: Pamela.

MS PAUL: Yes. Thank you for your presentation and being here this morning. I was just wondering. With regard to the information that is given out through the registry -- you did mention that you're monitoring and following up the sorts of information that is available -- could you just sort of give me an overview as to how detailed the information would be accessible to somebody in the public or somebody that is inquiring? Is it a vast amount of information that is given through the registry? I know you're monitoring and sort of doing follow-up. When you do use the registry, can you put a qualifier on your application -- I suspect that's how it would work -- that you do not want any information going out?

MRS. BEVERIDGE: We actually do not sell information or distribute information to individuals on third parties unless they have an access agreement with us. In order to have an access agreement with us, there are a number of criteria that they have to fulfill. I actually didn't bring our policies with me today, but I could make that available to you if you wanted. If you're an individual seeking information on yourself, though, you can come in and buy the information. The type of information we are taking about is, as Barb mentioned earlier, name and address. Let's say you have an account and you were -- I'll give you an example -- a parking company like Impark. You would be providing a licence plate number, and then what you'd be seeking is the name and the address of that individual who had been parking in your lot and had not paid their bills.

MS PAUL: Okay. So having said that, would that indicate that the person asking that information is in fact working for that parking company?

9:43

MRS. BEVERIDGE: Yes, it would. Like in the case of Impark, they actually have what's called a batch interface, so we know exactly who's acting. It comes right through the computer. Their requests are processed every night and then sent back to them. So we know exactly who's requesting it.

What we don't do now and what the commissioner wants us to do, is if -- now, this is if -- after our new standards are issued, parking companies still can get information from us without having informed consent from the public, then we would have to do some sort of a follow-up audit to make sure that the information that they're getting from us is being used for their debt collection purposes.

MS PAUL: Okay. I and a number of other people that I've talked to have a concern with the information given out. When I registered my particular vehicle, I didn't want anybody to know where I was living. Shortly after I registered the car, which I had to change -- I changed my address; nobody knew where I lived -- a speeding ticket came to the house. So the information was put in the computer, and it was accessed. I guess the police can access whatever, but that means the information is at hand and accessible. I only registered my actual address in one particular place. You know, you talk to people and there are concerns, and I hope it is being monitored. In some situations it's life and death, and you just don't want the address given out.

MRS. BEVERIDGE: You know, we can in serious situations -- and this has been historical as well -- suppress addresses so that even the police can't get at them. In fact, what we often do in a case like that is recommend a box number, using something like that. As you mentioned, though, the police do have access to our databases, and we didn't include them as part of this.

MS PAUL: My concern isn't the fact that I have to pay the speeding ticket. My concern was obviously that all of a sudden something comes to the address, that nobody knows, where I live, and it sort of put flags up. Thank you.

MRS. BEVERIDGE: You're welcome.

THE CHAIRMAN: Okay. Any other members have any questions?

I have a question, but I also have a bit of a concern. I believe your committee is very aware of this because it's similar to a lot that has been expressed to us and comments that I've heard over the last couple of months, and that is that you have to be very careful when you change something that affects historical practices. As you mentioned at the beginning of your presentation, the disclosure of certain types of registry information is a long historical practice, and if there are going to be some changes, they have to be done in such a way that those people who would be directly impacted -- whether it's a business, private parking operations, the private detectives and that, with the submissions they have made . . . I have a personal opinion, and that partly reflects another committee that I work very closely with, and that's the regulatory reform initiative. This issue has come up, and a concern that has been raised and is endorsed by the task force is that if the practices are changed in some way -- and I expect that there will be some changes coming out of this review -- because of the way a lot of things have been structured over the years, the same rules should apply to legitimate, bona fide private parking operators or law enforcement agencies or private enforcement agencies, and I emphasize: legitimate and bona fide. There should be the same kind of ground rules. Otherwise, I think a lot of what's happening out there is going to be thrown into chaos. I gathered from your comments that this is something that you are considering, but I would like to throw that out to the committee.

The question I have around all of this is: if there is going to be a practice relating to the disclosure of information that might be a bit unique from other operations, from other departmental or

public-body operations, can something like this be handled through a paramountcy section in the act? Now, Clark may have to give part of the answer to this, but we are dealing with the issue of paramountcy. Could the Department of Municipal Affairs in its legislation declare a paramountcy that would have slightly different rules than might apply across the board in all other instances of disclosure?

MRS. BEVERIDGE: I don't know if I could answer that. I might have to defer this one.

MR. DALTON: Let me take a stab at it, Mr. Chairman. I think it could. We've had this discussion earlier on in our meetings, the sort of relationship between paramountcy and section 4, which is the exclusion from the act. You can do that, make it paramount, because section 5 -- I've got it right in front of me here -- essentially says:

> (2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless
>
> (a) another Act . . .
>
> expressly provides that the other Act or regulation . . . prevails despite this Act.

You can say in the other act that this prevails despite what FOIP says, and then whatever rules you create in the other legislation would have that paramountcy to this particular piece of legislation. For example, in the Motor Vehicle Administration Act there could be a provision that says that these provisions allowing access, if there are any -- I doubt if there are. But if we did put something in there and constructed something like that, those provisions would apply despite the Freedom of Information and Protection of Privacy Act. Similarly, with the Land Titles Act you could say the same thing and similarly with the Personal Property Security Act and so on.

THE CHAIRMAN: I'm just thinking of the possible advantages. If you exclude through section 4 any operation of a public body, it becomes literally uncontrolled, you know, other than by ethical treatment, the good judgment of those involved. If you include it in another act as a paramountcy, you could still put some fences around the kinds of information that might be released. Again, I'm going to reflect only my personal thoughts. We've done this so long, you know, issuing name, address -- and I'm not sure whether gender and personal description is necessary. If that's deemed to be part of what allows law enforcement to operate properly and if there were some strict limits as to what could be divulged, then it might better be handled in a paramountcy situation than simply by excluding it. I don't know if that's something that's been considered.

MR. DALTON: That's certainly a method of doing that. It in a way reflects section 38 of the act, which is a disclosure provision for personal information. Many of those disclosure provisions are purposive in nature; in other words, for the purpose of this or the purpose of that. For example, you can disclose personal information to law enforcement agencies. The same idea could be encompassed within the home legislation, the Motor Vehicle Administration Act or whatever. So you could do that.

THE CHAIRMAN: Would that be a clumsy or awkward way of doing it?

MR. DALTON: Well, there's of course both sides to the story. Sometimes you like to have it all in one particular act because then you don't have to look all over the place. On the other hand, if all you're really concerned about is that particular act in any event -- for example, I wouldn't think users of the Land Titles Act would be looking for FOIP in any event; they'd be looking at the Land Titles Act. Similarly with users of the personal property security registry. I bet if you asked a number of those people, they wouldn't even know the FOIP Act existed.

So in many ways that kind of legislation is a good home for that kind of rule because those are the people that use it in those circumstances. Perhaps it would be the same way with the Motor Vehicle Administration Act. The people that are using it really don't know FOIP is around. They sort of know it's there, but when I talk to my colleagues and tell them that I do work in this area, they shake their heads and wonder what it's all about. Yet they know very much what goes on with personal property security, land titles, motor vehicles, that kind of thing. So it's a balancing of who's going to use it and how easy it is to find for the users.

9:53

MR. DICKSON: I'm just going to mention that I don't know whether either Pricewaterhouse or Municipal Affairs have seen it, but the Law Society of Alberta actually did a very thorough presentation. It was actually a segregated presentation dealing with registry information apart from their main presentation. Is that available? It's a document that either the department and/or Pricewaterhouse should be looking at in the course of their review, and I'm not sure the copy has made its way to your office.

MRS. BEVERIDGE: No, it hasn't. We were aware, after we had our stakeholder consultations with each of the interest groups, that a lot of them were going to make presentations to your committee. So we knew that the Law Society was going to make a presentation, but we've never actually seen the presentation.

MR. DICKSON: It seems to me, Mr. Chairman, somebody may want to have a discussion to make it available. We sort of have two processes, and there's an area of overlap, two consultations going on in parallel. I think we have some responsibility to make sure that we're sharing with that process the relevant kinds of submissions we've seen. We're going to, hopefully, get the benefit of a report which is sort of the distillate of their process. So, you know, they may be parallel, but they shouldn't be mutually exclusive.

THE CHAIRMAN: Okay. What is it specifically you're asking for then?

MR. DICKSON: Well, I'd like to make sure that any submissions that we've seen -- and I reference in particular the Law Society one specifically on this point -- are also shared with Pricewaterhouse and Municipal Affairs so that they're at least aware of the kind of input we're getting.

My concern, Mr. Chairman, is this. If there are groups that think we're doing it all, who make a presentation to us in good faith, I don't want anybody feeling blindsided because we've got this other process going on that may come up with very different recommendations. It just makes sense to harmonize and integrate them wherever possible. I don't remember reading other submissions as specific or as voluminous as the Law Society one, but there may be some others that address this point.

THE CHAIRMAN: So you're suggesting that the submissions that are made to this committee that relate to registries be made available to their committee or to Pricewaterhouse.

MR. DICKSON: Absolutely.

THE CHAIRMAN: It's public information, and there's no reason why we would want to hide it, for sure. I'm assuming, Barb, you're the one that's working more directly on it. If you want to contact either Diane or Sue for any of that, you're certainly more than welcome to have it.

MS BROOKS: Thank you.

THE CHAIRMAN: Any further comments or questions? If not, thank you very much for the presentation.

As Gary mentioned, we know that there are several initiatives going on outside of the direct parameters of our committee, and we don't want to directly interfere, but we realize that there's enough common ground that we can't go in two separate directions. So if there's anything that you feel you need from the information that this committee has, as I said, you're certainly welcome to it, even in addition to the stuff we just talked about in terms of presentations. If there's information you have that we need, I'm assuming that either through Diane or Sue we could get updates on that as well.

Thank you very much for coming over. You're welcome to stay and listen to the rest of this if you want, but you don't have to feel obliged to do that. We know what we discuss here is very exciting, lively, and most people wouldn't want to miss it.

As we said at the beginning of the meeting, we're going to move up item 6 on this agenda so that Clark can be here for this. Hilary Lynas and Clark are both going to be making presentations on this. Your name appears first, Hilary, and we want to make sure that Clark feels that he's top dog in this one for sure, so he gets all the opportunity. I see you've got all your papers there. Sometimes for the purposes of seeing who's speaking, the microphones at the end might be a little bit handier, but if you've got a bunch of stuff there you don't want to move, you can stay where you're at.

MS LYNAS: Okay. Thank you. The peer review and quality assurance issue was raised in about four submissions that we received. Alberta Labour and Alberta Health have also received correspondence on this issue. Section 9 of the Evidence Act provides protection of records created by certain medical committees which are made up of doctors from being used in court as evidence. Peer review and quality assurance processes are undertaken to analyze how individuals and the institution involved can better respond in the future when there has been an incident in an institution, and the purpose is not to assign blame when something goes wrong.

Historically physicians have relied on section 9 of the Evidence Act to prevent disclosure of any information generated during the reviews. Outside of court, hospitals could refuse any requests to release these records. Now with the FOIP Act, since it has become effective for the regional health authorities on October 1, if a formal FOIP request is received for quality assurance records, the regional health authority will have to accept the request and review the records and make decisions on whether they should be released in part or in whole. The records will need to be reviewed for any of the mandatory exceptions for disclosure, such as protecting personal privacy in section 16, and also discretionary exceptions may be applied such as legal privilege in section 26. The four submissions have asked that section 9 of the Evidence Act be made paramount to the freedom of information act.

