Title: **Tuesday, October 20, 1998** Freedom of Information Review Committee

Date: **98/10/20**

10:07 a.m.
[Mr. Friedel in the chair]

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

I'm just informed that Pamela Paul is in the hospital, so she won't be joining us today, and Gary Dickson phoned me a bit earlier and said he was going to be a few minutes late. He had another meeting, and from the adjournment of that one to getting here, he said he'll be here as quickly as he can. Also, Pam Barrett advised me she is going to have to leave for a time during the middle of the meeting. She's going to Sandra Notley's funeral. Ron, you said you may have to leave a little early this afternoon to catch a Calgary flight, and Janis is leaving early.

MS BARRETT: You've got to chain us to these meetings.

THE CHAIRMAN: So we'll work around that, I'm sure.

MS BARRETT: Yes, we will.

THE CHAIRMAN: The first item of business is the approval of the agenda. It's not very detailed, but that's what you get. So if we could have someone move that.

MS BARRETT: So moved.

THE CHAIRMAN: Moved by Pam Barrett. All in favour? It's carried.

The minutes of the meeting of October 5. Could we have a mover for that?

MR. DUCHARME: I so move.

THE CHAIRMAN: Moved by Denis. Any discussion? If not, all in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Carried.

Today we are going to be dealing with the detailed review of the issues as they have been identified. The questionnaire that you received late yesterday tries, as well as we could, to compile and identify the issues that were raised by either the public submissions, earlier discussions of this committee, or whatever way we became aware of issues. I would like to thank Sue and whoever helped, probably even through the weekend, to get this thing done.

Sue and I met about the middle of last week and tried to get a consensus, we felt, on what had come in. From what we had as a rough draft last week to what you finally received yesterday took a lot of work, and I do apologize that you didn't get it until yesterday afternoon. But if you saw what this started as, I think it's worthy to note that there was a lot of work done. Even the rough draft that I saw late Friday had a lot of fine-tuning done on it, so I'm assuming you did some evening homework.

MS KESSLER: We had some people working on the weekend.

THE CHAIRMAN: I certainly appreciate that.

What I'm hoping to do is go through these things one by one. There are a few items in here that we may not have enough technical advice on as we reach them, and we may have to defer them. There also may be some issues where there isn't strong enough consensus, where we may want to take a little bit more time. Sometimes just thinking about it outside of the confines of a meeting helps. So I'm going to suggest that we go through these one by one. A lot of them are technical, probably fairly easy to come to a consensus on. We'll vote them off and have them approved. There may be some that are more contentious or less easy to deal with that we may end up dealing with at another meeting. I'm sure we're not going to get through all of this today anyway, unless everybody is a lot more co-operative than I could expect.

Okay. Gary just joined us. We actually just approved everything.

MR. DICKSON: I figured as much, Mr. Chairman.

THE CHAIRMAN: We thought it'd be much easier when you're not here.

I'm just going to repeat the last comment I made, Gary. The questionnaire has everything laid out as best as Sue and I could condense the submissions. If there are significant issues that need to be raised, of course they can be raised at the table, but I was hoping that we could go through these one by one. Those things that were reasonably easy to get a consensus on -- and some of them are technical -- we would deal with and get a consensus vote.

I'm doing this for your benefit, Gary.

MR. DICKSON: Thank you.

THE CHAIRMAN: If there are things that we can't come to a consensus on, we would defer them until the meeting. In that way we're not going to get bogged down on one or two items, and we avoid having some kind of expediency to the review. Also, there are a couple of items where we may be a little bit shy on the technical background yet, so those, obviously, we'll defer. If we can do that, hopefully we can do this in a reasonably informal way. You know, we'll still recognize whoever wants to speak, but in order to make this thing flow smoothly, I'm going to try and be as informal as possible and see how that works.

There are two kinds of questions here. The ones that are numbered are the questions that we actually will vote on or come to some consensus on. You'll notice that under the headings there are questions that haven't got numbers. They're sort of rhetorical questions, the essence of the review. So unless someone wants to get hung up on those, we won't spend too much time on them.

On the first one, the fundamental principles, the question is: "Are the fundamental principles of the legislation appropriate?" I think there was a general consensus that it was and that there wasn't much need to improve that.

The second main section is the public bodies. The first question under it is:

> Should local governments be covered by the FOIP Act or the Municipal Government Act respecting access and privacy issues?

The reason that question is there is that the existing act says that those local governments are covered under the act. There were some submissions that suggested they should be removed, and unless someone wants to get into the debate again, which essentially was covered in 1993, I don't think there was any new argument that hadn't been heard before that would justify changing the provision that included local governments under FOIP. So there is a consensus that the act as it is presently written would prevail.

The second question is:

> Should the definition of local government body in section 1 be amended to specifically include municipal and regional police services in addition to Municipal Police Commissions?

There's been some discussion on that. The recommendations from

the IPC office were that there is a distinct difference in role between police commissions and the actual police services. I don't know if we've had a lot of discussion on this, but I sense that there was a bit of a consensus that they were two distinct bodies. The commissions are sort of the political and, in some sense, the policy-making wing of policing services while the police service itself is the administration and enforcement body, and there would be justification to keeping them separate as entities described under the act.

Questions, comments?

MR. CARDINAL: Gary, just a comment on that. There are the aboriginal police agreements, the tripartite agreements between the feds, the province, and the Indian bands, and the RCMP of course in most cases are involved in it also, but not in all cases. Would they fit under this, or would it come under the federal freedom of information package that's being proposed?

10:17

THE CHAIRMAN: My guess, Mike -- and maybe we should get some technical advice here -- is that it would probably come more under question 3, which deals with the RCMP detachments which operate as municipal or regional policing services. The RCMP, I believe, have taken sort of the general approach that they come under the federal legislation. This was one of those questions that I had suggested we may not have all the technical or legal advice on, but perhaps we could go to Clark or somebody who feels that they're an expert in this and might guide us. Are we ready to deal with that issue right now, or do we need some more information? I know Sue and I talked about it, and we weren't sure last week whether we had the necessary background information to make that decision today.

MR. DALTON: Mr. Chairman, which one are we referring to? Is it 2 or 3?

THE CHAIRMAN: Number 3, actually.

MR. DALTON: Okay. That is an open question, and I'm not sure anyone will ever be able to answer it entirely. Clearly, I think the RCM Police take the view that they're covered by privacy legislation in particular that is federal, and there may be some conflict between federal legislation and provincial legislation if we attempt to extend the legislation here to the RCM Police when acting in the authority of a policing agency.

Now, there has been a civil case where the issue was whether a law firm could obtain documents from the RCM Police when acting as what we call persona designata, or people that are designated as investigators under the Fatality Inquiries Act. The judge in that particular case went through an argument that the RCM Police was somehow bound by our freedom of information act, but it wasn't a complete analysis. In the end he indicated that at least with respect to information they gather as investigators under the Fatality Inquiries Act, that would be subject to our own legislation and hence would be accessible for purposes of a lawsuit. I'm not sure that the analysis was complete. The RCM Police advised me that they took the position that they're covered by federal legislation, and I'm not sure whether an appeal has been made in that particular case.

So I arrive at the conclusion I started with: it's a bit of an open question at the moment, and I'm not sure that there's a complete answer to it.

MR. DICKSON: My thought is that the reason the RCMP do that municipal policing is that they draw their authority from a contract between the federal government and the province of Alberta that in fact defines the kind of services that the province is paying the RCMP to get. It seems to me it's not good enough that you have communities in Alberta as large as Red Deer using the RCMP as their municipal police service. The federal legislation is badly outdated. It's stale, and I don't think it's good enough for Albertans to have to rely on that ancient FOIP model in terms of the federal legislation when it comes to what their privacy and access rights are.

The other thing you run into is that we then have the thing that I thought in Alberta we always tried to avoid, which was disparity in standards. I should have the same standards in terms of accessing information and in terms of protection of my privacy as an Albertan whether I live in Red Deer or in Calgary. For us to say, "Well, there's some issue here, so we're simply going to defer to the federal legislation," I suggest, Mr. Chairman, isn't good enough.

I think all we can do is recommend anyway. Why wouldn't we recommend to the government of the province that they take steps to ensure that if it's not expressly provided for in the act, we ensure in the agreement between the province and the federal government that in doing municipal work, the RCMP force is going to be subject to the same law that applies to every other police service in the province?

THE CHAIRMAN: Other comments?

Clark, is it possible that we might have more information in the next few weeks -- and I emphasize "few" -- that might help us in this debate, or is it not likely it's going to get any less fuzzy than it is now?

MR. DALTON: I expect it's the latter, sir. For example, in this particular case if an appeal was taken, that would likely be well beyond the deadline of this committee. So in terms of fuzziness I'm afraid it will likely remain fuzzy to the end as far as this committee is concerned.

MS BARRETT: Is it your opinion that we would very likely get into a direct conflict with the feds if we not only made the recommendation to include the RCMP contracts that are held municipally but actually create a problem if we recommended and the government proceeded with that recommendation?

MR. DALTON: I think it can be fairly described that it would probably wash out in the courts somewhere, because it's really not clear where we're at on this. I'm afraid that's the best answer I can give.

MS BARRETT: That's fair enough.

THE CHAIRMAN: If the federal legislation was deemed to prevail, anything we would do would be ultra vires anyway; wouldn't it?

MR. DALTON: That's correct.

THE CHAIRMAN: Even though you've suggested we're not going to get any better advice over the next week or two, I'm going to suggest that we defer a decision on this and let everybody think about it. It's raised now as an issue. Let's do a little bit of soul-searching. Clark, even though you're not anticipating anything new and earthshaking, if there's any other advice you can get us, we'd appreciate that, and maybe we'll deal with it at the next meeting.

MR. DALTON: Sure.

MS BARRETT: So in a way, Mr. Chairman, are we deferring both 2 and 3? I think they do run together?

THE CHAIRMAN: Well, I think 2 is a different situation. This is the issue of splitting police commissions and police services. I got the impression, subject to being corrected here, that there was a bit of a consensus that they could be split. Is that agreed?

SOME HON. MEMBERS: Agreed.

MR. DICKSON: I still have reservations about it, Mr. Chairman, but I've expressed those before.

THE CHAIRMAN: Okay. Question 4 -- I think it's fairly straightforward -- deals with the definition of a local government body insofar as it deals with library boards. There is some confusion because of how boards are set up, under which jurisdiction, various funding roles, and things like that, as to their involvement with the act. The suggestion is that the definition in the Libraries Act be used, in which case there would be uniformity. Is this correct, Sue? Am I interpreting that somewhat correctly?

MS KESSLER: That's correct. Part of the difficulty was that the Libraries Act was amended after the FOIP Act was created. The FOIP Act doesn't specifically include library boards, although it's read into it that they are included. This would make it explicitly clear that all of these boards are covered.

HON. MEMBERS: Agreed.

10:27

THE CHAIRMAN: Question 5.

> Should the definition of health care body in section 1 be amended to:
>
> - ensure hospitals and nursing homes operated by RHAs are viewed as part of the RHA for the purposes of the FOIP Act, while ensuring that other hospitals, nursing homes, Community Health Councils and subsidiary health corporations not directly owned and operated by the RHAs are maintained as separate public bodies under the Act?

It doesn't exclude them from the act, but it keeps them as separate entities for the purpose of administration.

Any discussion on that? I gather that there is a consensus to that effect, that they would be operated as separate entities.

MR. DICKSON: Just one question. The Minister of Health currently has an ongoing review that's looking at long-term care. I don't know whether one of the things coming out of that is going to be some suggestion to reorganize the way long-term care is delivered, and I don't know whether anybody around the table has that information. But one of the things being considered was a larger provincial role in terms of supervising and monitoring long-term care. So we're making an assumption here that there are a number of these things that are outside the control of RHAs. I'd understood that there was a move to bring most of these under.

THE CHAIRMAN: I'm not aware of any specific proposals.

Consensus on that bullet then? Agreed, I guess.

The second bullet I think is obvious. It's a technical drafting error: "the Alberta Cancer Board [should be] included as a health care body."

HON. MEMBERS: Agreed.

THE CHAIRMAN: We're agreed to that.

Question 6.

> Should the current criteria for the inclusion of agencies, boards, and commissions, etc. under the Act remain as it is?

That's a pretty broad question.

MR. DICKSON: Can we deal with 6 and 7 together, because they really speak to the same thing?

THE CHAIRMAN: Any problem dealing with 6 and 7 together? There doesn't seem to be, so we can, yes.

MR. DICKSON: The observation I'd make is this. I like the notion that if the Lieutenant Governor in Council or a minister appoints any member of a board, the board should be subject to the act. We have a number of boards where you have a government MLA who is either chairman or whatever of the board. I think to members of the public it's seen that it's not arm's length from government but in fact acting under the control, if you will, of the government. So for that reason, rather than having the existing provision where all of the members, officers are appointed under the authority of, just simply have: if there's any member appointed by the Lieutenant Governor in Council, it should be subject to the act. That's the first bullet in 7.

THE CHAIRMAN: Okay. We'll deal with that issue. Has anyone got any comments?

MS BARRETT: I have a question first, Mr. Chairman. Can somebody direct me to the page where the current criteria are outlined?

MR. STEVENS: Page 1 of the number 1 paper.

MS BARRETT: Not in the act.

THE CHAIRMAN: If you look in the summary, pages 14 to 16, you'll have excerpts of the act there.

MS BARRETT: Oh, okay. I get it.

THE CHAIRMAN: I have a concern with that suggestion, Gary, because there are a number of agencies where, for the sake of ensuring that there is some additional openness and accountability on an otherwise independent or private-sector, almost, agency, there are appointments made. I think right now there is an acceptance of some of those because of the intent, the purpose of that appointment. If we immediately included all of those in the act, there's going to be a strong resistance from a lot of agencies to have the government involvement, and I'm not sure if we would be defeating some of the good purposes that exist now.

MR. DICKSON: Mr. Chairman, we don't all accept that assumption you make, that having a government MLA on a board is a positive thing. In fact, I'd suggest that many of us are concerned that a lot of boards don't have the appearance of independence let alone the opportunity to operate independently because government has appointed to so many boards either the chairman or an individual. I think you can't have it both ways. If the government wants to install a government member as chair or member of a board, then I think there are some things that go along

with that, and one of them is that heightened expectation and standard in terms of openness.

THE CHAIRMAN: You made reference, though, to an MLA being on the board. Your first comment was: any member appointed by a minister or the Lieutenant Governor in Council. There's quite a difference.

I don't have any problem with the concept where the body performs as its prime purpose a statutory function for government. I think that is the intent of the act right now for a delegated administrative organization which is a privatized or quasi-privatized operation on behalf of government. I don't think you'd get much argument, but simply because a member or possibly a couple of members are appointed, I'm not sure that's a strong enough criteria to assume that it is a public body under this act.

MS BARRETT: Are all of these bullets under 7 up for discussion right now?

THE CHAIRMAN: Yes.

MS BARRETT: Well, I'd like to make a very strong case for inclusion of privatized organizations. Organizations that hitherto had been operated by government were presumably done so in the name of the public good. When privatized, those mandates were not to have changed. I'm not convinced that those mandates didn't change, particularly when it comes to registries. We call them motor vehicle registries, but remember that these are people who are also dealing with vital statistics. I know the game that these people play, and they still have to pay the department that runs vital statistics a flat fee for any of the information they obtain from vital stats, but the sky is the limit as to what they'll charge the consumer. Not only that. We found out not from the press but from the commissioner's report six months ago and now from the Auditor General's report last week or the week before that these people are in the business of selling names and addresses to such petty interests as private parking lot companies who want to come and seize your car because you didn't pay your $35 bill. They're not happy with going to court anymore.

Now, I would say that agencies like that should come under FOIP. These people need to be accountable. They were given a public service mandate that had been directly operated under the auspices of the provincial government. Their mandates did not change when these agencies became private as opposed to publicly owned. However, the floor and ceiling within which these people are operating seem to expand at whim without any -- any -- accountability.

THE CHAIRMAN: Pam, I accept your point on the privatized organization, but I'm also going to ask, because it's so unique, that we leave the Motor Vehicle Administration Act as a separate item under question 20, partly because the Ministry of Municipal Affairs is doing a separate review that we will certainly comment on, and it is extremely unique.

MS BARRETT: Okay. But, Mr. Chairman, I can make the case for ALCB. I mean, I think any public service function that had been directly delivered by a public authority in the province which subsequently became or becomes privatized needs to remain exactly as accountable as it would have been if it had been kept under the direct auspices of the province.

THE CHAIRMAN: Comments on that?

MR. DICKSON: Well, I agree. There's an irony to me. At the same time that we're looking at hopefully strengthening the freedom of information act, the scope is shrinking. I think Tony Blair and his government in the U.K. in their discussion paper recognized that. It's one of the reasons in the United Kingdom -- the recommendation is a broadening of the scope. Whether services are provided by a for-profit operator or a public agency, they're discharging traditionally government roles and traditionally public responsibilities. To me that should be the test. It's not whether it's for-profit or public. If there are services that have historically been provided as public services, are currently provided as public services and they're privatized, that shouldn't mean that there's a reduction or diminution in the kinds of information and access rights that Albertans enjoy when it comes to other public bodies.

So I think that's a major concern. To not attract those privatized agencies -- I mean, at least in this province it looks like the scope of FOIP is just going to dramatically shrink. We came up with an excellent statute and it may work very well, but it covers a decreasing number of services that Albertans use and rely on on a day-to-day basis.

10:37

THE CHAIRMAN: There should be one difference noted though: the issue that an agency, privatized or otherwise, which is essentially operated to perform a government service should be considered differently than one that is privatized because the government has divested itself of its interest because it's decreed to be not a core government business. You know, simply because the government chooses deliberately to get out of that business, I think we have to be careful. So there needs to be a consideration at that line. Maybe there was a situation where the government had no right or shouldn't have been in that business but over years chose to become involved, and maybe now we're accepting that that isn't the role of government anymore. So we have to be careful of that distinction.

MR. STEVENS: From my perspective, the paper which we received on this at the bottom of page 1 outlines my view of the general rule relative to inclusion, and basically it sets out three criteria.

- The Government appoints a majority of members to the body or to the governing body of the organization; or
- The body is wholly financed through the General Revenue Fund; or
- The Government holds a controlling interest in the share capital of the organization.

If we're talking general principles, those are the general principles that I would see as applying. There are specific examples that I think we have to address here today -- and we will -- one being the registry, another being private schools, and so on. From my perspective those three criteria are the starting point, and there are certain exceptions that we have to address separately. That would be my position as we go forward. So to be specific, I would not be in support of expanding to include situations where there's simply any member appointed by the Lieutenant Governor in Council or a minister.

MR. DICKSON: Mr. Chairman, I was just going to say that the alternate proposal I'd suggest is the one that appears on page 5 of the same paper that Ron Stevens referred to. The three alternate criteria -- and this would be reflecting the experience about British Columbia and Great Britain -- would be:

- any body to which the government or a minister appoints a member . . .

not a majority but a member,

- bodies, including private bodies, that perform functions under an enactment; and
- privatized entities that continue to carry out functions that are in the public interest.

I think that also is true to representations made by the government when they privatized a number of services over the last three years. When this came up in the House, I remember being assured by Minister West and by other cabinet ministers who were asked that privatization didn't mean that these groups automatically were going to be outside the scope of FOIP. I don't have access to it now, but in fact we can find those references in *Hansard*. It seems to me that to accept this proposal I read out a moment ago simply is true to those kinds of representations that were made by ministers of this government in the '93 to '97 period.

MR. CARDINAL: I think, Gary, any agency or private company that has to go through a competitive tendering process to receive a contract or a project should definitely be exempt from this process.

THE CHAIRMAN: That would be what? Like administration of a private company or something like that?

MR. CARDINAL: Well, for an example, another one could be the maintenance contracts from transportation, which is done now by private industry, and they do a good job. But you can't tie their hands down to go through an administrative process like that and still be competitive. You know, the contractors that are out there are private companies owned by Albertans, and they do well as long as we don't tie their hands to the point where they can't operate. It's a possibility if we go too far.

THE CHAIRMAN: So what you're suggesting: is there a difference between the role of performing an action, I guess, as opposed to a group that has some policy-making authority?

MR. CARDINAL: Exactly.

MS BARRETT: Well, I don't know what Mike is referring to, so let's be clear about this. Are the companies that win the contracts to do highway maintenance by a public tender now FOIPable?

THE CHAIRMAN: This would be a question for Sue. Do you know?

MS KESSLER: Peter, do you want to take this?

MR. GILLIS: It would depend what was in the contract. If the contract said that the department wanted to control particular types of information they may have on their premises, then they would be FOIPable. If it didn't, if it just said that you're responsible for this maintenance and at the end of the day we'll audit you or whatever, then it wouldn't be FOIPable.

THE CHAIRMAN: The information that the department receives from a contractor subject to protection of certain business interests is FOIPable; is it not? That applies to virtually any contract.

MR. GILLIS: Yes. Sure. I would use the example that I'm a contractor, not maintaining roads, but my contract from Labour says that there are certain documents I'm responsible for. If there's a FOIP request, I've got seven days to produce those to the Labour office as part of any request.

MS BARRETT: Okay. I'm getting the picture here. Well, I'm going to go down and get my papers in a minute. I'd like to suggest that any organization that is receiving public money to provide a service formerly provided directly by the government should be completely FOIPable. I don't see why not. Plus they are presumably -- well, yes, as a matter of fact for sure in the case of parks and in the case of highways and roads -- operating under an act.

MR. DUCHARME: Mr. Chairman, I'd just like to speak to the three criteria that Gary Dickson spoke to a little earlier: basically

- any body to which the government or a minister appoints a member . . .
- bodies, including private bodies, that perform functions under an enactment; and
- privatized entities that continue to carry out functions.

I think that if we follow these three criteria, what we're doing is basically using a very broad brush in terms of opening it up, and I think what it would do is that all of a sudden we'd be privatizing. We'd be putting, you know, the FOIP regulations into the private sector. And I don't think -- well, it's not that I don't think, but I certainly will not be supporting such a movement to go out into the private sector. I think by using these criteria, that's what we would be doing.

MR. DICKSON: Mr. Chairman, I might suggest that this actually provides a great opportunity for compromise. There are some of us around the table who think there ought to be comprehensive privacy protection in the for-profit sector. Now, I know we may have to agree to disagree on that, and we've teased out that difference in past meetings. Here's an opportunity, rather than just holus-bolus bringing in the whole for-profit sector under freedom of information, to be more targeted and say that we're not going to have massive comprehensive protection. Although I think that would be a good thing to do in the nongovernment sector. But we're going target those corporations, those agencies effectively doing government/quasi-government, public/quasi-public responsibilities. I think, frankly, it represents a good compromise.

10:47

MR. STEVENS: I think in areas like the ones that Gary has just mentioned we have a couple of alternatives which will allow the public interest to be addressed without applying general rules to circumstances that we cannot anticipate today. One of them has already been alluded to, and that is the fact that when you contract with various parties, if you consider it necessary to have through the FOIP provisions access to documents, that can be made a matter of contract. I certainly think that would be one of the solutions relative to the RCM Police. I think it would certainly be a solution with respect to any contractor within the province of Alberta. Perhaps one of the recommendations we could make, generally speaking, to ministers as they go forward is that they consider whether or not that type of information is something they would like to have access to and consider it as part of a contract when they're dealing with the private sector.

There was another point I wanted to make, but it has escaped me. I'll come back to it.

MR. DICKSON: I wonder if I can ask: Ron, is it acceptable, though, to allow a single minister to decide where and when access to information rights are going to apply and when they're not? I mean, there's certainly some advantage in terms of flexibility in terms of doing it that way, and that's some of what we see in some current practices. But as a committee now trying to send a message to the Assembly and to government in terms of a broader

brush basis what we'd like to see, doesn't that send a message that these fairly basic rights of individual Albertans are really at the whim of an individual minister? I mean, I can think of some ministers in the existing cabinet who I think would take a very expansive view and probably insist on fairly broad FOIP application and of some other ministers that would never choose to put it in a contract. Wouldn't you run into a situation of unevenness, lack of uniformity?

MR. STEVENS: Well, I guess it depends on what principles you apply to the operation of government. I've already indicated the three criteria that I believe should be the general criteria that we use regarding the scope. I also happen to believe in trust and judgment as opposed to regulation and direction. So when I look at my ministers, I say: these folks are there because they have gathered the respect of the Premier, and they should be trusted, together with their departments, to use some judgment in these matters so that when they are dealing with the private sector, they can consider whether or not the information should apply.

That's the approach I take to it, which actually leads me to the second point I wanted to make which had escaped me earlier. That is that quite apart from contract, ministers who have bodies for whom they have some responsibility -- for example, private schools for the Minister of Education -- where some public but not complete public funding is provided for the operation and where there is regulation and legislation that relates to the operation of the entity, can they in fact as a matter of routine receive information regarding those bodies? For example, in the case of private schools and the Minister of Education, the minister receives on an annual basis from each of those private schools response to a number of questions that relate to the quality of education and the type of education that is being afforded there. They provide annual budgets, they provide audited financial statements, and so on and so forth. All of those documents are available through this FOIP legislation as a result of approaching the minister.

So quite apart from contract, which deals with the supply of services from the private sector, for those bodies that, to use the words we're using here, perform some function under an enactment and that may receive some but not complete public financing, there is an ability by the ministers to obtain the information that's necessary to protect the public interest. We expect our ministers to do that type of thing. They do that kind of thing, and that information is available to us. So that is the other way, I believe, that we as the public can receive information that's important for accountability.

THE CHAIRMAN: What I'm going to suggest is that this looks like one of those that we're probably going to have to wrangle with a bit, that might be an issue we would defer and think about.

I'm also looking at number 8, at the way it's written. The first part of it relates to delegated administrative organizations, but it has the next phrase "and other `privatized' services," which is almost similar to the last bullet of number 7, making it a little questionable. I don't think there's any doubt that DAOs are intended to be included in the act, and I believe even the way they are established right now, they are written to be included in the act. But if we have that other part relating to privatized services, we might not be able to deal with that today, unless we wanted to change the wording of it.

I meant to do this at the beginning of the meeting. If any members of the technical team here want to make comments or jump into the debate -- I mean, this is a good part of the reason why you're here -- feel free to get my attention, and I'll put you on the speaking list.

I'm going to ask you actually, Sue: is there a reason why the words "and other `privatized' services" would need to be in that question?

MS KESSLER: That question actually is really rolled up into question 7 already. It's part of the criteria, so in many respects it likely didn't need to be a separate question.

THE CHAIRMAN: We could actually take it right out; the intent would be covered. Okay. Is everybody agreed we'll delete question 8?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. We'll try and bring you more information for what is now the combined 6, 7, and 8.

Question 9. "Should inclusion criteria for agencies, boards and commissions be in the Act, the regulation or be part of policy?" I believe some of that is going to be discussed in the section dealing with paramountcy, but it may be worth getting into it briefly here. I don't think anyone would want the situation to be so loose that simply a policy would be enough for inclusion criteria, but the way it's written right now, both the act and the regulation would need to be considered, unless there's a strong feeling to amend the act. I'll open that for debate.

MR. DICKSON: The advantage with regulation is flexibility. The disadvantage is twofold. An Albertan who picks up this thing or an agency that is trying to figure out whether they're included or not -- and this is a source of confusion already -- can't go anywhere that gives them that indication. I think that statutes can be a useful tool to inform citizens of what their rights and remedies are, and I think it's unreasonable for our constituents to put them to having to track down a regulation.

The other problem is the way regulations are made in Alberta. As long as regulations are done without being published in advance and without an invitation for comment or being subjected to scrutiny by an all-party committee of legislators, I just have this problem that the 600 or 700 regulations a year we pass in this province aren't subjected to adequately aggressive scrutiny or a rigorous enough scrutiny. That's why I would encourage us to put it in the act. We're only talking about the criteria anyway.

10:57

THE CHAIRMAN: Any others? I think we raised this discussion a bit at an earlier meeting. I'm going to disagree with you on that, Gary, that you can only use the legislation. I don't believe that legislation is flexible enough, and the process of developing legislation is equally inflexible. You're restricted to the time that the House is in session. There needs to be some provision for emergent situations, where these things can be dealt with in legislation and even, I think, in the orderly carrying out of the business. You can't expect things to be structured so rigidly as to work around the legislative schedule. The degree to which things may need to be in legislation or regulation of course is up for debate, but simply saying, in answering the generality of this question, that regulation wouldn't be one of the options, I would have to totally disagree with you.

Mike, you want to speak?

MR. CARDINAL: I was just going to disagree that it has to be part of policy, but the minimum we should have is the act plus the regulations in order to be able to operate. Otherwise you tie down the hands of the government, whichever government is in, to try

and govern without the ability to use regulations to carry on the day-to-day or month-to-month departmental or government policies. So I would say that the minimum would be the act plus the regulations.