The other alternative which has been proposed is to exclude peer review and quality assurance records from the FOIP Act; that would be a section for exclusion. Some physicians have said that they will discontinue quality assurance meetings until the Evidence Act is made paramount. The concern seems to be that the frankness of the process will be lost and that liability issues could arise for the participants.

The Information and Privacy Commissioner has recently recommended that section 9 of the Evidence Act be made paramount until October 1, 1999. However, the commissioner has also said that he is not convinced that making the Evidence Act paramount to the FOIP Act will solve the problem. I'll also mention that Alberta Health is examining the issue as part of the process of developing health information legislation.

That's kind of a thumbnail overview of the issue.

THE CHAIRMAN: Questions? We'll maybe take questions on this part of the presentation and then move to Clark so that we can keep them separate.

MR. DICKSON: Mr. Chairman, there had been express threats -- threats may not be a fair way of describing them. There had been indications in both the Capital and Calgary regions that their internal investigation facility was going to be disbanded because doctors were no longer willing to serve post-October 1, 1998, with the advent of FOIP. I'm wondering: have we got a current status on that? Have any of those committees in fact folded? Have people left those committees?

MS LYNAS: The last I had heard was that the Calgary committee was planning not to meet in October. Since then the commissioner has issued a letter, and Alberta Health I believe was going to be communicating with them as well. I'm not aware what their decision has been.

THE CHAIRMAN: Anyone else?

10:03

MR. STEVENS: This arises out of the commissioner's attendance here. When he was here, he spoke of this matter and, if I recall correctly, indicated that he was going to be having meetings on this issue during the month of September with a view to perhaps finding a solution within his mandate. I was wondering if we could have an update on that, if in fact it's appropriate.

MR. ENNIS: In terms of the meetings, a meeting was held with the Calgary regional health authority on this issue. Information has been exchanged on various points of view, but I really can't give you an update at this time as to whether anything more than the commissioner's letter to the Department of Health has come out of that.

MR. STEVENS: Thanks very much.

MRS. TARCHUK: Actually, I was going to ask the same question. I'm also not clear. You said that if the Evidence Act is made paramount, it doesn't take care of the concerns. I'm not clear why that is.

MR. DALTON: If I may, Mr. Chairman. The difficulty is the way it's formulated. It doesn't create a sort of paramountcy situation. What it simply says is that no one may be asked and that no one is required to give the information or records that relate to these committees. The trouble is: how do you make that paramount? Because it's in a court. The formulation of section 9 is: no one may be asked in a court, and no one may be required to give information or records to a court. So if you say, “We make that

paramount to FOIP," well, FOIP is not about courts at all. It's about making access requests to hospitals, about access requests to these regional health authorities. So paramountcy may not help the situation. You can't say this will be paramount to FOIP because it has nothing to do with FOIP at all. It really means courts.

If I may just sort of tag onto that. When we developed the act, we had in mind and I certainly had in mind this particular section. It was one that I'd had some dealings with over the course of years, and I certainly had in mind encompassing that into an exception to the act under section 26, where it would be accepted because it's a privilege under law. Section 26 of the act says that you "may refuse to disclose . . . information that is subject to . . . privilege, including solicitor-client privilege," et cetera. It was my view that section 9 actually created a privilege, and the privilege is that you don't have to give the information in court circumstances. My thought was that that privilege would carry over into any access requests made to a public body.

We thought we'd covered it in that section up until recently. There was a court case in Nova Scotia that suggests that maybe that privilege only exists for the purpose for which it was created, i.e. for courts only, and that it doesn't exist outside of the courts. So there may be some question as to whether my thinking on that as to whether it was a privilege or not was correct. It's up in the air.

The other aspect to it is that even if it is a privilege, notwithstanding the fact that the commissioner has ruled I think in accordance with other legislation that solicitor/client privilege exempts the whole record, facts and all, if there's a question of whether there's a whole exemption of all the records where it's another kind of privilege, there may in fact be severance required in that certain things can be accessible; for example, background information but maybe not some of the discussions or what have you. Privilege doesn't seem to work very well, so I think you need to do another formulation of that to have the two work together. So my initial thoughts on this probably aren't correct, and we have to do something different with this section if the policy is to carry forward what is already in section 9 of the act.

If I could just comment. I'm involved with Alberta Health in developing a proposal for doing exactly that: making a provision that, number one, carries forward this kind of exemption -- they've chosen not peer review but quality assurance as the concept -- bringing that forward; and number two, expanding it beyond merely medical practitioners. That's been a problem over the years. The peer review now, rather than just purely medical practitioners, is multidisciplinary and involves doctors, nurses, and others that are involved in the health process. So they're exploring the possibility of expanding it to what it really is, to quality assurance review, and expanding the types of bodies that they'll cover.

We've come up with some ideas to put forward to regional health authorities and to others to see what their thoughts are on it, and we will hear from them near the end of October. So we're sort of paralleling this committee in that sense. I know that's a long answer to a short question. Frankly, I don't think paramountcy helps, and we have to develop something else.

THE CHAIRMAN: Okay. Even though you suggest it was a long answer, it answered both of the questions I was going to ask, so it was a good answer. I see it raised one from Gary though.

MR. DICKSON: Yeah. The reason I raised this on August 31 was my concern over timing. I appreciate the analysis you've done in terms of section 9 limitations and so on. Is there some certainty that if a legislative solution is required, the legislative solution would be dealt with in the fall session of the Legislature? My concern, again, is that the physicians I speak to who serve and have served for a long time on these critical assessment committees are very frustrated. If it means there's no resolution of this until the spring of 1999, I'm concerned that we're going to lose these. So can somebody address sort of the timing issue on this in terms of how quickly, whatever that solution is, we're going to have a solution in place?

THE CHAIRMAN: Well, I'm not sure if either of the presenters -- Clark hasn't made his presentation yet -- would be able to answer that very specifically, because it depends on what can go into the fall session. My understanding is that it's going to be existing legislation, and there isn't likely going to be enough time to introduce new legislation or changes.

But it does raise the question that was dealt with at the last meeting, and that's dealing with paramountcy. The present situation of regulations under the FOIP Act, that gives some temporary relief to deal with the emergent situations that can't otherwise be dealt with in paramountcy legislation outside, would seem to be the avenue if that is what the minister and whoever else is involved would decide to do. One of the decisions that this committee has to deal with is: what would be the effect or the potential ongoing effect of that regulation-making authority under the FOIP Act? A lot of the discussions that we've had seem to zero in on the fact that that should be retained, that there must be some kind of a mechanism to deal with the practices or problems or other things that come up that simply can't be dealt with in the prolonged process of introducing and passing legislation.

Perhaps before we get too sidetracked, we should have Clark make his formal presentation, and then we can sort of blend the question and discussion part of it.

MR. DALTON: Essentially, Mr. Chairman, I've given it. [interjection] Yeah, that's exactly it; I got it in through the long answer.

Hilary's dealt with the other aspects to it. We know what the legal implications of the section are, and we know what we're doing in the future for it, so unless members have questions, I would probably leave it at that.

THE CHAIRMAN: Okay. I'll open it up for questions and discussions again. Clark or Hilary, do you want to comment on my comment about the regulation? Is that sufficient relief for this sort of problem?

MR. DALTON: Well, that's why the regulation-making provision is in there, so that when we find things like this, we can deal with them. I don't know whether in this particular case it would actually do the job, as I indicated, because it's trying to make something paramount that really affects only courts in an act that deals with access to information. So I'm not sure whether it does the job. It certainly gives the message anyway that that's what we intended.

THE CHAIRMAN: Okay. Anything we do in this act isn't going to affect the Rules of Court anyway.

MR. DALTON: That's correct.

THE CHAIRMAN: That is an entity unto itself. The way I understand the problem is that there can be a privilege established in a court, but your suggestion is that that might not carry over

after the court and that the information that is subject to privilege may not be subject elsewhere. So were you suggesting that an amendment to either FOIP or some other legislation may or may not solve that regardless of what happens, or is there a way that that can be clarified?

MR. DALTON: Obviously, in my view anyway, the best solution is to make it clear instead of relying on inference. I think there's an argument the other way, that a privilege, once it's established, is a privilege for all purposes. The argument I use for that is that we also exclude a parliamentary privilege, which is privilege that exists in the context of you members carrying out your jobs as parliamentarians. If we mean privilege to be that kind of privilege as well for purposes of access requests, then we also could say that that means privilege should be extended to access requests not only for parliamentary privilege but also for purposes of privilege in courts for these kinds of things.

So I think there's an argument the other way. It's unclear. It maybe should be clarified. I'm sorry that may seem very unclear, but it's a very technical legal point, and I think there's an argument both ways on this. Why not make it clear?

10:13

THE CHAIRMAN: Is that something that you had suggested you would have more information on by virtue of what you were doing for the Department of Health by the end of this month?

MR. DALTON: That's correct. Actually, we have developed concepts that are going to go out to the community for them to have a look at to see if they can go along with the concepts. That involves two things: one, expanding it to multidisciplinary committees, which apparently is the way that people are doing these things these days, and secondly, making it not just privilege but for purposes of access requests in hospitals and regional health authorities and those kinds of things.

THE CHAIRMAN: So it might be appropriate that we didn't get into too much detail on this topic until you have more advice for us.

MR. DALTON: I think that's right. I guess from our point of view we're looking at saying to you: look; we're doing some work in this area, and maybe we can show you something later on. We could probably even show you what the concepts are if you wanted to see that.

THE CHAIRMAN: That sounds like a fairly good suggestion.

Any other questions before Clark likely has to take his leave or back to Hilary? If not, we'll move on, and you can check to see how important that phone call was.

I guess we're back to what was item 3 on the agenda, Municipal Government/Police Issues, and that was paper 6, that was distributed earlier last week. I think everybody would have got that by about the middle of or late in the week.

Hilary, you're the presenter on that.

MS LYNAS: Thank you, Mr. Chairman.

THE CHAIRMAN: Excuse me, before you start, actually there's a corner over there that makes sound projection kind of difficult. I'm having trouble hearing you. Maybe if you don't mind, I will get you to sit at the end of the table. The sound from there is always a bit better.

MS LYNAS: This paper summarizes the issues raised by local government bodies. We've also included in here issues around publicly owned utilities, municipal police services, and some questions about how RCMP fit into the FOIP Act.

I can begin by describing the issues that were raised by the local governments. The first one relates to the relationship between the FOIP Act and the Municipal Government Act. Once FOIP comes into effect for local government bodies in October '99, wherever there is an inconsistency or conflict between the two pieces of legislation, the FOIP Act will prevail over the Municipal Government Act unless the Municipal Government Act expressly provides that it prevails over FOIP. The MGA has been amended so that on October 1, 1999, its principal provisions relating to access and privacy will be repealed. Also, certain sections relating to access to assessment information or records will prevail over the FOIP Act. The FOIP Act will extend the obligations local government bodies have now with respect to access and introduce new obligations relating to privacy.

Page 1 of the paper summarizes the differences between the two acts, and then appendix 2 of the paper describes them in more detail. Some of the key ones are that the Municipal Government Act doesn't protect the collection and use of information in the same way that the FOIP Act does, and the MGA has different criteria for the disclosure of personal information. The FOIP Act applies to records which are under the custody or control of municipalities, whereas in the Municipal Government Act the key concept is possession of records. The FOIP Act requires partial disclosure of records in certain cases, where the MGA would allow complete nondisclosure.