MR. DICKSON: The Assembly might have to sit a little longer. We might have to have a fall session every year if we had to change the statute to change the criteria.

MR. CARDINAL: It's working very well the way it is.

THE CHAIRMAN: Any other comments? In order to deal with this one, I think the simplest might be to have a motion. There are two points of view here. Gary Dickson is suggesting: only in legislation. My suggestion was that it be in legislation and regulation. I'll call for a motion if someone is inclined to do that.

MR. DICKSON: I'll move that

> the inclusion criteria for agencies, boards, and commissions be specified in the act.

THE CHAIRMAN: Okay. That motion would preclude regulation. Further discussion?

MR. DICKSON: With respect, Mr. Chairman, it doesn't preclude necessarily incidental regulations. It just means your primary criteria are in the act.

MR. CARDINAL: Question.

THE CHAIRMAN: The question on that has been called. All in favour? Opposed? It's defeated.

Do we have another motion then?

MR. CARDINAL: I'll make a motion that

> it include the act and the regulations.

THE CHAIRMAN: Okay. Further discussion? All in favour? Opposed? A split vote, but it's carried.

Question 10.

> Is the current process for the removal of agencies, boards and commissions appropriate? If not, what changes should be made for improvement?

I don't recall that there was a lot of debate disagreeing with the present process. I stand to be corrected on that. Comments?

MR. DICKSON: I don't recall any real dissatisfaction in any of the submissions with respect to the removal process.

THE CHAIRMAN: So there's a consensus that the answer to number 10 is that the current process is appropriate.

HON. MEMBERS: Agreed.

MR. ENNIS: Mr. Chairman, just on that point. The commissioner did make a remark about the impact of a name change on an agency being enough to trigger its removal from the act. I think that was the only case I saw in going through the submissions.

THE CHAIRMAN: That's actually question 11, which follows here.

MR. ENNIS: Right.

THE CHAIRMAN: Okay. There is a consensus on 10 then.

The point that was just raised was whether or not an agency, board, or commission would be removed simply by virtue of changing its name but with performance of the same function. Again, I don't think there's anything controversial about that. If it's a name change -- and I believe the example that was used in the commissioner's recommendation was the tire recycling board, which changed the words a little bit but is in essence the same board and does everything the exactly the same. So the only amendment would be to revise the name in the regulation.

MR. CARDINAL: Gary, just a comment about the last point as far as "performing the same functions." You know, as time goes on, organizations change a bit in general as to how they operate. Would it be possible to change that to "the same general functions" to leave at least some flexibility in there?

THE CHAIRMAN: Well, I think that if it changes its function, then it would be up to the agency or the minister responsible to make a case for its exclusion, if that's what the choice would be. But what we're talking about here is very simply a name change and virtually no change in the function. That would be the way I interpreted this recommendation. Am I correct in that, Sue?

MS KESSLER: That's correct. There would be no other changes to the criteria that the body would fall under. It would be simply a name change.

THE CHAIRMAN: If there was a change in the criteria, then a case would have to be made one way or the other.

MS KESSLER: Then it would have to be reassessed.

THE CHAIRMAN: Gary, you had your hand up.

MR. DICKSON: I was just going to make the point that we're not drafting the statute here, and really if we can send a message in terms of the principle we're agreed on, it's going to be a challenge for the draftspeople to address those kinds of concerns.

THE CHAIRMAN: So we're agreed on 11?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Number 12, I believe, is also just a technical change. The term "by-law of a local government body" should be changed to "by-law or other legal instrument," because not every public body operates under bylaws. They have resolutions and things like that. It seems straightforward. Are we agreed on that?

HON. MEMBERS: Agreed.

THE CHAIRMAN: I think we've got to the end of the easy ones, at least for a little while here.

Expansion of the act. I expect that there's going to be a little bit of debate on the next four items at least.

Item 13, the private schools or private colleges inclusion or otherwise in the act. There was a committee -- and I believe Ron Stevens chaired that -- that recommended that private schools not be included in the act. Part of the reason anyway was what you just mentioned before, Ron, that by virtue of the contract with the minister, essential information or information that's deemed to be essential public information could be extracted by the contractual agreement, and when the minister receives that information, it automatically becomes FOIPable. Could I maybe ask you to

elaborate on other points? How good is your memory of that recommendation?

MR. STEVENS: Well, I don't know, and I don't know if anybody will check. I don't know that it's a matter of contract. I think it's a matter of perhaps a combination of legislation and regulations requiring certain information to be provided for the minister by the private schools. As I indicated earlier, that information substantially deals with a whole host of questions which the minister asks on an annual basis and which are answered. It deals with the budget; it deals with audited financial statements.

The short of it is that that information, in my view, addresses the interests of the public. That information is available under this legislation, and it is appropriate in those cases where some but not all of the expense relative to the operation of those entities is funded by public funds. So the question really becomes a question of accountability associated with the involvement of the government, and it's a matter of perspective as to whether that is sufficient. My view and the view of the people who were on that particular committee was that that was appropriate.

11:07

THE CHAIRMAN: Okay. Pam, you're next.

MS BARRETT: Thanks. My concern is that what we're talking about here is kind of a secondhand approach to information. The private schools and colleges in this province receive a lot of public funding for the purposes of operations. I know that they don't get it for capital, but they do get it for operations, and it's generally in operations where you may have questions that need to be answered in an accountable way.

Going through a minister is like going through another stage in this. Gary, when you were doing the initial summary on this, you used the word "could," and I think that's a very revealing word. I'm not trying to say that you loaded the language. What I'm pointing out is "could" as opposed to "must." That's the difference I think between going through a ministerial level to get access to some limited information that he or she has the right to access on an annual basis and coming under the full scope of FOIP. So I'm going to argue that because there's public money -- and a lot of it, by the way -- in the operations of private schools and colleges, there's no reason they shouldn't come under FOIP, absolutely none. It's their argument, which I know to be the case, as Ron quite well summarized: well, we answer to the minister, and that makes us publicly accountable. I say: what are you so scared of? If you say that you're accountable to the minister, then be accountable to the public at large. You're taking the public's dollars, thank you very much.

MR. DICKSON: I have a lot of difficulty, Mr. Chairman, in this committee, which is specifically tasked to decide what should be under FOIP and what isn't, to sort of incorporate by reference some other consultation that was done by a committee with no opposition MLAs on it, to my understanding, and to take those recommendations and bring them in. We went to Albertans and said: tell us what should be changed about the act. If you look through the recommendations we received, we had Pat Hunter of Olds College, the Canadian Association of Journalists, the Alberta School Boards Association, the Peace River school division, people representing Red Deer Catholic -- and I can go through the list -- all saying, accepting what is to me the most fundamental principle: if you're going to take tax dollars, if you're going to take public money, whether it's a hundred percent of your funding or not, then that means you have to meet certain public expectations, and that means exposing yourself to access rights and information rights.

To me the notion that you have to go through the Minister of Education and that there may be some things covered collaterally under contract or otherwise is wholly unsatisfactory. I think more than that, we're sending a message to Albertans that private schools have some exalted status, some preferred status. At the very time when I expect government to be a defender of public education and so on, here we are yet again undercutting public education. That's exactly what we do here.

You know, I saw a publication come out when there was a lot of concern about local schools being subject to FOIP. Some of the private schools circulated a notice to parents and prospective parents. Do you know what it said? I'm paraphrasing: we're not subject to the Freedom of Information and Protection of Privacy Act. In other words, if you don't want to be subject to people asking questions and finding out how their tax dollars are being spent, ensuring that your children and parents have some privacy rights, enroll in our private school, where you're out from underneath this monster. To me, I found that so offensive. I'm not suggesting it's widespread; it may have been a single private institution in Calgary doing that. But it seems to me that to exempt these people, we're ignoring the public input we had in this process, and that's what we have to be paying attention to. I think we're just creating some really serious problems. So I feel very strongly about it.

Mr. Chairman, thanks.

MR. CARDINAL: Mr. Chairman, I think they should be exempt. Again, the minister I think has enough regulations and the legislative authority to be able to handle the issue. I guess, for an example -- and I think we should look at it as an option -- if they receive more than 50 percent of their funding from the public, then maybe they should be included. But if they receive less than that, I think they should be exempt.

MS BARRETT: Define "funding" though.

MR. DICKSON: Why would we focus on percentage? The most fundamental proposition is that if you take public dollars -- I mean, there's an option. If you don't want to measure up to the kinds of accountability, you fund yourself privately and you don't ask for public dollars. If you ask for public dollars, whether it's 20 percent or 10 percent or 100 percent, then surely there's a price that has to be paid. There's an accountability that has to be met. I hope we don't have to argue over what percentage it is. It's fair; if you're taking public dollars, then you have to measure up.

THE CHAIRMAN: Well, I think the issue of percentage can't be ignored. I don't think it's drastically different than the argument over whether one board member or a majority of board members are appointed. I guess we disagree on that point as well. But I don't think you can just categorically say that some funding automatically must force the inclusion. I think I would take exception to that. There are a number of arguments which the private schools have made which . . .

MR. DICKSON: But not to us, Mr. Chairman.

THE CHAIRMAN: Well, I think if the argument is made and the information is available, we would consider it the same way as we're looking at information that is passed on to us secondhand, whether it's through the registries or the federal government initiative. We're not ignoring that information simply because it

wasn't made specifically to this committee. Some private schools would argue that with the taxes they have paid, they should be entitled to some of that. I'm not going to debate whether or not it's a valid argument, but I don't think it's clear-cut. All I'm saying is that I don't think we can simply say that some involvement by some grants automatically should necessitate any agency from being in the act. That's my personal opinion, but we're still debating this.

MR. STEVENS: This goes back to the basic criteria that we were discussing earlier this morning. Once again, this is a matter of principle from my perspective, and I don't think it's a question of a majority of the members on a body or the whole financing or the controlling interest. It's not enough to simply have a member appointed or some financing or some interest. One has to draw the line somewhere. The line I draw is basically relative to majority control, whole financing, and then the issue outside of that becomes a matter of the minister ensuring that the public interest is protected to reflect whatever the public interest is. If there is some financing or some interest, then information can be obtained. To the extent that the information is obtained, then that information is available from that minister through this legislation. So as a matter of principle, that is the approach I take to the issue of private schools. It's not a question of revisiting the private school issue but rather going back to basic principles associated with this particular legislation.

11:17

MR. DUCHARME: I believe Ron has just covered the thoughts that I wanted to pass on. It's sounds like the argument that I'm hearing from the opposition is that there seems to be no accountability for the private schools or the private colleges, whereas in effect there is accountability to the minister, and with the information that is forwarded to the minister, that information is available to the public. So I think we're going around and around, and basically the information is available.

MS BARRETT: With respect to all of the people at the table, I need to repeat something that I said when Ron was out, and that was that when you have to go through a minister to get access to some information that he or she may or may not have, you're not talking about the full scope of FOIP properly applying to private schools or colleges. Let me make the case to you that the majority of their funding and the majority of their budget is operational; 99.5 percent of their budgets are operational. The majority of that funding does come from the taxpayers.

Now, the minister in charge will have certain powers to which the private schools or colleges must answer, and the minister will probably have a lot of areas where the accountability by the schools is gray. Ultimately what I'm pitching to you is: what do they have to be afraid of? They want the public tax dollars. In order for them to function, they argue, they need to have most of their funding coming from the tax system. Why wouldn't they want to be accountable? Remember that we're talking about organizations that do not have, as we do in the public system, elected school boards. They don't even have that; right? So I ask: what are they so scared of, and what will it take for me to convince you that this is only an issue of accountability?

It's more an issue actually of transparency than it probably is of substance in most cases, but where cases do come up -- and I've had admittedly only one problem with a private school and getting information from that private school since I got re-elected in 1997. But I'll tell you what. I can't get anything out of that school. I have a serious complaint from a parent and child, but I'm not getting anywhere. If they were covered by FOIP, I'd be able to do my job. I agree that it's only one. For the most part it's an issue of optics.

THE CHAIRMAN: I won't refute your argument, Pam, but I think you're incorrect in the percentage of funded dollars and even as part of the operating funding. It's not a majority. But other than that, I accept your argument.

MR. DICKSON: I'm going to move a motion to sort of crystallize the debate, but before I do that, I just want to make the observation that Denis and I disagree fundamentally. He talks about accountability to the minister. When I look at the act and I look at section 2 and the purposes that are enumerated there in the act, it talks about accountability to Albertans, accountability to the citizens, accountability to the public, the people that pay the freight. That's the accountability that is provided if these schools are subject to the act and, notwithstanding Ron Stevens' argument, in my view does not exist if they're excluded. So it's accountability to Albertans and not accountability to the minister that's the key.

Anyway, we've had some spirited discussion around it. My motion would be that

> private schools and private colleges which receive public funding should be subject to the act.

THE CHAIRMAN: Okay. The motion is accepted. I want to make one point, again a personal observation. The fact that there is some involvement by government, whether it's in this area of funding or appointment of board members or whatever, might there be an argument that there would be some involvement in either control or whether it involves the Freedom of Information and Protection of Privacy Act or otherwise? There might be a proportionate responsibility too. That's probably the basis for which I personally believe that in this case the private schools should not be subject to the full extent of this act. They get some funding, so there is some accountability in relation to that funding. The only alternative is through either another statute or in this case through the agreement with the minister. That would be the reason why I would disagree with your comment, Gary.

The motion is on the table though. Any further debate?

MRS. TARCHUK: Can I just ask you a question, Mr. Chairman, more with regards to process? We deferred question 7. Now, were we deferring that so that we could have these discussions with similar questions later on, or are we deferring it to another time? Frankly, if we deal with question 13 here, we may as well go back and deal with 7. I mean, they really do all belong together. So just the intent of deferring 7: what was the intent there?

THE CHAIRMAN: Well, I think 7 was a little bit more complicated. It wasn't precisely a yes or no. Just to give members here a chance to go back and think about the complexity of it. There's an entire paper on it, and it has several recommendations.

MRS. TARCHUK: One of the reasons for my question, which we may want to consider -- I mean, question 13 really does belong with that similar discussion. So we could consider deferring 13 with 7 and identifying similar questions throughout the paper and dealing with them in one discussion.

THE CHAIRMAN: Oh, you mean the funding of it.

MRS. TARCHUK: It doesn't matter. I'm willing to deal with the question now. I just wanted to point out that it is very similar.

THE CHAIRMAN: We've excluded some specific examples because they stand out. That they don't come under the broad umbrella is why this is in here. You can make the same argument for possibly the next couple that come up as well. I think we should keep them separate.

MRS. TARCHUK: Okay.