The FOIP Act imposes a duty to assist applicants, which isn't in the other legislation. The FOIP Act requires that reasons be given to applicants as to why information has been withheld or refused. The MGA just requires reasons, whereas FOIP is more specific in that the statutory authority or the section of the act must be named. The FOIP regulation sets limits on fees and allows for fee waivers, whereas the MGA allows for reasonable fees to be set and established by bylaw. The FOIP Act has both mandatory and discretionary exceptions to disclosure, whereas the MGA only has mandatory exceptions. The FOIP Act allows an independent review of decisions of public bodies by the commissioner's office, and under the MGA the appeal is to the council of the municipality. Several submissions contained an opinion that the Municipal Government Act was sufficient and that FOIP therefore wasn't required for local governments in the same way as other sectors.

Another issue that was raised relates to how the records of councillors are treated under the FOIP Act. Section 4(1)(i) sets up an exclusion for the records of elected officials of a local public body, and these are records which are not in the custody or control of the public body. Six submissions indicated that they would like a clearer definition of the records which are to be excluded. The concern seemed to be that the wording of this section should more closely mirror 4(1)(j), relating to records of Executive Council. The Executive Council wording talks about personal records or constituency records.

We had a look at legislation in other provinces for comparisons. The B.C. FOIP Act has the same wording as Alberta's legislation, and as far as we know, it hasn't been the subject of a commissioner's order that might have interpreted that section in more detail. In Ontario there are separate acts for provincial and municipal governments. Neither act excludes records of elected officials.

Now, a separate issue that was raised concerns the status of publicly owned utilities under the FOIP Act. EPCOR and ENMAX are utilities owned by the cities of Edmonton and

Calgary, and they have asked to be excluded from the FOIP Act on the grounds that it could adversely affect their competitive position relative to other private-sector utilities. The concern is that competitors could use the FOIP Act to probe their business practices and also that complying with the act would add costly overhead to their operations.

We had a look at other precedents in this case as well. The federal Access to Information Act doesn't apply to Crown corporations, although it does apply to some other entities which compete in the private sector. In B.C. their legislation doesn't apply to the BCR Group of Companies, which is a company which owns railways, wharves, and telecommunications facilities, and that group does compete in the private sector. In Ontario and Quebec, which both have large Crown and municipal companies, they haven't made special exclusions in their legislation to protect competitive advantage.

We included some options in the background paper. One would be to allow the FOIP Act to take effect and to monitor its consequences. So that's essentially a wait and see how the act applies and look at it in a future time.

10:23

Option 2 would be to exclude certain Crown or municipal corporations from the FOIP Act. So that would be more of a section 4 exclusion.

Option 3 is more of a middle ground where it would be possible to exclude certain sensitive business records of certain named Crown or municipal corporations under section 4(1)(i). In that case we would be trying to come up with a definition of sensitive business records which should be not subject to the FOIP Act while allowing the privacy protections to still apply to records. As well, the act would apply to general records that the organizations may have, general kinds of administrative records that aren't particularly sensitive. Those are the local government issues that I wanted to highlight.

I could now turn to the issues raised by the Alberta chiefs of police. The Association of Chiefs of Police suggested that the act could be made clearer in section 19, which deals with law enforcement in terms of criminal intelligence information. The FOIP Act includes criminal intelligence operations in the definition of law enforcement. However, legislation in other provinces, such as B.C., makes criminal intelligence a specific exception to disclosure. The submissions recommended that criminal intelligence be excluded from the act under section 4 or that it be a specific exception under section 19. Similarly, the submissions recommended that information regarding ongoing or unsolved investigations be added as a specific exception under section 19, and the submission cited that the FOIP acts of B.C. and Ontario and Manitoba have similar provisions to these ones.

Another issue related to the police services requiring clarification is the definition of police services and how they might be subject to the FOIP Act. The way local government bodies are currently defined in the act, it's not clear that police services are not subordinate to either police commissions or municipal governments in relation to FOIP. Alberta Labour has consulted with police services on this issue, and all would prefer a clarification in the act that would make police services a separate public body under the freedom of information act.

Other recommendations raised by the association are outlined on page 6 and refer to clarification of certain small areas of the act, which I won't go into unless anyone has any questions.

Two submissions raised issues surrounding access to RCMP records, and this is an area that is again fairly complicated. On October 1, '99, the eight municipal police forces in the province will be subject to the FOIP Act, but the remainder of the province is policed by the RCMP, and the RCMP's records relating to federal policing services are accessible through the federal Access to Information Act. The RCMP also provide services under provincial statutes that are not considered part of their federal policing mandate, and there is some question as to whether the information relating to these services is provincial or federal. While it's generated under provincial legislation and could be considered provincial information, the RCMP appear to consider it federal information. So it's one of these situations that at the moment is accessible through a request under the federal Access to Information Act.

Those are my comments on the paper.

THE CHAIRMAN: Okay. Any questions? Gary, you look really anxious. I know your hand is going to go up. Go ahead.

MR. DICKSON: I was trying to discipline myself, Mr. Chairman, in case others had questions.

A couple. One, I don't know, Hilary, whether you've had the benefit of reading through the huge number of submissions we've received from local municipal councils and local municipalities, but it struck me in reading through there that a lot of them were not even aware of the provision that exists in the current FOIP Act. I wondered if they were looking at an old copy of the act, because they didn't seem alive to section 4(1)(i).

When I read through the submissions, it just seemed to me all they wanted was to ensure that their personal records weren't going to get caught up with, you know, the municipality they were part of. Maybe you haven't read those things, but do you think something else is generally required to be able to safeguard those personal papers of aldermen and so on?

MS LYNAS: Well, I think some of their concerns may come from not having worked yet with the act as well with the timing of the review process. People were making submissions before the new issue of the policy and practices manual was available. The old manual did not cover this section, because of course it was directed towards government. The new manual contains a section which discusses the meaning of 4(1)(i), which just wasn't available to these municipalities at the time they made their submission. So I'm not sure whether any of them would feel more comfort now that they can read a little bit more about it and see what it means.

THE CHAIRMAN: Okay. Other questions?

I have a couple of things highlighted in the paper. One of the suggestions that has come up a number of times is that the act should be reviewed after the local government bodies have had some experience with their inclusion in the act. It seems to me that a lot of the queries and concerns that have come in relate to an uncertainty of what it really means. I'm certainly forming the opinion that one of our recommendations should be along the lines of a review of at least that part of the act where the MASH sector, or public bodies, has an opportunity to work with the act at a reasonable period down the road, whether that's three years or some like term, an opportunity similar to what we gave ourselves as the provincial government to look at problems, glitches, or whatever you want to call them. It's one of the notes on page 2.

I have similar sympathy for the councillors or board members, whichever they are, on the respective public bodies. As MLAs we're very concerned about certain things that we do that attach a bit of a privilege, you know, because of the confidential and very sensitive nature of some of the things we do. I think we have to have a good look at giving something of a level playing field to

other elected agencies as well. While I'm not certain that they have to be absolutely the same as MLAs and cabinet ministers and such, I think there has to be recognition that they have a similar role and that they have constituents who are equally concerned when they come to them about sensitive and sometimes very privileged information. So I think we have to have a pretty good look at that.

There was another item, if you'd bear with me for a second. I think some of these things were housekeeping, and as you said, we didn't have to go into a lot of detail with them. I did have a question regarding RCMP records. Right now I understand from this presentation and from what you've said that they consider their operations generally under the federal FOIP act. If we included something to that effect, that would be contrary to the federal act, which of the two acts would be paramount?

MS LYNAS: I'll ask Mr. Dalton if he could comment on that one.

MR. DALTON: Well, the conventional wisdom, assuming that they have the jurisdiction to legislate, is that the federal legislation would override provincial legislation. That's the normal constitutional rule. The question is: where does this all fit in there? It's very unclear. Where does provincial policing by RCM Police fit? We don't know.

THE CHAIRMAN: So is that something that is going to require a legal interpretation, or is that something that the only way you're ever going to resolve is with some kind of a challenge down the road?

10:33

MR. DALTON: Well, the difficulty is that it's difficult to categorize information that the RCM Police receive in a legal context. So it strikes me that really the only -- I throw this out as a possibility -- real possibility is one where, if you did legislate in this area, there would be a consideration sometime down the road as to whether that was effective or not.

THE CHAIRMAN: The last item that I had an opinion on, I guess would be the right way of describing it, is that of the publicly owned utilities. The suggestion that they be exempt from the act I think comes from the major ones that are in existence right now. I have a little bit of a problem with that in that these corporations, as they call themselves, have no problem with taking the advantages of being part of a public body but don't want the disadvantages that go with it. I think that when you're connected in that way, there are certain obligations that go with it. How difficult would it be to follow option 3, the sensitive business records, where you would literally identify which things would add a major competitive disadvantage, make those things subject to some kind of an exclusion but the other parts of the corporation's operation, including the protection of employees and the other kinds of expectations of privacy -- would it be relatively easy to identify that in some kind of a legal description, or is it going to have to be an exhaustive list? And I use the word "relatively" a bit loosely.

MR. DALTON: There's the rub. We sort of all know that what we're talking about here are sensitive records. On the other hand, that concept may be different for different organizations. If you're trying a listing, you may find that it's impossible to list everything or you're going to miss something.

What we did in section 15 was adopt the old concepts of commercial/financial/technical information, and the courts and commissioners have said that those things have their ordinary dictionary use. If it's commercial information, that's what it is. But what section 15 creates, as I explained last time, is a three-part test. It not only has to be commercial information, but it also has to be given in confidence, and thirdly, some harm should exist from its release. My understanding here is that if it meets the test of sensitive information, the act wouldn't apply at all. So it wouldn't have to meet those other two tests, that it was given confidentially and that some harm should occur from its release.

I think there's difficulty in defining what sensitive information is, because each organization probably has a different concept for that. If we try and use some of the other concepts, like commercial information, yes, they have dictionary definitions, but then it flies in the face of section 15, which has a narrow test. In other words, not only is it commercial information, but it must be given in confidence and some harm must have occurred from its release. So I see difficulties in trying to define the concept and trying to use concepts that we already have in the act given section 15 that already exists. I know that's very complicated. I'm trying to think on my feet here.

MR. ENNIS: Mr. Chairman, if I can just add to Clark's thought on this. One of the difficulties operationally is that section 15 is available to third parties involved with the freedom of information act. A public body cannot declare itself to be a third party. Apart from the philosophy in section 15, the mechanics aren't there for a corporation of this nature to invoke. The definition of a third party precludes a public body acting as a third party. So they would probably look at other sections of the act to see if there are other sections that allow them to shield information from access where that information is sensitive, and there are other sections in the act. There are discretionary exceptions in the act that they can turn to. The issue there is whether they would hold up in any given situation, and that would be tested in front of the commissioner the way the act is currently set up.

There's a section specifically that deals with harm to the economic interest of a public body, and if I could just move with Clark's thought a bit, I think that's probably the section that's left after section 15 vanishes for them because they don't have access to it. In reading the submissions that came in from those corporations, it seemed that they hadn't really looked into the act to see what might be there for them but moved to suggest that they be excluded from the act, thinking that there would be nothing in the act that would give them any ability to shield that sensitive information.