THE CHAIRMAN: Whether we deal with them today or not is a different situation, but as a separate question.

Denis, did I see your hand?

MR. DUCHARME: Gary, I think it's quite evident that I will not be supporting your motion, but there's part of your preamble that I think I should touch on, and that was the comment that you made that the act is accountable to the people of Alberta. I kind of got the insinuation that maybe you were saying that the minister was just accountable to the minister, whereas the minister is ultimately accountable to the people of Alberta. I thought maybe I should clarify that.

THE CHAIRMAN: Other comments before we vote?

Okay. On Gary Dickson's motion that

> private schools and private colleges be included if they obtain any government funding.

All in favour? Opposed? The motion is defeated.

I'm assuming there's no point in calling the other motion. I think this one by converse would show that the recommendation is that it not be included.

Question 14.

> Should commercial entities controlled by a local authority (e.g., EPCOR/ENMAX) be fully subject to the FOIP Act, excluded from the FOIP Act, or should sensitive business records only be excluded from the access provisions of the FOIP Act?

There are three options in that. We discussed this a bit earlier, but I don't think there was any consensus at any point yet.

MR. DICKSON: It's the same proposition, Mr. Chairman. These organizations have received public funding. It's public funding that's built the infrastructure that they now rely on in their business. I think of the three options. To exclude them from the FOIP Act altogether is unreasonable, and in fact if you look at the submissions we received -- and I'm not going to go through the list now -- generally the only people arguing for the exclusion were EPCOR and ENMAX.

Of the three options my argument would be: let's make them fully subject to the FOIP Act. Between now and the time legislation is introduced, they have an opportunity to make submissions to cabinet and to the ministers responsible to try and persuade them how they would narrow it down to sensitive business records. I don't know how we'd be able to do that now. My fear is that they would go far more broadly than I think is appropriate, so I'd sooner start off taking the default position. They should be subject to the FOIP act because they're benefiting from public funds in a situation which until recently was a government responsibility. I'd be open I suppose down the road to them coming back not in a broad-brush way but in a very targeted way to try and make the case for what kinds of sensitive business records have to be excluded that can't be caught under the other exceptions in the act.

11:27

THE CHAIRMAN: Any other comments?

MR. CARDINAL: Again, any of these entities that are private enterprises that have to compete in the tendering processes in order to obtain or deliver the requirements I think should definitely be exempt from the act.

THE CHAIRMAN: Well, these aren't necessarily a tendered process. They're owned by the respective cities.

MR. CARDINAL: But if you were to go with this, you would automatically include the tendering process. For example, in Transportation private companies have to compete to obtain the job. They would be included in this, unless you're specifically dealing with EPCOR.

THE CHAIRMAN: I think Sue was going to give us a clarification.

MS KESSLER: I'd just like to make a point of clarification. They are currently included in the definition of local government body, so the act will become subject to them unless some changes or amendments are made to the act. That's what EPCOR and ENMAX have asked for. So I think that's the reason why the question is raised here.

THE CHAIRMAN: They are asking to be excluded?

MS KESSLER: That's correct, but they currently are included.

THE CHAIRMAN: Okay.

MS BARRETT: Well, first of all, I don't know ENMAX. Does someone want to tell me what ENMAX is?

THE CHAIRMAN: It's Calgary.

MR. STEVENS: But what they do is buy and sell electrical power as opposed to EPCOR, which I understand also generates it.

MS BARRETT: Right. A pretty public process then. It certainly is with respect to EPCOR. There are no secrets there, and if they do have secrets and they want to defend why some of their business strategies need to stay out of scope, then let them defend them. Aside from their commercial activities, which might be potentially sensitive, there's absolutely no reason to kowtow to these people. What makes them so different from any other commercial entity owned by a local authority? It's nuts. I don't know why you'd want to get into that.

MR. DICKSON: And a head start at public expense.

MS BARRETT: Well, yeah.

THE CHAIRMAN: I have to admit that earlier -- and I even made the comment on the record at an earlier meeting -- I was leaning towards the compromise that would allow for certain business records to be excluded, but I had a conversation with at least one of my government colleagues who argued that it would be very difficult to separate the two, the business and those public records. So I don't know. Maybe I'm waffling a little bit.

Any further observations?

MR. STEVENS: Are there entities that you're aware of other than EPCOR and ENMAX that currently exist that this particular point would apply to?

MS BARRETT: Sure. Lots. Medicine Hat's gas. There are lots.

MS KESSLER: We don't have a list.

THE CHAIRMAN: Well, I don't know if the city of Medicine Hat's gas utility is a separate company or whether it's simply operated by the city.

MR. CARDINAL: They own and operate it.

MR. STEVENS: Mr. Chairman, I personally would feel more comfortable if we deferred this. I'd like to take a closer look at this point.

THE CHAIRMAN: And some of the implications, okay, particularly in light of what Sue has just mentioned. But I wasn't aware -- and I probably should be as the chairman -- that they were presently included and were asking to be excluded.

MS BARRETT: I hate to create work for the people who work for this committee right now, but it would be interesting to see how many of these commercial endeavours have played the game of giving themselves a different name and called themselves the equivalent of a Crown corporation by decree of their city or municipal council in order to say: we're different, so we can get out of this. You know, if you can look around and see how many -- whether it's gas companies, water, electricity, those kinds of companies. I'm pretty sure that they're all publicly owned, well, most anyway, but it would be very interesting to see if there are a lot of them that have played this game of calling themselves controlled by a local authority. Is that the distinction that is being made? Are they saying that they should be exempt because they're now a separate company, not directly owned and operated by the city?

MS KESSLER: I think their rationale is that they're competing with the private sector.

MR. CARDINAL: Commercial companies is their rationale then.

MS KESSLER: Yeah.

MRS. TARCHUK: When you say that they're currently under the act, are they actively under the act, or are they waiting for a future okay?

MS KESSLER: No. They would be subject to the act.

MRS. TARCHUK: So we had no experience to fall on here.

MS KESSLER: That's correct.

MRS. TARCHUK: Okay.

MS KESSLER: They'd be subject on October 1 of '99.

MRS. TARCHUK: Right.

MR. ENNIS: There is some experience to fall back on in that corporations that now are under the control of the provincial government are under the act. So, yes, the Special Waste Management Corporation, the numbered companies that have in one way or another fallen under Alberta Treasury are listed as public bodies under the act. There's a bit of a track record there in terms of access requests on some of those public bodies.

THE CHAIRMAN: If we could, it might be interesting to get some information, not necessarily exhaustive but some information, on a correlation to the provincial government and similar agencies.

MR. DUCHARME: Mr. Chairman, with the changes and the deregulation of power that are coming up there now -- and we know that the situation of EPCOR was basically a major election issue in the municipal election that just ended yesterday -- I have a concern in that we may be tying the hands of our municipal governments in terms of having to make decisions whether they should continue to offer these . . . [not recorded]

THE CHAIRMAN: I would suggest that we defer this one to get that information from Sue and possibly John in co-operation.

I've got a note here that our lunch has arrived slightly early. It's only about eight minutes before we were expecting it. Does anybody have any objections if we adjourn now and do, as we did the last couple of meetings, lunch on the run?

MR. DICKSON: It may be something we can all agree on, Mr. Chairman.

THE CHAIRMAN: It's no use me saying five minutes. I think we'll take about 20 minutes because we need a stretch and a potty break and everything else. So let's try and be back at work about noon.

[The committee adjourned from 11:37 a.m. to 12:08 p.m.]

THE CHAIRMAN: Okay. We might as well get back to work here. Janis will be back in a minute, and she has to leave at 1 o'clock.

We're on question 15.

> Should self-governing professions and occupations be covered by the Act or could a set of criteria be established, which if conformed with under the specific establishment legislation for each profession, exempt that profession from being subject to the FOIP Act?

The question is specifically worded around an earlier discussion. I don't believe that there is consensus on this, but an alternative to bringing self-governing professions under the act would be to send out a message -- I'm not sure in what form this would be -- that would require certain criteria to be included in the establishment of or enabling legislation for each profession which, if it was conformed with, would exempt it from the act or future inclusion in the act.

The kinds of criteria that were suggested were where the members of the professions council or the appeal committee had representatives of the public on that -- some suggestions were made in the vicinity of about 25 percent -- that hearings would be held openly unless there was a compelling reason in a particular instance not to be able to do that, and that decisions would be in writing and made public. That kind of criteria was suggested, and I'm not suggesting that that is all inclusive, but along those lines.

Other than that, I have certainly personal reservations about bringing self-governing professions under the act. With those very biased opening comments I'll open the discussion to the floor.

MR. DICKSON: Mr. Chairman, I wonder if we can just be updated. You remember that on September 21 when we met, the suggestion there was that you've got some professions like the Law Society that already in their submission addressed how they deal with fair information practices. We hadn't heard from a lot of the

other professions. My understanding was that we were going to send out a *Hansard* excerpt, a letter, and some other material, and I think you confirmed that had gone. I'm just wondering, first, if we can check and see what sort of specific feedback, what sort of correspondence we've received from any of those professions with respect to showing how they're complying with fair information practices.

THE CHAIRMAN: Well, I'm not sure that any of the submissions specifically addressed how they were complying, but if you look -- and I don't have mine here with me -- the latest update on the feedback includes, I would say, five or six responses from professions which specifically responded to that information we sent out. It would be on the last two updates, I believe, of the public submissions, which you should have received.

MR. DICKSON: So have we seen that correspondence then? Is that what you're saying?

THE CHAIRMAN: Every member got it with their updates. I'm sure there are two updates, because the first one came out and I believe there was only one response, and then the last one that just came out a few days ago had about five more on it. Am I correct with that, Sue?

MS KESSLER: Yeah. There were two updates. I'm not sure of the specific number of new submissions, but there were I think around four or five.

MR. ENNIS: The College of Physicians and Surgeons', the ATA's. We have the College of Physical Therapists'.

THE CHAIRMAN: The responses were not word for word but a reaffirmation of the original position, maybe being a little bit more emphatic based on the information we sent them.

Other comments?

MR. DICKSON: Well, I'm trying to find some sort of compromise between just saying that these professions are completely outside the act and bringing them completely under. I still am attracted to the notion of saying to self-governing professions and occupations that we have an expectation on behalf of Albertans that they find a way of conforming to fair information practices and I guess either expressly or implicitly make it known that if they're unwilling to address those or unable for any reason, then it seems to me that there's a far more compelling need, perhaps, for legislation. I'd like to avoid that. I don't know how we get that message across, Mr. Chairman.

THE CHAIRMAN: You're saying essentially what I said. I'm not sure that we've defined any fair information practice that we could use at this point. That's why in my comments I specifically mentioned a few items that there seemed to be a desire or a need to have some compliance with, but that list could either be expanded or there could be some other way of saying it. I certainly sense there was a consensus that it wasn't appropriate to bring the self-governing professions totally under the act but that there were a few expectations that could be complied with, probably a little more than on an honour system; you know, a firm expectation. If that in fact did happen, then we would not need to pursue the recommendation that they be included. Now, the mechanism or what those conditions would be and how we would enforce it I'm not sure of, but I'm sure if we decided in principle that this is what we wanted to do, we could find some way of getting that message out and also determining if there was a measuring device that could determine whether that in fact was accomplished.

MR. DICKSON: Well, the fair information practices: we know what they are. Those are easy to spell out. I'd like to move that

> the committee advise each of the self-governing professions in the province and request that they advise us of what plans they have to ensure that they incorporate fair information practices into their operation, with the notion that if there isn't that sort of compliance with fair information practices, the committee would consider expanding the scope of freedom of information to encompass self-governing professions.

THE CHAIRMAN: I'll accept the motion, but I have a problem with the logistics of it. The way you've worded it would imply that they would have to get this to this committee before it would make its report, which I don't think is physically possible. The intent of what you're suggesting I would agree with. I would also want to make sure that we all understand what fair information practices means, that there is in fact such a document or that there is no misconception as to what items would be included. At this point I'm not aware or not familiar if that actually existed.

MR. DICKSON: It does exist.

12:18

THE CHAIRMAN: As a document that this committee has endorsed or can endorse?

MR. DICKSON: Sure. Peter could provide us with two pages that summarize at least in general terms the internationally recognized fair information practices, I think.

THE CHAIRMAN: The only thing I'm wondering, Gary, without changing the essence of your motion: is the intent that it come to this committee prior to us making a recommendation or that this be some mechanism that would determine down the road that it should happen prior to the next review?

MR. DICKSON: Some of the professions are small. I mean, we tend to think of the physicians and the Law Society, which are quite sophisticated, lots of resources, and so on. Some of the groups are much smaller. You know, at this stage, even if they sent us a letter saying, "We've struck a committee to look at fair information practices, identify where we fall short, and come up with an action plan to remedy the deficit areas," to me that would be a positive thing. The legislation isn't going to be passed -- well, we're going to be sitting in the spring, and presumably the legislation could be introduced then. Our committee will probably be finished, but they could always make their submission to the Legislative Assembly.

THE CHAIRMAN: I'm still concerned about: where do we measure compliance, or who does that? Again, don't get me wrong; I'm not arguing with the point you're making. I'm sure I agree with you. I think we just need to come up with something that is not only definable but measurable.

Ron, any comment?

MR. STEVENS: Well, I certainly agree with the thrust of what Gary is saying. It seems to me that organizations like the Law Society and the College of Physicians and Surgeons are doing a good job in addressing the kind of issues that we would like to see them deal with. I don't see in the material that we have a need for this committee at this point in time to make a recommendation that

would affect the legislation that we currently have. I notice, looking through the material, for example, that the proposed Health Professions Act has some provisions that deal with this. So one of the things that may happen is that there will be, as we go forward, certain bodies that will be impacted by legislation.

I think that the gist of what we're talking about is to formulate a direction that goes out so that self-governing bodies understand that we consider it important that fair information practices be addressed and be addressed appropriately. We have a pretty good understanding at this point in time as to the status of that, and that can be measured and recorded. We can develop a letter that goes out that gives them the backdrop on what our expectations are. This legislation, I'm sure, will be reviewed again sometime in the future, and as the ministers go forward with individual pieces of legislation, there may be certain bodies that are impacted with respect to privacy and access to information as a result of that. I think that in the meantime I would be happy seeing some kind of general direction from the government saying to these bodies: "This is an issue that you should be addressing. We think it's important, and we're giving you a heads-up on it. Here's what we're talking about."

This is probably where I would disagree with part of your motion, Gary. I don't know that the end result of that is necessarily to bring it within FOIP. It may be to deal with it under the law societies act or the appropriate individual legislation that relates to these bodies.