THE CHAIRMAN: Would it be possible, if there's a problem with definition or determining where an organization like this fits into the act, that there could be either some clarification or something added that would make it very clear that even though certain things are applicable, that might not be to other bodies or agencies of a public body?

MR. DALTON: Again, it's a definitional question. You really have to define what it is you're talking about if you want to exclude it.

My colleague here has pointed out to me section 24, which may offer a partial solution I think. Section 24 is: disclosure harmful to economic and other interests of a public body. "The head of a public body may refuse to disclose information" that is "financial, commercial, scientific, technical or other information in which a public body . . ." assuming that's EPCOR or some of the others. You could stop right there. You could say: any financial, commercial, scientific, technical, or other information is subject to

a discretionary exception.

MR. ENNIS: Where harm can be shown.

MR. DALTON: But we could take "harm" out. I mean, if you wanted to get rid of the harm's test, you could take that out.

THE CHAIRMAN: In which case the commissioner would rule, if there was a dispute, as to whether that was done properly or not.

MR. DALTON: That's correct. I'm just offering a solution, and you can discuss that.

THE CHAIRMAN: Well, I purposely tossed this out because it's going to be something that has to be debated certainly, and not only does it give the committee members a chance to think about it but the technical advisory people maybe a little chance to look at some of these options as well.

Gary, you had a question.

MR. DICKSON: Actually just three queries. Hilary has covered lots of ground. The first one was more of an observation. I was just going to say that it was interesting reading through all the municipal presentations, and often there's a sense that the municipal government is the one level of government that's truly open and transparent to citizens.

I'm just going to remind people on the committee that the chairman and I were on a committee with the initial FOIP thing in the fall of 1993 that went to a small community in central Alberta. The mayor made a presentation insistent, as we saw in some of the written submissions, that they're completely open, that citizens are able to access any information they want, that there's no need for the legislation. The next presenter was a woman who for over two and a half years had been trying to get information about a sewage lagoon and some problems. I just make the point that there are people who are denied information, that can't get it under the Municipal Government Act.

10:43

The second point. Just in terms of utilities, I was going to say that in the analysis reference is made to the federal act, but the federal act is almost 15 years old. There's reference to the BCR Group of Companies being excluded from FOIP. I was going to ask: does that exhaust all of the Crown corporations that carry on business in British Columbia? I'm assuming that there must be some others that aren't part of the BCR Group of Companies. In other words, are there some Crown corporations that in fact are carrying on business, competing with the private sector perhaps, that are under their FOIP legislation?

MR. GILLIS: Yes, there are. I wouldn't say they're Crown corporations necessarily. For example, there are hospitals which carry on types of services which the private sector also offers. They are not excluded from the coverage of the legislation. In fact, there have been a couple of cases in B.C. where the very section we're talking about here, section 24, economic interest of a public body, has come into play because of the competitive relationship, where in fact the private company offering the services is very interested in how the public body is operating and has asked for information.

MR. DICKSON: The other point, Mr. Chairman, just quickly, is under the police. We talked about this I think maybe August 31 or September 1. This is the reference on page 6 to police commissions and police services. I'm wondering whether any of the municipalities raised this as a concern. I remember reading submissions from police agencies saying that this was a problem to resolve, but what's curious to me is that I didn't see a submission from the city of Edmonton, the city of Calgary, or Grande Prairie, the larger communities, saying that they were worried, that they wanted the police commission to be one public body and the police service to be a different public body. Did we get submissions like that from municipalities?

MS LYNAS: No. I don't believe they raised it.

MR. DICKSON: The reason I ask that, Mr. Chairman, is because I have a bit of a concern. The problem with being an opposition MLA, I guess, is that sometimes you get to become too suspicious, but it strikes me that there has historically been a certain kind of tension between police commissions and sometimes police services. It seems to me that there's another option which remedies any confusion, and that is to expressly say that the police commission incorporates the police service. That sort of reasserts the idea of civilian control of a police service. It resolves any ambiguity, because now we know through whom you deliver your FOIP request. It just seems, frankly, to undermine civilian control and a bit silly to say that the police commission is a public body when all you've got is a group of volunteers and maybe one staff person in the biggest cities in the province and the police service over here is going to be treated very separately. Anyway, that's a concern I have, and it's reinforced a little bit I think by the fact that none of the municipalities have registered that concern, that what they want to see is the police service hived off and treated as an independent public body.

THE CHAIRMAN: I think, though, that would come under the category of not having much experience either. I suspect there are a lot of issues that are going to come up as the MASH sector finds itself involved in administering the act. I think a lot of the submissions we heard were based on the immediacy of the administration part of their operations coming under the scrutiny of access and how you protect the privacy of it. There are a lot of these that would almost be considered side issues because there's been very little experience, and probably in smaller municipalities that have their own police forces, there may not be quite as much difference in the operations as there would be in a larger force.

I know, for example -- and I'm going to use the RCMP example in most of the communities that I represent, even though that isn't really what we're dealing with -- that if you have a police force that amounts to three or four constables and a corporal or a sergeant in charge, there is a very intimate working relationship between the police commission members and the members of the police. They're almost in constant contact. If you take a force that has a few hundred people, there are only a few members of the force that actually would know what the police commission is really talking about or thinking about. So they would see themselves as having a significant difference in entity. I would suggest that would be one of the reasons why there may be a lack of response from the smaller communities. But, again, this is something that the committee has to debate, you know, look at the pros and cons and how eventually that's going to affect them, and make sure that whatever we recommend covers everybody in sort of an equitable fashion.

Did you want to say something?

MS LYNAS: Yes. One of the factors in this is that there are certain delegation powers within the FOIP Act, and if either the

municipality or the police commission was the head under the act for a police service, it would limit the service's ability to delegate some of their powers. If there was a change in their structure or whatever, they would need to go back up to the head and do a new delegation agreement. So it means that it would introduce an element of negotiation over a subject between those bodies that doesn't exist right at the moment.

The other consideration, as I understand it, is that police commissions have a certain scope of activities, and if the police commissions were the head for police services, the police services would then be in the situation of being required to release records to the police commission that the police commission actually doesn't have authority to see. So it would, again, upset the roles that both of those two entities have where there's legislated limitations on what records can be released to police commissions.

THE CHAIRMAN: Other comments? If not, before we go on to the next item, though, the agenda may not have made it completely clear that lunch is going to be served. We'll do the same as we did at the last meeting; we'll have a working lunch. Sandwiches are going to come in about a quarter to 12 and everybody can serve themselves and we'll just keep right on going.

The seventh item on the second page of the agenda, Commencement of Detailed Review of Public Submissions. We left that on there because it's quite likely that we will finish the actual presentations before the adjournment time, and there will be an opportunity to maybe go in general terms into some of the submissions. But I'm going to suggest that we don't get too carried away today in detail, because before we do that, I think we need to have some more refined steps or questions. If we were to start without some guidelines, we're going to be all over the map and probably get nowhere. As soon as we're finished with this part of the presentations, I'm going to work with probably Sue and whoever else on the technical committee and Diane to try and identify as many specific questions so that when we come in, we can deal with them more item by item. I'm afraid otherwise we would lose structure in the review, and if there are issues that aren't properly put in that way, they can be raised. But I'm not sure that we would be terribly productive if we just used a shotgun approach.

10:53

MR. DICKSON: Mr. Chairman, does number 7 mean commencement of detailed review of public body submissions?

THE CHAIRMAN: No, of the hundred and some that came in.

MR. DICKSON: Okay. Can I ask: what's the status of the presentation from the public bodies and provincial government departments? We've been waiting for that, and you've shared a concern when we discussed it before. Are we any clearer in terms of when we're going to get that presentation from government?

THE CHAIRMAN: I'm not sure when it's going to arrive. I asked that we get as much unofficial feedback as possible if there isn't a formal one, and whenever that comes, we'll deal with it. But I have no update on that, Gary.

Okay. We can then move on to item 4, Privacy/Fair Information Practices. Peter is going to take us through a presentation on that.

MR. GILLIS: Thank you, Mr. Chairman. There is no paper for this, so I'm just going to make a short presentation.

I think it's important first for the members to appreciate that for the most part in our discussions we've been dealing with part one, freedom of information, and now we're going to go on and deal with part two in this presentation, which is protection of privacy. I want to emphasize to you that you move between two worlds when you do this. Part one is how you make a freedom of information request and the process for doing that and what the results are. So it's request driven.

Part two, protection of privacy, is really how a public body has to do its day-to-day business while taking privacy protection into account. It sets out what in the sort of trade are known as fair information practices, which, if you deal with a lot of personal information, you have to build into your operations. Those fair information practices come directly from the OECD privacy principles which were developed in the 1970s and to which Canada became a signatory in the early 1980s. The same principles are expressed in privacy legislation across the country as it applies to public bodies.

Now, what are those principles? Well, the first principle deals with collection. When you go out to collect information, you have to have an authority for doing that, and the act sets out what "authority" means. One might be a statutory authority, and I use the Workers' Compensation Act. In the Workers' Compensation Act it says that the Workers' Compensation Board can seek medical information if you're a claimant. That's a statutory authority to go out and collect information. If you are a law enforcement body, you're empowered by the act to collect information about law enforcement. It doesn't put any constraints on that. Again, as we were talking earlier about criminal intelligence and so forth, there's a broad right for law enforcement bodies to collect information.

Thirdly, probably the most problematic but also the most practical collection authority is that if neither of the two previous ones apply, then you can collect information that relates directly to and is necessary for an operating program or activity. Now, in a provincial public body that would be something reflected in the estimates. You're spending money on this; that's an operating program or activity. If it was a municipality or a hospital, it's basically in your budget. Again, you've got this type of program; you've allotted money for it.

The ringers in there are "relates directly to and is necessary for." So, for example, if you were collecting information and the public complained about the breadth of the information you were collecting, the commissioner would come in and he would test: is it related directly to and is it absolutely necessary for the operating program? Sometimes he finds that, yes, it is, and lots of times he says: no, it's not, and you're going to have to stop collecting the information. So that's the authority and sort of relevance test. That's the first principle.

Then the second principle in the act says that in most instances when you collect personal information, you should collect it directly from the individual involved. So that sort of sets up the principle; you're generally going to do that. Then there are a number of exceptions in the legislation to meet, again, practical situations. For example, if you're a law enforcement body, not very often are you going to go out to the person you're investigating and necessarily ask for all the information from them. You're going to collect it indirectly from other sources.

Another one is eligibility for social programs and benefits or verification of social programs and benefits. Well, there's a power to collect indirectly when you're trying to see if someone qualifies for a program. I'm just picking ones out of the air here; there's a number of them. Another one relates to the Maintenance Enforcement Act, that there's indirect collection when the Department of Justice is seeking information to enforce a maintenance order. And it goes on. There's a number of these. So

the principle: direct collection in most circumstances, then some exceptions that permit sort of practical government operations and public body operations to occur.

Then the third part of the collections process is that if you are collecting directly from the individual the information relates to, you have to notify that individual of the purposes why you're collecting the information, the authority for collecting it, and give them someone to whom they can talk to explain the collection to them if they have more questions about it.