MR. DICKSON: I'd be happy to amend the motion to suggest rather that there be some legislative response. Clearly what we're trying to do is convey the significance of fair information practices and the importance of our expectation and, frankly, to use what leverage we have now while we're looking at expanding or contracting the scope of FOIP. Not to exclude other legislative change, but frankly, this is when we have some leverage, and we want these groups to pay attention and not just file 13 it.

THE CHAIRMAN: That is the basis of my comment, too, that it would be more than just getting a letter back saying: yes, we're looking at it. I think that there would need to be some demonstrated action. It could be in their enabling legislation; it could be, you know, in their bylaws. I think it likely needs to be something more than a document that could be changed at will by, say, the governing board of the day; you know, the today we're in, tomorrow we're out sort of thing. I think that can be accomplished.

The only thing I'd like to ask, Gary, is that for support maybe you make it clear in your motion that it isn't necessarily a report that would come to this committee, in the shortness of time.

MR. ENNIS: Mr. Chairman, just on sort of a point of clarification on this. Fair information practices are sometimes read as not including access to information of a general nature from whatever institution is involved. Fair information practices often are read strictly as the protection of privacy of individuals and don't address the freedom of information side of the act. So in this discussion I'm wondering what the intent is around the freedom of information part. Would that be clear to these bodies if you as a committee were to write to them? Would they see this as being a question of how they would respond strictly under the protection of privacy or whether they would be expected to respond on the access to information side?

THE CHAIRMAN: That was my concern, too, because I'm not familiar enough with this fair information practices document to know that it covers what was really intended here. It may or may not.

I'm going to suggest, if we can use your motion as sort of agreement in principle on this idea, that maybe between now and the next meeting we come up with some kind of wording, you know, if I can maybe rely on you and Ron and whoever to give me some suggestions so that we could come in with a document that we would present to them.

MR. DICKSON: I'd be happy, Mr. Chairman. I take the point. The reason I was focusing on sort of the privacy side is because these groups have often in their responses focused almost exclusively on the access part in terms of demonstrating their openness and so on. I'd be happy to volunteer to try and draft the kind of letter Ron talked about, consult with Ron and see if we can put together a draft and circulate it to members of the committee well in advance of the next meeting and see if it would be acceptable to members at that time.

MR. STEVENS: A thought I have, not to preclude what you may do, Gary. Really what we're talking about is something that is going to take place beyond the life of this committee, so a process is an important point. It seems to me that really what we're talking about is a suggestion from this committee to the government saying: here's the way we think self-governing bodies should be dealt with going forward.

It seems to me that rather than a letter from this committee, it should be a recommendation to the government and the individual ministers, if you will, who may be in charge of certain but not all of these bodies -- I haven't sat down to figure that out, but I expect that there are a number of different ministers who have responsibility here -- saying: "Here's the way we see this issue, and here's the way we would recommend you approach it. You may want to deal with it specifically under some legislation like the Health Professions Act in certain cases, but generally speaking, we think that there should be a proactive position taken by government with these bodies in any event of legislation." They should be considering fair information practices on their own within this area, because we have the demonstration of people like the Law Society and so on and so forth, who have of their own initiative done a good job in a lot of these areas. So my thought would be that it should be a recommendation to government that ministers approach this particular issue in some fashion.

MR. DICKSON: My friend from Calgary-Glenmore has better access and probably more credibility with ministers than this member.

That's fine, but there would be a problem in us drafting the letter. I mean, we're the ones who are dealing with the elements. We've received the submissions. It seems to me that if we could attempt to draft a letter that sends out the sort of message we're talking about and we bring it back next time -- one of the things that we may decide is that it becomes an appendix to the report and that the suggestion is to the minister to write in similar or identical terms to the self-governing professions. I mean, that's an option as well.

12:28

THE CHAIRMAN: Well, I think there's no problem with doing a letter, but in order to be correct, we have to remember that this committee makes a recommendation to the Legislature, and any letter that we would send out simply under the signature of every member of this committee or the chairman of the committee or however it was to go out would not carry much weight other than

the fact that if this same group of people sat on the next review, we might remember that we said this and might be able to do something about it. Otherwise, a future committee is going to make some changes. If the recommendation is simply to have something occur, you know, the weight of the letter would have to be questioned. I think having it put in writing so that it's very plain what it is we intend would be helpful, because even as part of the recommendation it would make clear the message that this committee wants to send out.

I'm going to suggest, Gary -- we've sort of rambled considerably from your motion. If we had a consensus that the intent was to look at a written proposal that would allow some form of -- what did you call it? -- a fair information practices document to be adopted, this committee would recommend that the self-regulating professions remain outside of the freedom of information act for now. If you and Ron could maybe each give me your thoughts, preferably in writing because I'm assuming that we're talking about something that might be a little bit legal, we'll try and put something together and get it out to the committee before the next meeting.

MR. CARDINAL: In plain language.

MR. DICKSON: Absolutely.

THE CHAIRMAN: In plain legal language. I'm not sure if that's an oxymoron or not.

That means that we would have to withdraw your motion and work on a consensus, because I'm not sure we completely know how we would do this.

MR. DICKSON: Mr. Chairman, I'm happy to withdraw the motion. It's served its purpose. We have a plan, and it seems to me that it's generally acceptable, so we'll proceed in the fashion you've outlined.

THE CHAIRMAN: There's a consensus here. It's just that we need to know what words to put it in; okay? Both of you will do that plus any other committee member who has some thoughts on it. We have two legal beagles on the committee. We might as well use their expertise.

MR. DICKSON: We may need Mike Cardinal to make sure that it's comprehensible at the end of the day.

THE CHAIRMAN: Okay. Question 16.

> Should the FOIP Act Review Committee make any specific recommendations pertaining to the inclusion of the private sector in the Act?

I'm going to suggest, with the information that we've received, some of it unofficial -- certainly most of it is inconclusive at this point -- that we be very careful how we step into this. The federal legislation, I understand, is setting up a three-year time frame, during which, assuming that that act will ultimately be passed, there would be opportunity for each province to set up its parallel legislation; otherwise, the federal act would become paramount. I think that gives us ample time to see what the federal act at its completion actually says, how it affects the province, and gives us a little opportunity for some experience plus certainly some technical advice that would be needed before we jump into this thing.

Now, I understand, Gary, you phoned me this morning. You have some information that indicates that Saskatchewan is going to challenge this. How would you explain that?

MR. DICKSON: What I've got, Mr. Chairman, is there was a story in the *Leader-Post*, in the province to the east, that sort of talked about the reaction. In Saskatchewan there are some real issues around the constitutionality of the bill that's been introduced in the House of Commons. I can pass around copies.

I understand the point you make, but I always have this concern that I don't take very much comfort in the three-year provision. It seems to me that this is the front end, where Albertans would want to have their say rather than just leave it to Members of Parliament from this province. We're dealing with these very issues now. It just seems to me so appropriate that we offer some advice to this province in terms of the position they should take with the federal government.

My sense is that to simply sit back and let the House of Commons and the Senate pass the bill that's currently before them and then to talk about how we fit in after is a little like watching the gun legislation go through the House of Commons and the Senate and to say: well, we'll worry about it after. The provincial government took an initiative there where it was seen as important to be involved at the front end of the process. In the same way, I think we have the chance to do that here.

Anyway, I'll pass out copies of the article.

MR. STEVENS: I certainly think that it is appropriate for the government to seriously consider and understand and respond to this proposed legislation, Gary. But there's going to be a period of time that's going to be necessary to fully understand and to address this issue. As you well know, the health information legislation is under review, and it may be impacted by this. There are people who are looking at it in that context, and there are other provinces that are similarly impacted by this. There's the concept of harmonization of legislation of this nature and the benefit of that, which, as you know, is part of health information and certainly would apply to privacy information.

I share your view that people should be concerned and should address this particular issue, but I differ from you on the place for that and the timing of it. People, I am sure, are starting today to do that. But I don't know that this particular committee, in the time that it has and with the information available to it at this point, is going to be able to do much more than receive and acknowledge that there is this proposed legislation, that it does perhaps have some impact on what we are doing, if it is passed as currently drafted, going forward some three years out or so.

Apart from that, I don't know that we can do much meaningful at this point in time.

MR. DICKSON: Well, here's an alternate suggestion. What if we were to recommend to the government that once there has been a new health information law passed in the province, which we expect will be in the spring of 1999, the province then create an all-party select special committee to specifically consider the federal bill with a view to making recommendations of the position of the province of Alberta around that federal initiative? What that would do would be to ensure that we would have already resolved as a province how we're going to deal with health information.

I guess I'm making an assumption, perhaps unfairly, that it's going to mean some expansion beyond sort of the traditional public health sector into at least part of the private sector. Once that groundwork has been laid and we've made a determination as a Legislature, then I think it would be appropriate that we have a group tasked specifically to address the next step, as opposed to simply sort of washing our hands of it or shrugging our shoulders and just saying: there's nothing else we can do. It would be a recommendation. The government can do with it as they wish, but

at least there would be a forum with all-party representation to wrestle with some of those issues.

12:38

THE CHAIRMAN: The concern I would have is with setting up another committee just to deal with this thing specifically. I certainly agree with the original concept that the province should not just sit idly back and wait for this to happen and then later on come in with its own legislation. We don't know the impact of that. But there have to be other ways than setting up a special select committee that would review privacy in the private sector. I would support something that would be a little less formal than that.

Right near the end of this questionnaire there is a recommendation, in the form of a question, that a further review of this act be undertaken in approximately three years. That was specifically triggered by some requests from the MASH sector, that once they have some experience with their involvement in the act, they have an opportunity to have a look at it, much like we did on behalf of the provincial government when the act was first passed in 1994, that within three years there would be a review.

That same time would allow us to not only review anything else that was in the act but maybe with specific emphasis on this and as it relates to the federal legislation. I think anything short of that, you know, within the next six months to a year -- I'm not sure we're still going to get a lot of feedback. It's almost going to be too late to do anything for the federal government anyway. If we're going to have some involvement -- that act is already tabled. I'm assuming they'll do something with it before their present parliamentary session adjourns. If we wait for a special select committee to be formed as a result of our report, that act will have been passed.

MR. DICKSON: Two things, if I might, Mr. Chairman. The first one is that my understanding is there is a good chance the bill is not going to be passed before 1999. The bill has been introduced, and there is going to be some consultation, maybe not unlike what we're about here. So I think it wouldn't be too late. I mean, I'd be happy to do it right now, but I'm trying to find a compromise that would be acceptable to all committee members.

The other point is that the three-year review I think clearly would come too late to impact in any meaningful way this federal initiative. I think it's a good idea to do a further review, but that presumably would be three years after municipalities came under the act, which is not going to be until the summer of 1999. So that is, I think, too far out.

THE CHAIRMAN: The point I was making, Gary, was that if we wanted to make a recommendation to the federal government on their presently tabled legislation, it likely needs to happen almost immediately if it's going to have some impact. The three-year review that I'm talking about would be relative to this province passing some parallel form of legislation or an amendment to the existing legislation that would ensure that our legislation is paramount, not that of the federal government.

So there are really two things happening. We need to address, if we wish, the federal legislation that's tabled right now so that if there is a presentation made, they may or may not consider it. Probably in the fashion that the federal government has been listening to us, we may not need to be overly optimistic as to whether our input is going to have any bearing anyway. Sitting back and not doing it, I guess, is going to ensure that we get no input. But I think that needs to be probably a lot quicker and therefore has to be informal. The review we would do -- I'm going to repeat -- would be relating to some specific legislation that we might bring about.

Did I ignore you, Ron? Did you have your hand up?

MR. STEVENS: You've never ignored me. I did have my hand up though.

I think I'm probably going to repeat myself in part, but this legislation that we're talking about is going to be addressed by all of the provinces, perhaps with the exception of Quebec. I know that in looking at the article you just handed out, Gary, there's at least one province that's talking about it being unconstitutional, and I'm sure that there are a lot of other detailed comments that will come forward in the fullness of time. We're just simply not going to be around long enough as a committee to be party to that.

I share your view that this is important legislation, that this is an important initiative, that it has to be addressed. That, I think, we're in agreement on. How it's addressed, by what part of government it's addressed, that I don't know. I do know that the health information committee is going to have to address it, and in fact it may have to address it more fully before the legislation is introduced. Perhaps it's not necessary to wait until after that point in time, at least with certain aspects of that legislation as I currently understand it.

I personally have great difficulty in doing anything specific relative to this. I'm comfortable in acknowledging that this is an important proposal by the federal government, that the provincial government should be looking at it, that it may well impact upon our recommendations at some point in time, may well impact on other provincial legislation. But beyond that, I don't see anything meaningful that we can do.

MR. DUCHARME: Mr. Chairman, regardless of the legislation that is coming forward from the federal government, I think we should still have some kind of specific recommendation pertaining to the private sector coming from this committee. I'm of the opinion that government is already in business' face enough and that business is successful in the way they do things and that we, let's say in terms of adding more legislation to put in front of them, only hinder business the opportunity in terms of being able to continue to be successful. If there was a recommendation to go forward, it's that they be exempt from the FOIP Act.

THE CHAIRMAN: I have to say that echoes my personal opinion on what government should do, in any event. We probably have to be careful that the federal government through its legislation doesn't override that basic concept of less government in the face of people though, so we may have to take some precautionary measures to make sure that we do have some control over what happens in Alberta, not for the sake of interfering with but perhaps protecting the interests of the private sector. That may not be the universal feeling across this committee.

MRS. TARCHUK: Is there a motion on the floor?

THE CHAIRMAN: There is no motion, but we should deal with something on this fairly quickly.

MR. DUCHARME: Well, Mr. Chairman, I would make the motion that a recommendation come from this committee that

> the private sector not be included in the FOIP Act.

12:48

MR. DICKSON: Speaking against the motion. What's interesting is that the mover of the motion is part of a committee that is

making a recommendation, which will hopefully translate into legislation, which is already going to have the private sector caught up with regulation in terms of protecting patient privacy, so we're already going to be there I expect. To me at minimum what this committee ought to do is vote against this motion but at least urge the provincial government to treat the federal privacy bill on an urgent basis, to craft a detailed response after some opportunity for public input. To just say that we think there's no room for legislating fair information practices, access to information practices, is already inconsistent with where the health information group is going. So I'd vote against it. I think it's not a helpful kind of direction to government or advocacy on behalf of Albertans on their privacy and access rights.