Now, that notification sometimes occurs on forms that you will get. There will be what they call a privacy notice at the bottom of the form or whatever where you would be able to read about the purposes and the authority and so forth. But it may also be that it could happen in a number of ways. It could happen that someone on the telephone will tell you about your privacy rights and ask if you want more information about that. It could happen that someone gives you a brochure with your privacy rights spelled out. There's a variety of ways. It could even happen in an electronic environment, where there would be a pop-up screen come up when you're filling in a form and tell you about your privacy rights and give you the option to print it out or whatever and take this away. So a notification can happen in a variety of ways and has to take place when the personal information is being collected directly from you about yourself.

Then the next section says that with any personal information about an individual that will be used to make a decision directly affecting that individual, the public body must make every reasonable effort to ensure that the information is accurate and complete. For example, if you had a file and on that file you've got a document and the document was illegible and you didn't bother to go back and find out what that document said and it is in the decision-making process, you have not ensured that that file is accurate and complete. If you decided to make a decision halfway through a process that you have in place and you didn't collect the rest of the information that should have been collected in the normal process, the file is not accurate or complete. So it puts an obligation on the public body to be thorough in collecting the personal information that's relevant to the decision and make sure that it is accurate and complete.

11:03

The second part of this section puts an obligation on the public body to retain such information for a minimum period of one year. The reason for that is that the individual should have a reasonable opportunity to obtain access to the record and find out why the decision was made in a particular way. Otherwise, you could have somebody collect the information, make the decision, and two days later destroy the file. Well, there's no fair process there to find out, say, why you didn't get a benefit or why something didn't occur that you thought was going to occur. So this second part ensures a fair process. Most records are kept longer than one year, but it puts a minimum.

The next part. The act gives individuals the right to request correction whenever they think there's an error or omission in the applicant's personal information. Okay? Someone makes an access request, they get the file, and they say, "This information is all wrong here about me," or "They didn't take this information that I gave them and put it on the file," so there's an omission. Now, in actual fact, what happens is that you have two types of possible errors or omissions. You have factual information; you know, date of birth, for example. If the date of birth is wrong on the file and the person comes in and presents their birth certificate and says you've got it wrong, well, you're going to correct the file and make it right.

The second part is opinion. When you have an opinion about somebody, that's personal information about them. If they disagree with it, you have two choices. One is you change your opinion, which may totally change your decisions, or you don't. Anytime, whether it's factual or opinion, you choose not to change the information in an opinion -- that's, I would say, 98 percent of the cases -- you then are required to annotate the file. Clark has said, "Peter Gillis is a fool," and I now want to have that corrected. Clark isn't prepared to change that opinion, but he's required to put on the file that I've said that I'm not a fool. Okay? So the two pieces of information sit on the file in close enough proximity that someone using the file can see both versions of events. That's required. There's a time frame, 30 days, that if you've disclosed this information to another public body or third party, you are required to also give those organizations notice. It actually has a one-year limitation on it. So if it's been disclosed during the one year previous, you have to go out and tell those public bodies and third parties that you've either corrected or annotated the information.

The next section deals with protection of personal information. It's really to make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or destruction of the information. So this is basically your security arrangements. Do you keep the personal information in locked cabinets? Does your computer system have passwords and access controls and so forth, all the things that would stop a hacker from coming in and taking the information or altering the information and so forth? A requirement to take reasonable measures in those types of circumstances as well.

The interesting one here is unauthorized collection. I'll give you an example of a privacy disaster. In the mid-1980s an employee in Revenue Canada walked out the door with microfiche on 16 million Canadian taxpayers. His objective: to start a direct marketing company. What better way to do it than to have the addresses of 16 million Canadians? So that was unauthorized collection and disclosure and use.

The next part deals with use, and it puts controls on how you can use the personal information. Once you've collected it, you can only use it for the purposes for which the information was collected. You collected it for one or two purposes and can use them for those purposes and none other. You can use them for a consistent use. Now, a consistent use is something directly connected. For example, if you were doing an evaluation of a program, you could use the information for that. If you were doing statistical analysis, you could use the information for that. If you were going to expand the program, if you already had personal information on people who didn't qualify the first time around but you've now changed the criteria somewhat, well, you could use that personal information. You couldn't take it out, for example, and decide to move it over to a totally different program and use the information. That's not the purpose for which it was collected, and it's certainly not consistent.

You can use the information for another purpose if the individual gives what is generally called informed consent, where you'd ask the individual if you can use his or her personal information for a different purpose. The regulations set out the prescribed manner for doing that.

Then you can use the information if you were able to have the information disclosed to you, which is the next part of the act, which sets out a number of conditions under which another public body can disclose information. So if in this case a public body wanted to use the information, if you could get access to it under the disclosure provisions from another public body, then you can use it for the purposes for which it was disclosed.

The disclosure provision: a couple of things are important here. The disclosure provision is discretionary. The fact that it is listed here doesn't automatically mean that a public body has to disclose the information. They make a decision whether or not it is good for their business. They don't have to make a privacy assessment, but one would hope they would. So they make some decisions.

11:13

Now, there's less discretion in some instances than in others. For example, if you get a properly drawn subpoena as a public body and you've taken it to your lawyers and they say, "Yes, it's properly drawn," you don't have an awful lot of discretion, unless you want to visit the local detention centre, to refuse. But there are some others here that are purely discretionary. I'm not going to go through them all because there's a long list of them. Again, one that is important is that there's an ability here to enter into agreements and arrangements with other jurisdictions, other provinces or the federal government, if there's an enactment of Alberta or Canada that empowers this to happen. For example, in the social benefits field, there are literally hundreds of agreements for the exchange of personal information. That's empowered through the section on disclosure.

We talked about subpoenas and warrants. The other one that's important and expresses an important principle in privacy is the right to know. So section 38(1), for example, says you can disclose information

> (g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member.

Again, the right to know, and this is one of the tough measures in here. Just because you're employed by a public body doesn't mean you get to know everything in the public body. All the personal information needs to be structured so that you have it only if you need it to perform your duties.

There's a provision for disclosing a limited amount of information for "collecting a fine or debt owing . . . to the Government of Alberta or to a public body, or to an assignee." So, again, one that's important.

You can also on a discretionary basis release information to a law enforcement agency, whether that be a federal or provincial body. Again, discretionary, and it has some conditions:

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

The next one then says if you are a law enforcement agency, you can also disclose personal information

> (i) to another law enforcement agency in Canada, or
> (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty,

et cetera. So you get a flavour of the types of things that are dealt with in the disclosure.

The final sections, 40 and 41, deal with disclosure of personal information for research or statistical purposes. Section 40 sets out a series of conditions that would have to be met before personal information would be released in raw form for research purposes. Section 41 deals more with historical research. Perhaps the most important fact here is that you have privacy until you're 25 years dead. Remember that: 25 years, not 10 years, not 50 years. Twenty-five years and then you lose all your privacy.

So that's saying that all these provisions, how you implement them and carry them out, can be the basis of complaint to the Information and Privacy Commissioner most likely in these circumstances for an investigation into how you're carrying out your business or, as we talked about this morning, for a compliance audit as to, again, how you're carrying out your business.

So that's privacy in a nutshell.

THE CHAIRMAN: That's it?

MR. GILLIS: That's it.

THE CHAIRMAN: Questions. At the beginning of your presentation, Peter, you said that the authority to collect information is in the act and that the commissioner can decide whether that information is essential to carrying out the function of whatever the act is. In the act, can it create its own justification? In other words, if there is an act established to do something that would be questionable as to whether the public body should in fact be doing that, but it creates the act -- in other words, this would probably be provincial legislation -- is that in itself the essence of authority? So that part isn't questionable?

MR. GILLIS: That part isn't questionable, no. It's really when you get to that third part that I talked about, where there is only a vague statutory -- you know, it sets up a body. There's an expectation that the body would collect certain types of personal information, but it doesn't say what. Then you go to (c), and you talk about directly related to and necessary for. But if you say in the act that you're going to collect this type of personal information for these purposes, then that overrides that authority.

THE CHAIRMAN: Other questions?

MR. STEVENS: Earlier this morning we talked about the compliance audit relative to motor vehicles. I was wondering: have there been others?

MR. ENNIS: Perhaps I should speak to that because these audits tend to happen under the guidance of the Information and Privacy Commissioner. The audit that was structured on Alberta registries was the most formal privacy audit that we've had. There have been cases where we've worked with public bodies to review specific program areas to see whether or not they pass muster in terms of all of these factors that Peter has just described. I think probably the highest profile of those was the seniors' benefit case where we looked at the information that had been collected historically by the seniors' benefit program and with a great deal of co-operation from the department reviewed each of those elements to see whether they were in fact needed and appropriate to the program. As a result, the information requirements of the program were pared down to a much lesser profile on each senior citizen. That process took several months and involved many meetings. So that was a form of interactive audit on information.

There have been other cases where we've looked at proposed computer systems that underlie programs and have been asked whether or not the information being collected in those systems is appropriate to the program. Now, those are called privacy impact assessments. They follow very much the method of something like an environmental impact assessment, where you're looking at a proposal before any substantive work has been done on it to see whether or not it would fill the need. In those cases the Information and Privacy Commissioner's office has been able to advise public bodies on what might be going a little too far in terms of collecting information. It gives an ability to public bodies to have someone else test the proposition that that information is really needed.

On occasion we'll find a data element that a public body is picking up that they're really only picking up because they think

some other public body wants it and are intending to pass that along through some sort of agreement. Sometimes when we push that question a bit, we find out that in fact it isn't necessary for that other public body or that they shouldn't care so much that the other public body might want it. Occasionally we have the specter of StatsCan coming around and public bodies saying: well, we have to collect this because StatsCan expects us to have it. In those cases we tend to point the public body back to its own legislation and say: well, do you really need it? Those are very productive discussions. A lot comes out of them in terms of improvements.

THE CHAIRMAN: Okay. Other questions? If not, thanks, Peter. That probably was the most significant step we've taken into the second half of the act so far.

We're on to item 5, Post-Secondary Institution Issues. It's paper 7. That was distributed probably on Friday. I was away in my constituency on Friday, and it was on my desk when I arrived this morning, so I'm assuming you people got it about equally recently and probably didn't have a lot of time to go through it.

We have Linda Richardson here from Advanced Education and Career Development speaking to this paper. Linda, perhaps be aware that the committee hasn't had a lot of time to review this, so we'll excuse you if you have to go a little further in detail than you might otherwise. I read it this morning, but what you can digest in about 15 minutes is about as much of it as I have, other than that the committee members certainly are aware that some of these issues have arisen, but this is the first time there'll be some background explanation. We're expecting the lunch to show up here in about 15 minutes or so, so we'll let you get through the presentation, and then depending how it goes, we may defer the question part of it until after lunch.

11:23

MS RICHARDSON: Okay. Thanks very much. The paper deals with a number of issues that have been raised by postsecondary institutions, and the first part of the paper sort of outlines the items for discussion. I guess I'd have to say at the outset that the issues dealing with the implications of the privacy protection provisions on fund-raising practices in particular, both the use and disclosure of alumni lists and also the practices of indirect collection of prospective donor information, are probably the most problematic for postsecondary institutions, but there are a number of other issues that they've raised as well. So I thought I would go through the issues. I can just sort of forge ahead through all of them, or I can take a little break at the end of each one in case there's a need for clarification.

In terms of fund-raising, generally there are 22 postsecondary institutions. They all engage in fund-raising. There's appendix 2 there, which indicates the dollars that were raised in '96-97 in terms of gift and donation revenues. Now, that doesn't show the Alberta Vocational Colleges because of course they just became public colleges after that year. The University of Alberta indicates that its current campaign, which is ongoing since 1995, has raised about $130 million. So it's very significant for the postsecondaries.

Our department is still consulting with the postsecondary institutions in terms of our departmental position. We put a position paper out to the postsecondaries, but it was on fairly short time lines, so we haven't heard from all of them as yet. So I won't be putting forward a departmental position at this time, more just trying to discuss the issues.

In terms of fund-raising, the two issues that potentially conflict with the privacy provisions of the act are the use of alumni lists for fund-raising purposes and the researching of potential donors. Starting first with the use of alumni lists, the issue here is with use and disclosure, not with collection. The information was collected from the individuals directly for the purpose of providing an educational program to them.

Institutions have large databases of alumni personal information. The U of A, for example, has about 170,000 names in its database. They use the databases to send newsletters, advertise products and services, ask individuals if they want to donate time or money to the institution. The uses currently are not consistent with the reason that the information was collected, which was to provide an educational program, even though historically I think individuals who are students expect to be part of an alumni association after they graduate.

The act tells us that we would need to seek consent for current and future uses and for disclosure of that personal information, for example fund-raising purposes, and the postsecondary institutions have said that because of their large databases this would be a very costly and time-consuming and inefficient way of going about their business. I think their argument is that they feel there's kind of a relationship that they cultivate over the years with their students, so there's a kind of an expectation from alumni that their information will be used in a particular way. New students will be asked for their consent for the use of their information for alumni and fund-raising purposes after January of next year, of course. So their information will be properly used and disclosed.

It's the existing databases that are problematic. Postsecondary institutions do a lot of correspondence with individuals on these lists, and they feel through the use of donor reply cards -- indications, changes of addresses from individuals, correspondence -- that in a sense those individuals are telling them that they are comfortable with the continued use of their information in that way.

One of the options that is put forward in the paper is to have postsecondary institutions provide a kind of substitutional notice of how their personal information is being used. For example, through their alumni magazines, mail-outs, that kind of thing, they could indicate to individuals how their information is being used, and then individuals who wished to have their names taken off the mailing list could certainly ask them to do so. Any questions on that point before I move on?

THE CHAIRMAN: Questions? None. Go ahead.

MS RICHARDSON: Okay. The second issue in terms of fund-raising is researching potential donors. This is an issue of indirect collection, not so much use and disclosure. With reduced government funding and the caps on tuition fees, postsecondary institutions feel that fund-raising is absolutely essential for them so that they can maintain the quality and excellence of their programs and services that they provide. One strategy that fund-raisers use is what they call a campaign for one. That's where they do fairly extensive research on potential donors to try to find out what their interests are and what kinds of programs or services they might be interested in contributing to.

Now, the institutions indicate in their submissions that they do this largely from publicly available sources. They look at newspaper articles, journals, web sites where this information is, annual reports, that kind of thing, to glean publicly available information. They also get information from reports of observable events. They will note down that somebody attended a symphony concert or something of that nature. They also receive what they call reports from reliable firsthand sources, the idea being that they would have this information on hand so that they could approach potential donors. Although this is a practice that is common in the

fund-raising area, it may not be a practice that individuals are aware of.

Now, the commissioner does have the authority to allow indirect collection of personal information under section 51 of the act, but in appendix 3, which is a letter from the office of the Information and Privacy Commissioner, the commissioner is indicating that he's not prepared to authorize this indirect collection.

MR. ENNIS: Just specifically on that. You're dealing with the donors that are being profiled, not the alumni lists?

MS RICHARDSON: That's right. Yeah. This is just dealing with the issue of indirect collection of prospective donor information.

Any questions on that point?

MR. STEVENS: What's the case on that particular point in other jurisdictions?

MS RICHARDSON: In terms of B.C. and Ontario they don't have any provision in their legislation dealing with indirect collection of information for fund-raising purposes. There are a couple of instances that I'll refer to when we talk about researching nominees, and they do have those provisions. In Ontario the universities are not subject to the FOIP Act. They have their own code of access and privacy, so they're not subject to these provisions.

In terms of B.C., we've been in touch with the office of the Information and Privacy Commissioner there, and they've indicated that it hasn't been a particular issue which has been brought to their attention through complaints. There was one issue in the health care sector that created a media stir there. The greater Victoria hospital fund-raising association was known as the woman who sent letters to dead people. It received a lot of publicity.

In terms of the postsecondary institutions, they indicated that there haven't been any issues or complaints so far.

11:33

MR. STEVENS: Is there any indication that it's been an issue or a subject of complaint anywhere in Canada?

MS RICHARDSON: Not that I'm aware of, except that certainly that instance in Victoria received a lot of publicity in British Columbia.

MR. STEVENS: Letters to dead people?

MS RICHARDSON: Yes. I should note that in terms of the hospital foundations, they are not subject to the act, so if they are carrying out this kind of practice, they wouldn't be subject to this legislation. There is an issue in terms of the playing field not being exactly equal out there in terms of fund-raising organizations.

Another area of, again, indirect collection is researching potential nominees. This would be for candidates for academic and research awards and fellowships. Also, for example, a presidential search committee might do this kind of research to put forward candidates. Candidates for boards of governors, senates, the chancellor, candidates for honorary degrees and other awards are all done through the indirect collection of personal information about these individuals. The reason it's done indirectly of course is that you don't want to embarrass individuals if their names aren't put forward, that sort of thing.

In British Columbia the legislation there does apply to all postsecondary institutions, including the universities, and that act does allow for the collection of personal information for determining suitability for honours or awards. In Ontario, where the legislation doesn't apply to universities, the act allows for collection for determining suitability for honours or awards to recognize outstanding achievement or distinguished service. So both of those statutes do make provision for this particular type of indirect collection of personal information.

Any questions on that item?

THE CHAIRMAN: There doesn't seem to be.

MS RICHARDSON: Okay. The paper goes on to outline a number of recommendations that came in from submissions from the postsecondary institutions and some of their recommendations in terms of handling the issue. Basically, the central issue is: should the privacy protection provisions of the act be amended to allow public bodies to use the full range of fund-raising techniques, including the profiling or researching of donor information? The paper outlines some options in it, one being to just keep the status quo and monitor the impact of the act on these practices.

Another option is to allow the indirect collection of personal information for nomination purposes, the areas that British Columbia and Ontario deal with. In the appendix with the letter from the Information and Privacy Commissioner it appears that the commissioner's office would be comfortable with that one, I believe. Was that spoken to? Yes, that's the number 1 item in the letter from the Information and Privacy Commissioner's office.

A third option would be to allow the indirect collection of some publicly available personal information, and that would have to be narrowly defined. This would be the idea of already published information -- newspapers, journals, directories, annual reports, web sites, that sort of thing -- so you're not creating any sort of new records. In appendix 3 that is an option that the Information and Privacy Commissioner has indicated that he's not comfortable with.

Then the fourth option in terms of the alumni lists is to allow continued use and disclosure of alumni information for fund-raising purposes but for a limited time period. During that time period the postsecondary institutions would have to go about obtaining consent in some way from individuals and whether the commissioner would allow the substitutional notice kind of idea or whether that would require actual individual consents from people that are in the database. The Information and Privacy Commissioner has indicated in the letter that in terms of the alumni lists, the feeling is that consent should be obtained from students -- and that will be happening -- and that existing lists disclosed prior to the coming into force of the act would not be subject to the act. So there is an envisioning of some grandfathering, I guess.

Any questions on those options that are put forward?

THE CHAIRMAN: Gary Dickson has one.

MR. DICKSON: Thanks for the presentation. You know, you can't help but be struck by the size of the submissions we've received, particularly from the University of Alberta and the postsecondary FOIP network. I wonder if we perhaps could make one thing a little clearer: item 3 in the letter from the IPC. Much of the focus in the universities is their existing -- I mean, the U of A with this huge megalist of past graduates. Now, that reference that the commissioner said: "Existing lists which were disclosed prior to the coming into force of the Act are not subject to the

Act." I guess I'm trying to reconcile this with the concern of the universities. Am I missing something? What do we mean when we say "existing lists which were disclosed"? Disclosed to whom? Can we expand on that reference, I guess partly from the commissioner's office, and why the universities don't seem to recognize that?

MS RICHARDSON: Well, I think part of the issue is: what does disclosure mean? I think the commissioner's office may be taking the position that if they were disclosed to alumni associations which were set up outside the institutions, those associations by their nature would not be subject to the act in any event, unless they showed some sort of custody and control of records. I think the issue for the universities and a number of the colleges as well is that in particular they may or may not have alumni associations. They also have alumni offices which operate within their institutions. So if those databases are housed within the institution, even if there is an alumni association in existence that uses those databases, they would likely fall within the custody and/or the control of the institution and therefore would be caught by the act. So what the commissioner is suggesting may not go far enough for their purposes.

MR. DICKSON: So the key really isn't the distribution or the sharing of the information. The key is the nature of the body who receives these donor lists. That's the rub; right?

MS RICHARDSON: Yes, given the framework that the Information and Privacy Commissioner's office is putting on it. Now, I think the postsecondary institutions would see it's the same sort of disclosure. They're collecting the information for an educational program. They're using it and disclosing it for alumni purposes and for fund-raising purposes, which wasn't the reason they collected it in the first place. So they feel that whether it's disclosed to an alumni affairs office within their institution who build up the database or it's disclosed to an alumni association, it's still the same use and disclosure.

11:43

MR. ENNIS: If I can in fact add to that and speak about the letter that we're talking about, signed by Frank Work, who is the director of the office. Frank was operating from a description of the program which focused on situations where the information would be disclosed to an outside group. So here he's really making a comment in a sense on jurisdiction, that if the association was not a public body and the information had already been given over to it, it wouldn't be a case where the information would be subject to the act.

Subsequently, in discussions with Linda and Sue and Hilary, we've seen a number of situations where the disclosure is actually an internal movement of information to another office within the institution that looks after alumni affairs. This particular comment was meant to govern that first kind of situation, not the second.

MR. DICKSON: So in sum, then, the answer from Mr. Work to question 3 really isn't of great comfort to our big universities, because I think they do it all in-house; don't they? The U of A and U of C have large development staffs. It's not out of their care and control at all.

MS RICHARDSON: They do have an alumni association, but I think the database is owned. As a matter of fact, the U of C would say that they see this as a very valuable asset of the institution. So I think very much they are saying, "This is within our custody and control," so it would be subject to the act.

THE CHAIRMAN: I'm going to toss in here a caution the same as I did when we were dealing with the registries discussion this morning. We have to be careful, I think, that any changes we're recommending or proposing that relate to historical practices take into consideration the amount of harm we could cause to possibly universities and colleges. If there is going to be change, we have to make sure that at the very least it would allow a transition time or perhaps endorse the practices that have been ongoing.

I'm not sure that there is a public outcry against disclosing the kind of information that alumni associations and legitimate fund-raising organizations exercise right now. I think we have to be careful that we don't undermine the institutions that are very important to us.

I think the comment that reduction in government funding and such has probably put more pressure on those groups to perform what they have historically maybe not been called upon to perform to that degree -- you know, we have to make sure we don't slam the door on them, that they're allowed to continue legitimate kinds of operations. I'm just tossing the caution out that I think there is a very legitimate concern about ongoing practice.

With that, I am informed that the lunch is beckoning at the door. We'll adjourn. I think at the last meeting we took about 20 minutes, probably first a potty break because it's a bit of a torture test to keep you in here after we've poured all that coffee into you. Then as soon as everybody looks like they're reasonably munching comfortably, we'll call the meeting back to order and just keep right on working.