MR. STEVENS: Denis's motion is specific relative to the FOIP legislation. He's indicated that this committee should not make a recommendation pertaining to the inclusion of the private sector in this act, and I think it's important to focus on that point. The Health Information Protection Act Steering Committee did prepare a report, and Denis and I are a part of that, as is Gary. One of the points made in that report is that health information should be treated outside of this act, that it should be treated separately in its own legislation, that it is unique. It is in that context that there was a recommendation relative to privacy and health information. From my perspective we're dealing with a similar but different sphere of information.

The issue relative to the federal legislation I've already addressed. I think the comment, if people around the table feel similarly, to simply underscore that it is important and may have impact in this area generally and needs to be addressed is appropriate. But certainly as the motion has been read, I would support it.

THE CHAIRMAN: I'm going to suggest, Ron, that Denis's motion goes even further. It emphatically states that this committee recommends that the principles of the government of Alberta are to minimally interfere with the private sector. Now, I can certainly appreciate that Gary Dickson, who is not a member of the government caucus, would not espouse that principle necessarily . . .

MR. DICKSON: Agreed.

THE CHAIRMAN: . . . either as worded or otherwise, but I don't think there's any problem with making that statement.

Near the end of this document there is still going to be an option to set up a review, at which time the involvement of any federal legislation, whether or not it passes, could be considered. I am going to also state, even though it's not part of a motion or anything, that the message you have indicated, Gary -- that perhaps the province officially in some capacity, whether it's through federal and intergovernmental affairs or through some other department, actively pursue some input into that federal legislation -- is going to have to be done outside of a formal recommendation of this committee, because if we wait for that to happen, it will probably be too late. I think this could happen by virtue of a couple of phone calls, tomorrow even, by myself or whoever else in the committee wishes to also do the same thing just to make sure there's a bit of a wake-up call. That's going to be the quickest way of getting some action.

MRS. TARCHUK: I think this committee would be remiss if we didn't acknowledge the knowledge of the proposed legislation and identify it as an important area that needs further examination. Just to go along with some of the comments that Ron had made.

THE CHAIRMAN: Okay. With that, I'm going to call the question.

MR. DICKSON: Can I just raise one other point?

THE CHAIRMAN: Okay.

MR. DICKSON: Before we vote on this, this talks about the private sector generally, as I understand the motion. We have yet to deal with the matter of registries, which is a specific issue. Would we not be further ahead at least to defer the vote on this issue until after we've dealt with the registries, because registries are clearly in the private sector? By accepting a general principle now, we're perhaps foreclosing decisions that have yet to be made sequentially on the list that we agreed to work through.

THE CHAIRMAN: I don't think it precludes the discussion that we're going to have on registries. The principle, whether we vote on it now or later on, I think is established. I think this recommendation is one that at least some of us feel is worth making, but I don't think it should either short-circuit or circumvent the discussion on registries that's going to come fairly soon in the questionnaire here.

All in favour of the motion?

MR. DICKSON: Can I make one other point before the vote, Mr. Chairman? Are we running out of time? What time do we adjourn?

THE CHAIRMAN: He's just practising his filibuster techniques for the Chamber.

MR. DICKSON: November 16 will be here before we know it.

Mr. Chairman, I was just going to remind members that in case anybody, in considering how they're going to vote on this, thinks the province has already been alive to the opportunity to have input early, I would refer you to the two- or three-page sketchy letter that went forward from Mr. Samoil on behalf of the province in the consultation by Industry Canada and Justice Canada that resulted in Bill C-54. All that Mr. Samoil said, if I can distill it to this, is that this requires further negotiation, further consideration, and so on. Frankly, if we don't put forward a lot more assertively the position on behalf of Albertans, we're going to once again be left out of the loop. Anyway, I wanted to make that observation before we vote.

Thank you.

THE CHAIRMAN: Okay. All in favour of the motion? Opposed? The motion is carried.

I've just made myself a note that I'll take it upon myself tomorrow to contact some of the ministers who might be interested in making submissions on that federal legislation. And any committee members who feel that they want to do the same, feel welcome to do so.

MR. DICKSON: Now we get to the easy part, Mr. Chairman. Is that it?

THE CHAIRMAN: The next general heading is Exclusions.

MR. CARDINAL: Great.

THE CHAIRMAN: Mike, you're very helpful.

Question 17 follows a bit of an earlier discussion. Actually, I think it was almost a lively debate a couple of meetings ago.

> Should there be a recommendation pertaining to the disclosure of MLA expense records under the FOIP Act or would that matter best be handled as a matter of a code of ethics, and through the Ethics Commissioner's office?

I've made it very clear in some earlier statements that the best place to handle it would be through the Ethics Commissioner's office. There are provisions right now which deal with these expense records. The privacy component of them was discussed at length, agreed and disagreed on by various members of this committee, but there is a certainty of handling them outside of this act that protects that privacy. My recommendation stays the same: that in essence this committee would not make a recommendation for change but that these matters would be handled as they presently are.

MR. DICKSON: Thanks for the recommendation, Mr. Chairman. I'm going to move that

> MLA expense records be accessible to Albertans under the freedom of information act and that we make that recommendation to the Assembly.

THE CHAIRMAN: Okay. The motion is accepted. Any debate?

12:58

MR. DICKSON: I think, Mr. Chairman -- I didn't see any other hands from other members -- that if you have an act that is attempting to consolidate in one place the rights that Albertans have in terms of accessing public information on how their tax dollars are being spent, it's a weakening of that statute to start hiving things off and dealing with them outside the act. We initially had it in in the 1994 version before it was changed in the spring of 1995. I think that whether or not the expenses could be handled in another way, it's not as efficient with a 30-day turnaround. It is not as efficient by having the independent adjudication.

In reality this is the sort of thing, whether we like it or not, that Albertans are interested in. Since they're paying the freight, Mr. Chairman, I think they're entitled to the information.

THE CHAIRMAN: The only comment I'm going to make is that I don't feel from my experience, although it may be limited, that ordinary Albertans are that interested in this information. I think the media is, I think there are certain interests that are, but the information that's available now in its present format quite adequately satisfies the interest of the general public. In my opinion it is the assurance that there is an expected confidentiality protection for MLAs' office operations. I'm not going to go into that at length. I think I did quite a bit at an earlier meeting express my feelings, so I'm not going to repeat it. But I'm going to disagree with you, and I would not support your motion, Gary.

MR. CARDINAL: Same with me. I would not support the motion because I think the way things are set up now -- and they have been set up like that a long time -- seems to work. I have never in my close to 10 years in provincial politics and years in municipal had one complaint that the constituents and Albertans in general have a problem in accessing information or are concerned about overexpenditures or other. Every now and then, of course, the people we work for out there have an opportunity to fire us if they're not satisfied that we are handling issues and expenses in delivering services to constituents.

So I think to go that far, legislating processes, would be discrediting Albertans because Albertans are very wise when it comes to the activities of an MLA. At least in a rural area they definitely are. They know us very well. They see us every day. When you travel down the road, they know what you drive, how fast you drive, how many times. They're very aware of us, and I don't think there's ever a question. I've never had one question ever about overexpenditure or using taxpayers' dollars unwisely as far as the MLA expenditures themselves.

So I think it best at this time to leave it the way it is until Albertans come and say that there is a major concern. They'll probably tell us at the ballots, and I'm not worried because no one has ever said anything if they're not satisfied now.

THE CHAIRMAN: Okay. There's a motion on the table.

MR. DICKSON: I was going to respond, Mr. Chairman, before you close off debate. Just three quick points. Firstly, in terms of those members who say that there's no public interest in this, I remember CBC running a series of programs last year on MLA car expenses that provoked plenty of public commentary. It may not have been to individual . . .

MR. CARDINAL: There is a difference. I should be specific then. When I say "constituents," I mean our constituents, not the press.

MR. DICKSON: Well, with respect, the media don't report stories if nobody reads them. The point is this. We've seen -- and it's the best example I can think of -- where there was a three-part CBC story on MLA cabinet ministers and their vehicles. There was, I'd consider, a lot of public interest in that. We may not always like it, and it may not always be particularly pleasant, but it's a fundamental right of Albertans to be able to access that information.

On the second point, in terms of confidentiality, I thought we'd considered this before. Section 16 of the act, the thing that protects disclosure of personal information, I think adequately, safely protects any of your constituents' and any of my constituents' personal information from being accessed by a media request or anybody else.

I guess it's the last point. Mike Cardinal makes the argument that if they don't like us, they can get rid of us at election time. Well, that was the argument that Premier Getty made in refusing a freedom of information and access to information law for at least five years. Your government decided that that wasn't good enough, that Albertans should be able to access information in that long three and a half, four-year period between elections. So I think that argument frankly can't be persuasive in 1998.

Thanks, Mr. Chairman.

THE CHAIRMAN: Do we need to prolong the debate?

MR. CARDINAL: No, you don't.

MR. DUCHARME: I just thought I'd speak a little bit on the CBC. It's just that the CBC has been in the media recently, and I feel proud that our government has been open in regards as far as the sharing of information and that we're not in any way trying to attempt to curtail it, as we've seen most recently with other governments in this country.

THE CHAIRMAN: I'm going to call the question. All in favour of the motion that Gary made that would include MLA expenses in the Freedom of Information and Protection of Privacy Act? Opposed? The motion is defeated.

I'm assuming from that that the converse would apply; in other words, no recommendation for change.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 18. This is a bit of a combination of information that came from public submissions and the suggestion from myself to Sue when she wrote this that we need to have some clarification that would extend, I guess, the intent of this committee or the act that would allow local authority councils and boards some of the same privileges that are afforded to MLAs. My opinion is that we have made certain assumptions, and we just talked about one. You know, there are certain confidentiality privileges that we ask as MLAs, as representatives of our constituents. We have to afford some parallel privilege to members of these local councils and boards; otherwise, we're being a little bit hypocritical. Even though there wasn't a strong submission to that effect, I think it's important that we do address this issue and hopefully come up with a recommendation that would in principle afford those same privileges. Because local authorities maybe are a little different in the way they operate than the provincial government, they may not be perfectly identical. We'd have to leave it up to the people that actually do the drafting to sort out those similarities and differences, but if we could at this point even endorse in principle that concept, it would be great, assuming I can talk you into endorsing that. With that, I'll toss it out for discussion.

MR. DICKSON: Well, I guess we can deal with 18 and 19 together, because one is just a subset of the other.

1:08

THE CHAIRMAN: Well, 19 is similar. It's the question of whether or not there should be a differentiation between a local authority, council, school board, RHA board, or such where some are elected, some are appointed but in essence perform the same duties. So it is a different question. The intent would be that if we agreed with the recommendation in 18, are we going to afford those same privileges to board members, specifically identified board members, not just every public board that the province has, whether there needs to be a distinction.

MR. DICKSON: Well, I'll economize on time and speak to 18 and 19 at the same time. We already have the provision that allows elected people in a local public body effectively the same kind of protection that legislators have, so I don't think there's a need to do anything further with section (1)(i).

On the second part, I do distinguish between people who have been elected and have what I might call sort of constituent obligations and people who serve on an unelected board. I mean, they may have personal papers which are excluded from the act in any event. I don't think you have to go further and treat them the same as elected people because there isn't that same degree of constituent representation.

THE CHAIRMAN: Are you suggesting that a board of governors of a university or college doesn't perform a similar function to a school board?

MR. DICKSON: That's right. I'm making exactly that point.

THE CHAIRMAN: Okay. Just for clarification.

I am going to keep 18 and 19 separate, by the way, for calling the question, but if anyone wants to comment, you can do it together or individually.

MR. STEVENS: Well, I'm hard pressed to believe that the board, for example, of the Calgary regional health authority should be treated differently on this score than, say, the Calgary separate school board on the basis of appointing them versus electability. The responsibility seems to be there, the budget seems to be there, and the exercise that they go through would be very, very similar. If we're going to afford this type of provision to one, we should afford it to both in my view.

THE CHAIRMAN: Other comments?

I think we should also make it clear that what we're talking about in question 18 is a clarification. There already is some protection, and the wording in fact of the first line indicates that what we're asking for is clarification. This committee is not going to come up with the specific wording, but we would be approving the principle of affording some parallel between the privileges of MLAs and members of local authority councils and boards. Just to make it clear here as well, we would be talking about school boards, municipal councils, regional health authorities, university and college boards of governors and, as we're going to clarify a little bit later on, the Alberta Cancer Board but not the general diverse group of boards and commissions and such that the ministers appoint from time to time.

MS KESSLER: If I could just make a point of clarification. In our discussions with some of the FOIP co-ordinators for the local public bodies some of the concerns they've raised to us in the interpretation of section (i) is that what we're dealing with here is a record of an elected official of a local public body that's not in the custody or under the control of the local public body. They seem to be concerned that if it wasn't separated or that if there wasn't some degree of separation between the personal and constituency records, there might be an inclination of those elected officials to take all of the records they deal with home so that they may be viewed as not in the custody or control of the public body so that they'd all be excluded. What they were looking at is possibly narrowing it to only the records that are purely personal and not the business records of the local public body. So that's part of the issue.

THE CHAIRMAN: Okay. Having made that clear, since you're going to be one of the parties that is likely going to put some of this into words when we're done -- and I'm sure Clark has already got all of the wording figured out by now -- we'll include that part.

We don't have a motion, and just from some of the debate we may not have a consensus here. So could we have a motion that

> the principle of question 18 be approved.

Nobody wants to move that? Moved by Mike?

MR. CARDINAL: Yup. Moved.

THE CHAIRMAN: All in favour? Opposed? The motion is carried.

Unless we see a strong need for it, I don't think there is a necessity for further discussion on 19. We've kind of included it. I'm asking for a motion

> to treat the board members, trustees, councillors, boards of governors of those local authorities who are elected or appointed on an equal basis.

MR. STEVENS: I so move.

THE CHAIRMAN: Moved by Ron. All in favour? Opposed? That is carried.

Item 20 is now the issue of registry services.

> Should the FOIP Act Review Committee make any specific recommendations relating to Registry Services (i.e., supporting the Commissioner's recommendation to incorporate measures in the Motor Vehicle Administration Act on the use, disclosure and protection of information held by Registries)?

We had some discussion on this at earlier meetings. I'm not sure that there was a consensus, and as a matter of fact I expect there wasn't. We talked about historical practice, and I think I made my feelings quite clear that we have to be very careful if we get involved in major changes that would upset historical practices. This discussion is going to likely also come up when we deal with fund-raising and such by charitable foundations associated with the hospitals and colleges and universities.