[The committee adjourned from 11:47 a.m. to 12:17 p.m.]

THE CHAIRMAN: Okay. I hope that everybody has had a chance to finish their lunch. I extended the lunch time just a little bit because it looks like we're going to be well advanced in our agenda anyway, so it gives everybody a chance to wipe the cream from those muffins off their chins.

We'll call the meeting back to order. We're still at the question stage for the postsecondary institutions presentation. Linda, you're back in the hot seat.

MS RICHARDSON: Okay. Well, maybe I can carry on with a few of the other issues in the paper that are outside the sort of fund-raising and indirect collection of personal information. There were a few more that were highlighted in the paper. Would that be appropriate?

THE CHAIRMAN: That certainly is.

MS RICHARDSON: Okay. The next issue is dealing with an exception in the act, section 18, which deals with confidential evaluations. A number of the postsecondary institutions have raised situations where they would want to apply this exception more broadly and feel that the act needs to be amended to reflect that. This is a discretionary exception. It means that on a discretionary basis a public body can withhold evaluative or opinion material compiled solely for the purpose of determining suitability or eligibility of qualifications for employment or awarding government contracts or other benefits. So this is talking about withholding reference information in these two kinds of situations.

Postsecondaries are looking to broaden the exception so that it would, first of all, change government contractor benefit to public body contractor benefit. That may have been just an oversight in

the drafting, where maybe there was an intention to focus on contracts, but because government bodies were the ones that were coming in first, that's how the wording came out.

The second way that they would want to broaden it is to recognize continuation of employment evaluations, performance evaluations, that are done as a benefit, the idea being that employees would not have access to this information, even though it is their personal information, if it was for the purpose of their continuing employment, in terms of performance evaluations, that kind of thing, so the opinions that are expressed by individuals. That isn't clear in the wording of the section. It seems to cover situations where you are applying for a job initially but not the sort of performance evaluations and continuation of employment or promotions.

The third way that they would like the section extended is to recognize the idea of admission to a postsecondary program, particularly in the area of graduate programs, or admission to faculties like law or medicine, where reference information is very crucial to that process, the idea being that that reference information should be given in strict candor and that applicants for those programs shouldn't have access to that information. So this would be situations where the act says that you always have access to your own personal information. Section 18 is an exception to that, but the postsecondary institutions are asking for some extensions to that. Any questions on that particular item?

Okay. Then the next item that's highlighted is Research and Teaching Materials. Section 4(1)(e) of the act, that's the exclusions to the act, what the act doesn't apply to. That excludes "teaching materials or research information of employees" of public bodies. I think that particularly the universities are wanting some clarification of that in terms of whether or not this is specifically referring to research or teaching materials that would fall within a collective agreement of an academic staff association, for example, so that it's very clear that nobody can bring an access request to get access to that kind of information. British Columbia has the same wording. They don't have any different wording in their legislation, so they're looking for some clarification. Any questions there?

Okay. The next one is again dealing with the research area. Section 24(1)(d) of the act is a discretionary exception that would allow a public body to withhold "scientific or technical information obtained through research by an employee" if the disclosure would "deprive the employee . . . of priority of publication." The universities in particular have raised this as an issue because they feel it may not be broad enough to include research in the social sciences or humanities area.

Looking at the British Columbia and Ontario legislation, they use a broader term: just research information or information derived from research. So they don't in those pieces of legislation seem to narrow it down to scientific or technical research information.

MR. DICKSON: Mr. Chairman, I'd just make the observation here that my recollection is that when the recommendations were made for the FOIP Act that we have now, there was never a distinction made between scientific kinds of research and research in terms of history, political science, other areas. The chairman has probably got a sharper memory than I do, but there's never been any attempt to apply it or give it a narrow definition. So it just makes sense, I suppose, if people think that it's too limiting. There's no violation to the original thrust of the exception in the act.

MS RICHARDSON: The final one that's highlighted in the paper is Exclusions of Records of Appointed Board Members. As you know, section 4(1)(i) of the act excludes records of elected officials that are not in the custody or control of local public bodies. The postsecondary institutions of course don't have elected board members. Their board members are all appointed by government, but they feel that they play a similar role to elected officials on school boards, for example, so therefore they should have a similar exception apply to their records that are not records within the custody or control of the local public body.

B.C.'s wording in their legislation is similar to ours, and Ontario doesn't have the exception that would apply to records of elected officials.

MR. DICKSON: This is an issue that comes up in lots of other contexts too. I mean, there are lots of other appointed boards municipally and so on, so at some point we should chat about this. It seems to me that there's a distinction. The whole purpose in dealing with elected people is that they have constituents. Constituents who have issues and concerns go to their elected person. I have a tougher time thinking of somebody on the board of governors at the U of A or the U of C or NAIT. They may have personal records which clearly wouldn't, I think, be caught by the act anyway. It wouldn't be a record of the institution. But they don't have, at least from my perspective, the same sort of constituent obligations and presumably not the same kind of constituent correspondence and faxes and that sort of material. There may be someone around the table who's actually been on an appointed board running one of these institutions. It seems to me the needs are different, so it's not good enough just to say that because elected people are treated sort of one way, well, it automatically follows that people on any appointed board should also have the same sort of exception for them. I'm looking for some clarification.

12:27

THE CHAIRMAN: Well, I think the point is taken, Gary, but there is another side to it. RHA members, for example, are appointed, and in essence they perform the same duty as a board of trustees that would have been elected earlier or a board of trustees for a school board. The duties of a board of governors of a college or university I don't think are essentially that different. Maybe they don't owe the same allegiance to electors, but I'm sure they still have people coming to them with the same degree of sensitive issues, and I think we have to respect that. I'm not suggesting that they in fact have to be exactly the same, but I think we have to consider that there are similar obligations and expectations. But you're right; we do have to address that because there are more than just a couple of groups that are appointed boards.

MS RICHARDSON: Then as a final comment I'd refer the committee to appendix 1, which is a list of other issues that have been raised by postsecondary institutions. There are a number of them, and I won't go into them in any detail unless there are any questions about those issues. The paper just really highlights some of the issues and some of the ones that have tended to be raised a number of times in a number of submissions.

MR. DICKSON: One concern. I don't remember which paper I saw it in or whether somebody had raised it with me directly concerning universities that do instructor evaluations, you know, where students at the end of a course or whatever are given a form to fill out, and that is compiled and produced, and students in a successive year then can use it. It's an evaluation of instructors. Now, if it's in here I maybe didn't see it, but I'm interested in what the plan is in terms of addressing that particular concern.

THE CHAIRMAN: Well, that was in the University of Alberta submission, I believe.

MR. DICKSON: Was it? Okay.

MS RICHARDSON: Yes. It is noted on page 12 of the paper: student evaluations of courses and professors. That certainly is an issue particularly for universities, other postsecondaries as well. There were two submissions that wanted to continue the practice. It's at the bottom of page 12. It's the practice of institutions disclosing evaluation information on either the course or the professor to assist students in selecting courses. The issue is whether that's because it is opinions about the professors, in particular, if you're focusing on the professor rather than the course. It's an opinion about that professor, so it then becomes the professor's personal information. But at the same time, is there a need to disclose that to assist students in making informed choices? Suggestions for amendments were to exclude student evaluations under section 4 under items which are not subject to the act or add this as a permitted disclosure in section 38.

Then, you know, we have opposing views. We've got the University of Alberta and the University of Alberta Students' Union that would argue for permitting the disclosure, and the University of Alberta academic association representing the professors objecting to the amendment. So you have both sides.

MR. DICKSON: But I'd make the observation our chairman always does, that if you've got a practice that's been going on with this institution for at least 30 years, you would think that there must be a way of accommodating it. Or, absent some incredibly cogent reasons, why disrupt the status quo, Mr. Chairman?

THE CHAIRMAN: I'm inclined to agree with you on that. I've said several times -- and you're correct -- that when there's a historical practice, we have to be careful if we recommend changes. You know, at the very least we recognize it, that in some cases it may be a matter of timing, or in some cases legitimize the ongoing practice.

MR. ENNIS: Mr. Chairman, just on that point. As we understand it -- and this is a little bit secondhand -- the practice is more a theoretical construct to this point. The University of Alberta is putting that information up on an Internet application so that people in the university community can see it. The last I heard, that was about to go, but I don't know the status of that. Apparently, the University of Calgary has made less progress in that direction and the practice isn't as is being proposed here. The practice there is to have the student union do the actual evaluations, as we understand it, rather than have the institution involved in the disclosures. So there are some nuances in these proposals that break new ground.

THE CHAIRMAN: Are there any other observations or questions on this presentation? If not, I'd like to thank Linda for what is obviously a lot of work.

MS RICHARDSON: I defer to Hilary, and thank you for giving me the opportunity to present the issues.

THE CHAIRMAN: There's an item that has come up. I believe the information was sent out. Last week the federal government tabled -- and I haven't seen it -- the privacy in the private-sector legislation. This is an issue that has come up in our discussions several times in our previous meetings. Now, all I have seen or heard of are the press releases. The commissioners of both B.C. and Alberta have reacted, I would say, positively to the comments.

I have some concerns about us jumping into this with both feet with the limited amount of information and certainly a limited amount of practical experience. I understand that the federal legislation has a three-year window of opportunity for provincial governments to enact their own or equivalent legislation. Otherwise, their act becomes paramount. Am I correct on that? John, you might be aware, or Sue. I don't know.

MR. ENNIS: I haven't read the act in detail. I've seen the federal government's press release on it. I understand there's a three-year window for non federally governed industries to adopt sector codes. I haven't seen the provisions specifically around provincial governments and the issue of paramountcy.

THE CHAIRMAN: My first reaction, depending on the accuracy of what I explained as my perception of it, is that we'd be better off to take the amount of time that's necessary to deal with it, if that is three years. Earlier today I made the suggestion that we recommend some kind of a review period for the inclusion of the MASH sector. That might be an appropriate time to look at it and determine whether or in what manner the province of Alberta might want to get involved. I think we'd want to make sure that we have some control of our destiny in that regard, but just jumping in with a knee-jerk reaction isn't necessarily what I would consider the best way to do it.

MR. DICKSON: Well, it seems to me for exactly that reason that we want to have some input into our destiny. We should jump at the opportunity to have some comment. You know, it seems to me, with respect, Mr. Chairman, that as a province we're sort of abdicating a huge opportunity to assert some leadership in terms of what Albertans want to see around this issue.

The submission on behalf of the province of Alberta to that Industry Canada/Justice Canada process, my recollection, was about a two and a half page letter that asked about three questions and was vague to the point of being meaningless. You know, we've talked before about the European Union privacy directive. All of these things are not being held up; they're proceeding apace. If we want to ensure that we're speaking for the interests of Albertans and Albertans who do business outside this province, this is surely the time now where we ought to be offering some comment. It doesn't have to be writing a new act, but surely we should be offering some commentary. If this committee, charged with the responsibility we've got, doesn't do it, I mean who else is going to? To wait three years means that a lot of the key decisions will have been made, and then we're quibbling over the punctuation. Surely this is the time to be involved.

12:37

The other point is that we're looking at health legislation -- and we've got our resident expert here from Calgary-Glenmore -- that's going to do some things that may be inconsistent with this kind of a sectoral code. We're talking about legislative coverage of potentially insurance companies and all kinds of other private-sector industries. A lot of that stuff is happening anyway, and it seems to me that we have a chance to address it. Frankly, I think we abdicate our responsibility as a committee if we don't look at that and offer some comment.

THE CHAIRMAN: Well, what I was talking about -- and I'm not jumping in with both feet -- was to change our own legislation in that regard. I'm not sure that we're ready to do that.

As to whether or not there should be comments about the federal legislation, I think any committee member that wants to on their own can make submissions. I'm not sure if the mandate of this committee is to research and offer an opinion. I'm not sure we have enough time available at our disposal that we could even if we wanted to. If the committee wants to delve into that, I'm not going to object. But we're talking there about making a submission to the federal government on its legislation.

I also suspect, like a lot of other legislation, that by the time it actually hits the Order Paper, the discussion behind the scenes is essentially there, and a lot of changes often are just cosmetic. So it begs the question: how much time do we want to put into it, if we want to, and what is the impact going to be?

I'm not downplaying or disagreeing with your comment that you only have so many trips to the well and you should take advantage of them. But is any activity we're going to take right now going to be fruitful?

MR. STEVENS: I haven't had an opportunity to review the legislation, so I have little idea as to what its scope is and what the time line might be. It seems to me, however, that it relates in some measure to what we're doing here, and I think it would be appropriate perhaps if we could get some additional information, for example, a copy of the proposed legislation. To the extent that there's any meaningful critique with respect to it that others might have done that's available out there, that could be perhaps pulled together. Of course, I would assume that someone like Clark might have had an opportunity to review it and have some overall comments that would be of assistance to us in measuring what it is about and how it might in some general sense relate to what we're doing here. I would also appreciate any comment that people might have as to what the time line might be, because it's not clear to me that this is a fait accompli. Perhaps it is. Nonetheless somebody perhaps could give us a brief overview. If that were agreeable, perhaps that could be done at the next meeting. But I'm thinking in terms of providing some information so that we can comment on it, because today I think we're likely for the most part as a committee speaking with little knowledge.

THE CHAIRMAN: You're right, Ron, unless someone else has an insight with additional information. I've seen two press releases.

MS KESSLER: Clark Dalton and I have been invited to a meeting in Ottawa the middle of October, and we will be meeting with our provincial counterparts to discuss the legislation and its implementation strategy. So perhaps at that point, when we return, we can provide you with an update in terms of what the reception has been from the other jurisdictions as well.

THE CHAIRMAN: Again, I want to emphasize that my earlier comments were relating to a made-in-Alberta act, a significant amendment to the act that covers this area, because I'm not sure that was a significant part of our mandate, to get into that. I think we expected that we were going to look at it in a cursory way. There may be committee members that might disagree, but I just don't think we have enough time, unless we want to totally rejig our schedule, want to change our mandate and such, to get into changes in the Alberta act that would reflect that. So if there is a desire among the committee to pursue some kind of a reaction or a recommendation or comments to the federal authorities, I have no problem with that. It's just that I think we're going to be a little restricted by time. I think we're already at a point where the amount of time left before our own self-imposed deadline is going to make it difficult to even achieve what we're already working on.

MR. DICKSON: Mr. Chairman, you mention the time thing, and I'd just make the observation that I think we've got to be realistic. I don't expect there's going to be legislation coming out of this that's going to be introduced in the fall session. At the earliest, legislation would be introduced next spring. It just seems to me that there is so much material for us to review. We haven't even seen yet the submissions from the public bodies, which, to me, is just key. We've talked about that before.

I guess I'm just signaling an interest in us being more flexible in terms of when we close off our discussion and do the report writing. You know, this is statutorily mandated. People have been waiting three years to register their concern. I don't know when this is going to happen again. I'd sooner we take the requisite time to make sure we do the subject and all of those interested stakeholders justice. I'm just registering that concern. I'm beginning to feel really sort of hamstrung that we're going to be in a position of having to furiously start writing a report when we haven't even had major elements of input and we've really had no discussion yet around what our recommendations might be.

THE CHAIRMAN: This committee has the option to extend the time lines if we find that it's necessary, if we just can't complete the work. I would still like to see and I'm going to keep pressing to see if we can have a report for the middle or toward the end of November. That would allow it to be tabled and would allow the powers that be to officially start working on some amendments to the legislation. If we can't meet that time line, it starts to become questionable whether changes are going to be possible to be effected in the spring of 1999 sitting. So we have to decide, I guess: do we have to cross every t and dot every i before we can come up with a recommendation, or can we capture the essence of what this was all about in time to make some meaningful changes? I'm not talking about a half-baked recommendation. I mean, these have to be considered.

I think we also have to keep in mind that ongoing review is essential. I think we've identified that there is some need to do that anyway because some of the sectors coming in and various things that keep happening are going to mean that this isn't sort of a onetime practice, that it's something that should happen regularly. I guess we'll have to measure, you know, in about a month whether we can achieve that, and if not, if the report isn't finished, if we're all very uncomfortable with it, then we'll have to delay it. I think right now I'd like us to keep our feet to the fire, of our own choice, and see if we can do it and make the decision only when it's necessary.

12:47

As a matter of fact, do you want to spend a minute or two debating that? I'm not trying to be a dictator here, but we have to look at the pros and the cons of the timing. No reaction means we'll try for the next month to see where we're heading.

Okay. We're at item 7, which is Commencement of Detailed Review of Public Submissions. The word "public" shouldn't really be in there. I'm personally of the opinion that if we get into a lot of detail at this point, we wouldn't be very focused. We can go into it topic by topic, and I'm certainly willing to do that if the committee wants to continue. My personal choice would be that I'll work with Sue and some of the other members of the advisory committee to pinpoint this to a series of questions or points so that when we come in, we can deal with these issues, you know, one at a time and have votes, if necessary, with no restriction on whether the topic should be expanded. That we can do at the table. But I think we need just a little bit more focus than seven general topics that we have under the discussion papers right now.

MR. DICKSON: I was just going to say that in terms of process I think it's very tough to start reviewing the papers we've received and try to work our way through the act or whatever and then get the public body submissions. I'm going to suggest that I think that's got to be part of the package. I can see us even working through the statute. I mean, there are different ways of doing it. One is to start, work our way through part 1 of the act, the access thing. We take the submissions we've received from public bodies and interested groups, and we can organize that and break it down and sort of spend as long as it takes working our way through part 1.

I guess the problem is that by working our way through the submissions without hearing from the public bodies, that are the ones who will process the thousands of requests to this point, it just seems to me we're going to end up doing a lot of duplication and revisiting.

THE CHAIRMAN: Well, I'm not sure, you know, unless we had control over when all that information is coming, what we can do. I don't believe that we just stop now and tread water until additional information comes. I think we have quite a bit of information; we can go through it. As I said earlier, I've asked that if there are some concerns about these submissions, there are unofficial ways of getting these concerns in, and a lot of them are actually in the submissions themselves. There are quite a number of the recommendations that actually come from the ministries or people involved with them.

MR. DICKSON: Mr. Chairman, if in fact the concerns of the 17 government departments and the other provincial public bodies are already brought forward in some other way, that's fine. I mean, let's get going. I'm happy right now to start the process, but I think we have to be clear with the public bodies and the provincial government departments. Once we start the process, it's simply not fair to have somebody come in and blindside us after we've been working hard going through all of these recommendations and say, "Well, we can't live with that" or "That's proven to be a real problem." So if we've got that input -- and they've had lots of input. I mean, the members of the public and other interested groups had to do this three, four months ago. I'm happy to do that, but my understanding was that there was going to be a package of material, and I assumed it was going to be comprehensive and a big volume coming from those public bodies. If that's not the case, then let's get into it.

THE CHAIRMAN: Okay. Well, I'll see what we can do about getting as much background as we can.

The point, though, that I made about proceeding right now without a very precise focus on items: what's the opinion on that?

MR. STEVENS: Well, I think your suggestion of doing essentially a list of issues that have to be addressed so that we have some focus makes a lot of sense. I think it's important to ensure that we have the list of questions that have to be addressed so that we're doing our job, and that would certainly assist me in working through it. So your suggestion is, in my view, a good one.

As it relates to the ultimate report recommendations, it seems to me that that won't be forthcoming until we have all of the information in front of us, and should information come in after we've started the process that requires us to review something that we have done or to add questions that have not previously come to light, then I'm sure that we're more than capable of making those kinds of adjustments. But it seems to me that we have to make progress with what we currently have in front of us, and with luck, the balance of the information that we require in order to do our job will be forthcoming shortly.

THE CHAIRMAN: I think there's a way that we can make sure that we don't have to rely entirely on luck, though, either. You know, as we're developing the detailed list of questions or whatever this is going to look like, Sue, for example, can make sure that her minister, who likely is going to be the person responsible for getting feedback from the other departments, very quickly becomes aware of that. If they have some concerns, we could possibly leave those major items off the first meeting when we discuss this so that we don't have to get in and spend a lot of time on those where there might be a controversial impact.

Also, I've made a note to myself already that we should separate those things that are minor, and there are quite a few of them. They're, you know, essentially housekeeping things that have obviously been missed in the first drafting or clarifications, which we likely could go through very quickly anyway. I mean, there's no reason why we have to delay any of that. As I say, if there are several sections where it's likely that there is some feedback, we could sort of push them off to the end of our agenda. But I would just hate to lose the time we've already got set for meetings. That shouldn't be a problem, Sue; should it?

MS KESSLER: I'm sure we can do that as we're putting together the list of questions.

THE CHAIRMAN: You know, just since it was raised, most of the departments are following what we're doing anyway, and I've had the odd phone call or comment. Somebody said: well, are you aware this is a concern? They're already on our list. As a matter of fact, I haven't come across anything that any of the ministers that I have spoken to hasn't already flagged in some way. Now, if they are coming up with a detailed presentation that adds to this, I'm not aware, but I don't think there are any new topics. There's been lots of time for these things to have been raised. I feel fairly comfortable that we're not going to have to backtrack a lot.

12:57

MR. DICKSON: So your sense then, Mr. Chairman, is that we're not going to get some kind of a more formal presentation?

THE CHAIRMAN: I think we will get a formal presentation, but I don't think there are going to be any surprises in it. They may emphasize concerns, but my sense is that most of those have already been identified either through the presentations that have been received or just through things that we've discussed here at the meeting. I mean, if I had the information, I'd give it to you. I don't have that detail. The best word I can use is "sense." My best insight is that there aren't going to be a lot of major surprises in terms of topic. We'll do whatever we can to make sure that every ministry is aware of the order and the issues that we're going to raise, and if someone has some concerns, we will avail ourselves of that information before we get into any depth in our discussions.

MR. DICKSON: It just seems, Mr. Chairman, that there's not a big incentive for departments if there's a sense that it's sort of an ongoing running process and they can pop in whenever they get around to it. It doesn't put them in a position of having to decide what's important and to communicate that to the committee straight off. That seems to be the problem, not having any deadline.

THE CHAIRMAN: Well, I can't disagree with you on the comment. I mean, if I had a magic wand that would have this stuff appear, I would try waving it, but I don't have either.

So my suggestion is that even though we're an hour short of our scheduled adjournment time, I'm sure that most of you would have something valuable you could do with that hour. Otherwise, I think we'd just be rehashing what we likely already did when the papers were presented. I'll call for a motion of adjournment. Moved by Ron. All in favour? Carried.

[The committee adjourned at 12:59 p.m.]