The Department of Municipal Affairs is undertaking a review, but I know they would appreciate some input from this committee. The timing is going to be such that by the time we submit a formal recommendation, they may be very close to having made their recommendation as well, but even having this discussion and earlier discussions on the record gives them some feel for where we're coming from. So it may be more of an informal feedback to the Minister of Municipal Affairs and her committee. I believe that committee is going to make some recommendations about, in my words, putting some fences around the kind of information that's made available. But for the purposes of legitimate law enforcement and quasi law enforcement and administering legal offices and such who need the information that comes out of registries, not only motor vehicles but land titles and such, we would be creating great difficulties if the province changed its attitude on the kind of information that's made available.

I think it's important also to recognize that when the information that registries gather was originally established, part of the reason was not just for the protection of the person who got the licence or the permit or whatever it was but also to provide that information for the benefit of others. If you're, for example, purchasing property, I think it's important that you know, if you want to find out this information, who owns the property adjacent to yours, because that might have some bearing on what the value of that property would be and the limitations on your use. I think it is the same thing if you're buying a car. It's important to be able to find out -- and I'm talking about a used car -- who owned that car before you. So it wasn't put there strictly to protect an individual or to create some privacy. I think the intent was to make certain information available, and as long as that information is reasonably necessary information to afford that purpose, it would be wrong to make changes now.

My little speech was for this informal message that we're going to send to the minister. I imagine the discussion here from the rest of you will do the same.

1:18

MR. DICKSON: Mr. Chairman, I'm going to suggest that disposing of number 20 may be premature. At our last meeting, on October 5, we had a presentation from the two women involved with that consultation. You'll recall that there was a discussion. They had had focus groups. They, frankly, got far more public input than we've had through this committee. There was an expectation that they were going to share with us that information they were putting together. It seems to me that that's pretty valuable. They've talked to Albertans about this issue. Rather than simply disposing of it now on the basis of what our own personal biases or our personal experiences may be, I'd like to see the matter deferred at least until we're able to get the full benefit of the consultation that's been undertaken. You know, at some point the purpose of this committee was for us to reflect what Albertans are interested in and want to see. It's clear that we've got a consultation occurring that we don't have the benefit of, so I think we're operating on the basis of our own prejudices.

I think there were only five submissions that talked about registry offices. The Civil Liberties Research Centre, Susan Platt in Calgary had recommended they be subject to the act, and then you had some parking management companies that wanted to be out of it. Why wouldn't we see what the public consultation said first, Mr. Chairman, before we vote to dispose of this issue?

THE CHAIRMAN: I have no problems with that, depending on what the committee wants to do.

I just want to clarify that you're correct: some of what I said may be a personal bias. But the essence was based on a fair amount of discussion with the people from the Ministry of Municipal Affairs and from telephone conversations that I've had, calls that have come in to myself as chairman of this committee and generally other ones from people who are wondering whether we are going to be involved, and I have gone out on about three or four occasions and have actually asked for some opinions. So this is based considerably on outside feedback as well.

If the committee wants to defer this, I have no problem with it if we want to get additional information. But just in terms of getting feedback to the minister, as I said earlier, it's likely going to be informal advice from the committee members, and it may even be based more on our personal feelings because we don't have all the benefit of their information. We're providing supplementary information to that committee; that is what I see it as.

MR. STEVENS: Certainly I think we should postpone this matter, but my memory of the date on which those folks appeared here is that I specifically asked them what the time line for their inquiries was and indicated that we were on a relatively short time line. I think they know what our expectation is, and they indicated that there was a prospect they would be able to bring that information to us around the beginning of November. So I think that's the context in which we said to them, "Love to hear from you," rather than saying, "We'll wait until you're back to us."

THE CHAIRMAN: So would there be a consensus that we defer final resolution of this matter until we are at least one or two meetings down the road?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Item 21 is a bit of an emergent issue. It really wasn't there when we sent out the original discussion paper, but it was a coincidental issue that came up from the medical community. As a result of some feedback and some discussion at this committee, there was an indication that it should be on as a question. I think there's a general consensus that in order for the existing peer review process to work, there needs to be some assurance that these records are kept confidential. So if we want to, we can debate this, but I expect there's going to be a consensus to agree with this.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Number 22.

> Should there be an amendment to exclude records composed exclusively of already published or publicly available information

from the scope of the Act?

My understanding of this is that there are some records -- and in a lot of cases they would pertain to fund-raising efforts and such -- where files are compiled by members of foundation boards. There may be other examples, but essentially all this information is gathered from newspaper reports, public documents, observing public occurrences and such. As soon as it comes into the area of a file of a public body as it would now be defined, there's some question as to: is this now private? Am I correct in my interpretation of that, or is there more to it? I'm looking to Sue or Clark.

MS KESSLER: That was the intent that was brought forward from the provincial postsecondary network, but I think you could likely read that more broadly to include things like library materials and everything else which is really included in our broad definition of a record.

THE CHAIRMAN: Okay. So this would be an issue of clarification, probably more than clarification, making it clear one way or the other.

MS KESSLER: It would be taking records outside of the act.

MR. ENNIS: Mr. Chairman, this is an especially complex area, because normally exclusion pertains to access. Here we would have the issue of exclusion for a collection behaviour, and I think it's unprecedented, in this act anyway, that there is exclusion relating to the collection of personal information.

Even the registries situation, where there's exclusion with regard to information made from a record in a registry, doesn't in any way shield Municipal Affairs from the requirements of the act when they're collecting information for registries. So this would be a case of taking a measure that might be somewhat frame-breaking to the principles of the act in terms of collection without consent. I think that's something that is technically a challenge in looking at this kind of exclusion.

1:28

THE CHAIRMAN: So how would we deal with this in the scope of, say, the fund-raising role of a foundation? I apologize. This is one of the issues where, when Sue and I went through these, I didn't realize the complexity of it. Is this one we might be well advised to defer until we get a little bit more advice on it?

MS KESSLER: It also relates to other questions in protection of personal privacy related to enabling the indirect collection of personal information for purposes of profiling, et cetera. So an exclusion may not be necessary to resolve the issue if there is a provision to enable them to allow indirect collection, but then other privacy principles of the act would apply.

MR. DICKSON: The way I'd come at it is that if you look at page 5 of the analysis that's been done around postsecondary and the discussion in terms of Ontario and British Columbia and the exception they make there for specific purposes, the B.C. act allows indirect collection of personal information in determining suitability for an award or honour, and the Ontario legislation allows indirect collection when information is collected for the purposes of determining suitability for an honour or award. I can see value in going that route. As it's stated in number 22 on page 4 of this thing we're working our way through, I think it's way too broad.

THE CHAIRMAN: I have something -- this is my personal ramblings in writing. I'm going to hand it out now. I'm not intending that this be necessarily approved as it's worded. In the earlier discussions in this committee and with members outside, my sense is that there was a lot of concern about information that was considered to be generally public knowledge in the sense that it was visible. That came from the concerns of schools; for example, class lists, year books, a lot of the activities. Now, I'm aware that a lot of this was based more on unfounded fears than on the actual writings of the act, but there certainly was enough question about it that, in my opinion, there should be some clarity.

I'm going to read what I wrote here. This is not endorsed by anybody; this is my own opinion. This would probably be the appropriate time to bring it up as far as this review is concerned. I'm suggesting that

> it should not be the intent of the [Freedom of Information and Protection of Privacy Act] to define as matters of personal privacy, circumstances, situations, or occurrences, which other reasonably observant persons could have witnessed, or otherwise legally become aware of. This would include such things as enrolment in a class or school; admittance to a public education, health, or other institutional facility; attendance at or being part of a public function such as a graduation, field trip or a ceremony; an achievement award or recognition that was or could normally be part of a public presentation; provided that personal details related to these matters may otherwise be subject to protection of privacy rules.

Now, I know this opens a significant can of worms, but this goes back to some of my feelings on historical practices. Enrollment in a class or a graduating class or yearbooks: these things have historically been public information. Nobody questioned it. You didn't have to worry about hanging a class picture on a wall unless you got consensus from every member that was there. If a group of students took a field trip to the Legislature, you didn't have to worry about getting your names -- as I say, I think for the most part the legal fears have been resolved but not the personal fears of people who administer the schools and such. I think it has a similarity to question 22. Whether it's going to take a long time or not, if we're going to get really bogged down, I'm just going to throw it out for the start of a debate. But if we have some comments, maybe now would be the time to take them. Dead silence. Does that mean . . .

MR. DICKSON: No, don't take that as assent. I wanted to give everybody a chance to participate in the discussion, in what I'm sure is going to be a robust discussion.

I take it that what you're looking for, Mr. Chairman, is to give people a measure of comfort. You're not suggesting that this would be in the act. You're suggesting that this is an informational tool to communicate with Albertans. Is that your intention behind writing this paragraph?

THE CHAIRMAN: Yes. And if it needs clarity, if there's enough uncertainty about possibly something in the act. I haven't preconceived what should happen, but this is my feeling about sort of a general principle of historical treatment of certain kinds of information.

MR. ENNIS: Mr. Chairman, just for clarification here. The suggestion is that this information would have been collected by the public body through some kind of statute that allows it to collect that information. Take any one of these classes of information that you're suggesting, "enrolment in a class" for example. Under the School Act a school collects that information, so that's the authority. But the suggestion here isn't that a public

body would be authorized to collect that kind of information just because it is this class of information.

THE CHAIRMAN: No, that's actually not the intent. What I'm suggesting is that reasonably observant people could see that you're enrolled in a high school. You go there every day; you're not trying to hide it. Simply the fact that at the end of the year you're part of a graduation ceremony, which is also a public ceremony -- you may have won an award at that graduation ceremony, and it was presented in public. What's the point of pretending that everybody around hasn't seen that? Why would anybody doubt that that should be public information?

Now, the way I understand it, the act as it's presently written would not preclude that. But to be on the safe side, everybody has to now go around, get waivers and permission letters and things like that. You may or may not catch up from now on, but historically what do you do? I think we should make it clear -- and that's all I'm suggesting, clarity -- that that's all that was ever intended. If it's not clear enough in the act now, maybe even a statement to that effect would be appropriate. I'm not sure of the legalities of it. As I said, this may be a bit of a can of worms, but I think we have to make it clear that we're not starting to go overboard and do overkill in terms of protection of personal privacy.

MR. DICKSON: Well, just speaking for myself, I think I understand what you're trying to do, Gary. I mean, the act is largely document driven; right? The FOIP Act is largely document driven, not sort of information as much as documents. This to me is so independent of the way the statute is structured and organized. While I appreciate what you're trying to achieve -- and clearly there's a big role for us and Sue Kessler's office in terms of education -- I think that this sort of imports as many issues as and maybe more than it solves. As I say, I take it as a genuine expression of the way you view the act, but I'm just not sure how helpful this is in terms of part of the report.

1:38

THE CHAIRMAN: The other thing too, having just dumped it on the committee right now, I'm not expecting that you should pick it up and endorse it either. It might be most appropriate that you just take that and defer it to the next meeting, at least, for further discussion even.

MR. DICKSON: One of the other things I was just going to say -- and that may be a good suggestion, to defer it. I think there's lot of confusion Albertans have around privacy. Most Albertans think that they have some privacy rights in a bigger kind of sense, watching too much U.S. TV, I guess. In fact we have very little in terms of privacy protection outside the Criminal Code and what may exist in part 2 of the FOIP Act. The way this is worded, I think it might lead someone to believe that they have a larger sort of legal protection around the notion of privacy than exists either in statute or common law in Alberta.

THE CHAIRMAN: Other observations?

MR. STEVENS: Well, I think your idea of putting it over till the next meeting so the people can reflect on it is a good one, and perhaps some of the folks who deal with this on a technical basis might give some thought to it.

MR. DALTON: Perhaps I can just give some introductory thoughts that I have on this. First of all, I think Mr. Dickson is correct. Personal information under the act means recorded information about an individual, so we're really talking about recorded information. Now, that can occur; for example, in your local newspaper so-and-so graduated or what have you. That may well be there. So we are really talking about recorded information and how that's dealt with.

The second aspect to it that concerns me a little bit. We tried when we developed this section to be as purposive as possible, so we were transparent, so you knew that if you had personal information about somebody, that's what could happen to it. Those circumstances would point out when you could use or disclose information and for what purpose in many cases. We were criticized by the commissioner from Quebec for having way too many exceptions to disclosure, but I don't worry about that too much as long as we can be transparent and say: look; you can tell when your information is going to be used.

The difficult part about a concept like this is trying to define it such that we avoid litigation, so to speak, if I may use that term. "Situations . . . which other reasonably observant persons could have witnessed" is something that to me is a natural for litigation. So to the extent that members can define more specifically what we're talking about here, that would mean all the goals would be purposive and transparent and would, hopefully, avoid as much as possible the situations where we would be litigating over them before the commissioner or someone else. Just points to ponder in terms of looking at the proposal itself.

THE CHAIRMAN: Just in case there's any confusion with the way I've worded it, I'm not pretending that that would be a good legal statement, you know, any of the concerns around that part of it, including the possible administration of it. I'm aware that this could be a can of worms. But I think there's sort of a general principle that I feel we need to address about how far we go, and I think the words I used before were: overkill or overemphasize the protection of privacy. We need to be sure that there is reasonable protection, but at what stage do we go well beyond what we really intend for the act to have happen?

MR. ENNIS: Mr. Chairman, I think the paragraph you provided us with here hits at a question we face every day in our jobs, especially on access requests, and the commissioner brought this up in April of this year when he addressed the FOIP conference and suggested that it was time that FOIP people started looking at cases where the disclosure of personal information may not in fact be an unreasonable invasion of somebody's privacy and that they should be sort of attentive to somehow testing the presumptions that are in the act.

One of the difficulties in the act the way it's currently constructed -- and I don't think it would be news to anyone in the technical group here -- is that the act has a set of presumptions in it about unreasonable invasion of privacy but provides not much in the way of information as to how to rebut or challenge those presumptions. I understand that when lawyers read the word "presumption," they automatically look for criteria around rebuttal, and they won't find it in the act. I'm not suggesting we should all read it as lawyers, but in the act there isn't a real sense as to what would be the test of something that is a reasonable invasion of somebody's privacy, and here you're suggesting such a test: the test of a reasonably observant person seeing it. It is an area that the commissioner has wandered into, and I think there's probably room in the act somewhere to address that so the act doesn't end up with silly consequences, especially on the historical information.

I recall in the submissions that were made that there was quite an intelligent discussion of this in the submission made by Dave

Anderson and Debra Tumbach from the Alberta School Boards Association. They went into this point in great detail, because it seems to somehow well up in the school setting that we've got this problem. They made some suggestions about something in the act that gives an indication of what would be an acceptable rebuttal so that you don't presume an automatic harm from the disclosure but you apply some kind of a harms test, a light harms test perhaps, and that's what you're suggesting here.

I guess that's all I can add, if you choose to defer it. It is quite a central question in the daily life of every FOIP co-ordinator though.

THE CHAIRMAN: As I say, I have no preconceived notions as to how this thing may unfold, or it may turn out to be totally unworkable, but I'd like to see the message in there someplace.

Denis?

MR. DUCHARME: Yes, Mr. Chairman. On the weekend I received two phone calls to my constituency office having to do with concerns that parents had now that the FOIP Act has come into force at the school levels. One of the callers was very, very insistent that the government should be told that this act is improperly named and that rather than being called freedom of information, it should be called suppression of information. He said that basically what it boils down to -- and I think I like what Gary's brought forward in this paragraph -- is we've gotten into the laws and we've forgotten about common sense. I think that what you're suggesting here, Gary, is bringing that element of common sense back into play.

THE CHAIRMAN: That's going to be an interesting challenge, as Clark said: you know, how do you put this in legal terms, and how do you get the message out so it means something? If nothing else it should be a message to the commissioner's office about what some of our intents are. So we'll have to wrestle with this.

I'm going to suggest that we leave it now. Committee members can sort of mull it over but probably more importantly maybe get some reaction from Clark and John on your respective views or anybody else on the technical committee as to how workable this might be or does it raise other problems or how might it be included or should we dump it or whatever.

Having done that though, would the same kind of discussion want to be deferred on question 22? We sort of got sidetracked on it, and I think maybe we need to do a little more research and bring some recommendations back.

> Number 23.
>
> Teaching materials or research materials of employees of a post-secondary educational body are excluded from the scope of the Act.
>
> - Should the terms "teaching materials" and "research materials" of employees of a post-secondary educational body be defined to specifically identify the materials to which the exclusion applies?
> - Should this exclusion be extended to include teaching materials in schools?

I'm not familiar enough with the specific concerns or, you know, the technicalities of the definition, so if someone could help us on that, I'd appreciate it.

You had a comment, Gary?

1:48

MR. DICKSON: I was just going to say that I take it that this is in response to what we heard the other day, the note that institutions were concerned that while scientific and technical research is adequately protected, research in areas of sociology, psychology, sort of the soft sciences, and social sciences was not included. Is that the concern here?

MR. GILLIS: No. That's section 24. This is an exclusion.

THE CHAIRMAN: Again I apologize. This is one that slipped by me. I didn't do my homework on what this one meant. I thought I had caught most of them.

Sue, do you remember offhand? If we're not ready, we can easily defer this one to the next meeting as well.

MR. GILLIS: Is this question in section 4, Sue?

MS KESSLER: Yeah, it is. Section 4(1)(e) says that "teaching materials or research information of employees of a post-secondary educational body" are excluded from the act. I think the concern was that they don't know how to define that. They don't know what it is.

MR. GILLIS: Well, it's basically somebody vaguely telling us what this is so that they can then second-guess as to whether we're defining it right or not. In some ways it's better to be left vague, in my personal view, because then it has more flexibility, rather than trying to guess every situation that might come up.

MR. DICKSON: Offering a more specific definition often ends up limiting an element in a statute.

THE CHAIRMAN: Does somebody have any really good ideas of what we do with it?

MR. GILLIS: I'd not do anything with it. I'd leave it the way it is.

MR. DALTON: I think I would too. This comes from British Columbia initially, so you'll see it has a parallel provision in British Columbia. It's meant to say: look; you just can't simply get at the teachers' materials that they use, that in a sense is kind of copyrighted to them, so that you can use it for your own purposes or something of that nature. Similarly the research aspect of it as well.

Now, we've kept research in the act as kind of broad, and in fact our act, in the sections that deal with research and access to research, was made broader at the request of the research community so that research would be interpreted in a broad sense. So if we touch research here, I think we've got to touch it in those other provisions. When we put the act together initially, they told us: keep it broad so that we can incorporate as much as we can into it that is research.

So I guess I'm with Peter on this one. Frankly, I think we should see how it falls out, and then if there's a problem with it, we could deal with it in due course.

HON. MEMBERS: Agreed.

THE CHAIRMAN: So the consensus is: no change.

We're on to paramountcy, question 24.

MR. GILLIS: Mr. Chairman, there is a second part there that I think bears. We have teaching materials and research information of employees. I think the second part says: teaching materials that are actually owned by the schools themselves as opposed to the employees. If you read 23, the second bullet, it is saying that the "exclusion be extended to include teaching materials in schools"; in other words, not owned by the employees but owned by the schools themselves.

THE CHAIRMAN: So are you suggesting we should . . .

MR. GILLIS: Well, I think it's worth while considering that it's maybe more than just employees. Schools themselves now use teaching materials that they own to make dollars, money, and so forth. They actually own the teaching materials. When you develop a course now for a college, you quite often sign over all the rights and privileges to the college. You don't keep the ownership yourself. It depends. You negotiate that. I think the briefs that I recall were suggesting this were that the exclusion was not broad enough as it exists currently. It's just for employees, and it needs to be for schools themselves.

MR. ENNIS: This is a standing problem, Mr. Chairman: confusing copyright with access under the freedom of information act. People are often concerned that allowing access is somehow a waiver of copyright privileges. I think we've seen enough cases through the office where I work where we've had to clarify this question to people, that the provision of access under the freedom of information act in no way affects the copyright privileges that the copyright holder has.

MR. DALTON: Oh, but it does. There's a specific provision in the Copyright Act that says that any access to information under the federal legislation or under any provincial legislation is an exception to copyright. There's a specific exception.

MR. ENNIS: But it doesn't go to the issue of use; does it, Clark?

MR. DALTON: Well, once it's out, it's out. Now, is there a secondary copyright? I don't know what the issue is there. The plain fact is that if we have something in a provincial department that's copyrighted and there's no exception for it under the legislation, the Copyright Act says that that's an exception to copyright and for us to be forced to produce that under FOIP. So there is a specific provision in the Copyright Act on this issue.

MR. ENNIS: I think the confusion is: does that exception then give personal access to information, the ability to use the information for commercial purposes or whatever?

MR. DALTON: I doubt it, but it does protect the public body.

MR. GILLIS: For example, in teaching materials -- I've had this happen to me personally -- all they do is take the teaching materials and they change the headers. They change one word on every page, and you've lost your copyright. It's gone.

MR. DALTON: I'm not sure that's right, but there is that fear of that. Copyright is a very fuzzy area of the law.

THE CHAIRMAN: This is starting to sound, from the unanimity of the opinions here, like maybe we should have a look at it at the next meeting.

MR. DALTON: Well, if you're going strictly on principle and you were to say, "Well, instructors can have this because we think there's a kind of quasi-copyright in it for the teachers," why can't you extend it to the situations that Peter has suggested, to the schools, to the institutions themselves?

THE CHAIRMAN: Does everybody understand this as well as I do?

MR. STEVENS: I must say, having listened to the conversation, I don't know why we wouldn't extend it to apply to the materials and the information of the institution also. I just can't imagine why we wouldn't. It seems to me that this otherwise would be available, if at all, through purchase. If you want the information, you can buy it. If it's not out there for purchase, you don't get it because it's owned by somebody who doesn't want to sell it. I mean, that's the way I hear the conversation at the other end, at least from my perspective.

I appreciate that there are some legal implications associated with copyright and whatnot, but I think that on what I've heard, Mr. Chairman, I would move that

> we extend the exclusion to include teaching materials and research information of postsecondary educational bodies.

MR. DALTON: I'm not sure whether it just means schools there.

MR. ENNIS: If I can just ask a question on that. Are you wanting to somehow limit that to formal teaching materials? I'm thinking of the kinds of records that show evidence of teaching going on in a school. Lesson plans and so on seem to be of particular interest to parents. I'm hearing, although we haven't seen evidence of this in our office, that those are a target of access requests by parents if you look for evidence of performance.

MR. STEVENS: If I could just back up for a moment. Point 23 in the material, as I understand it, relates to 4(1)(e) of the act. The way that's currently structured, it deals with teaching materials or research information. We've already had a discussion where the only comment made was: don't define it. Okay? That's from the technical folks, and I'm happy with the explanation, so I wouldn't define those terms.

1:58

We then had a discussion with respect to employees of a postsecondary educational body, and there was reference to the fact that maybe that should be expanded. I assumed the expansion was in connection with postsecondary educational bodies as opposed to some other kind of body. That's the context in which I was listening and having that conversation. So when I made the suggestion of expanding it, it was with respect to postsecondary educational bodies, period.

On the basis of what I've heard so far, I'd say: teaching materials or research information, not defined further, of employees, i.e. owned by, and owned by postsecondary bodies. Now, that's where I am in this conversation. If there are other issues, they have to be added.

MS KESSLER: There's a third one. The Rocky View school division recommended that it should also include the teaching materials in schools. So that's another element to it. Quite frankly, we haven't done any research on that. Have you from your office?

MR. GILLIS: No.

MR. STEVENS: So that would be the teaching materials of teachers or school authorities in schools.

MS KESSLER: Yes.

THE CHAIRMAN: Does that change your recommendation?

MR. STEVENS: It wouldn't change my recommendation. I don't know if in practice there is much of that, but to the extent there would be, it seems to me that the logic would apply. People might

have teaching material that is owned by the teacher or the school that would be just as entitled as teaching material in a postsecondary institution.

MR. DALTON: I think it's more apt to happen in a postsecondary institution, with a professor at a university, where they do their own research or where they create their own teaching materials and whatever. But having said that, the principle seems to apply to schools as well.

THE CHAIRMAN: So would your recommendation be expanded to include schools and postsecondary institutions?

MR. STEVENS: Well, just so I can get my thought on the record. In principle I would agree. It seems to me it should apply to both in principle.

MR. DICKSON: Well, you know, before we make law, I always like to make sure there's a mischief there that presents a compelling reason why we have to add more legislation. The alternate approach is to flag this as an issue to look at. We're talking about a further review. Once we've had some experience with local educational bodies and schools being subject to the act, if it becomes a significant issue, it's an opportunity to deal with it down the road. My concern would be -- I think we've heard there hasn't been any real research into this. This isn't something that's been raised widely in any of the submissions we've received, and I think that if we jump in a direction that's not been maybe adequately researched, there's always the risk that there are things we haven't anticipated. There may be some limitations that should be built around it and so on. I mean, I understand the argument in terms of logical consistency, but I'd sooner defer this kind of action when we're dealing with non postsecondary institutions until we've had some further experience with the act dealing with schools.

MR. DUCHARME: I was just wondering if I could just ask for clarification. If we look at, let's say, teaching materials owned by the schools, if I could just try using this as an example in just clarifying for me. You've got some schools basically that are offering French and French immersion programs, but most of the teaching materials that they do get basically come from France or whatever. So then the school would maybe hire someone to reduce the French content to something that would be a little bit easier to understand, let's say, for the level of French that's being taught in the schools. Are you saying that this would then give them the protection they need? You know, they went to that expense. If they wanted to share it with someone else, then they'd have to purchase it, and that would give them that protection.

MR. GILLIS: That would give them the option.

MR. DUCHARME: Okay. Thank you.

THE CHAIRMAN: Ron had to leave for a minute, but he's going to be back in a while. He's suggesting -- and I'm agreeing with him -- that we've had sort of a debate here; there are some mixed messages. I'm not sure that we a hundred percent understand the implications, and I'm going to suggest we defer this one to the next meeting. There may be some kind of a consensus from some our technical advisers, or there may be some kind of a recommendation as to what the follow-up might be. Gary's comment was: do we know that there's a problem yet? You may even want to sort of consider that in your advice to us for the next meeting.

MR. DICKSON: Can I just add, Mr. Chairman, that one of the things that's been a hot issue in Calgary is that there are parents -- the difference between postsecondary and K to 12 is that parents have a big role in the latter and a fairly small role in the former. It's been a keen issue on the part of some parents in Calgary in terms of the way certain things are taught in the school. I think a thing you want to consider as well is that you have parents -- there's an element there when you're dealing outside of the postsecondary context -- that may want to access some of the material that children are being taught and so on, and I think we've got to be careful in sort of addressing exceptions, that you're not unreasonably impeding the access of parents to teaching materials. Anyway, I'd just make that observation.

THE CHAIRMAN: Ron's motion, by the way, was withdrawn. That was his whisper to me as he went out. So we'll deal with it at the next meeting.

MR. ENNIS: Mr. Chairman, that's the second bullet, then, only?

THE CHAIRMAN: The second bullet, yes.

So between now and then whoever is going to put together some advice can maybe get it to Sue and you can get it to me.

MS KESSLER: Yes.

THE CHAIRMAN: Okay. Moving on to item 24, paramountcy.

> The current Act allows paramountcy to be established in either another Act or the FOIP Regulation; should a recommendation be made that paramountcy be handled by establishing it in other Acts and retaining the use of the FOIP Regulation for unidentified situations?

We've had some discussion on this. There seems to be an obvious need to continue the use of the FOIP regulation for emergent issues that can't be accomplished with either the time restraints or the other encumbrances of passing legislation. My feeling is that we should endorse the existing practice. It allows a minister to create a paramountcy through his or her legislation, but they have to go through the motions of defining and justifying why such a paramountcy would be necessary. There needs to be some kind of a vehicle whereby the same kind of protection could be afforded on a temporary basis, and I think that points to the fact that it's important that we keep the regulations under the FOIP Act intact.

Discussion? Gary.

MR. DICKSON: Yeah. The problem is that if you give the government the option to basically suspend Albertan's access and information rights, either by regulation or by statute, they can and will often choose to do it by regulation because it avoids any parliamentary review. It's not done in a public way. It's basically all done, whatever the review process, internal to the government. There's no input from the Legislature.

The best example is the spring of 1995. The government had developed for a year and a half the paramountcy project that called for an omnibus bill to be brought in in the spring of 1995 to determine which items should prevail because of conflict with FOIP. The government had the option to do that, and they chose not to. The government chose to do it by regulation in the dying days, Sue, of September, I think, of 1995. It was shortly before the October 1 proclamation date of the act. It seems to me that points out the problem.

2:08

In terms of the emergency situation and recognizing that what

we're talking about is suspending rights that Albertans have, one could make an argument that when an act first comes into force, there are things that can't be readily foreseen and so on. We've now had four years' experience with the act. We've identified the major conflicts and that sort of thing, and now I think that if you're going to try to exempt something properly, it should be done in the Legislature.

The alternative would be to make a recommendation to the Legislature that these regulations would have to be vetted in front of the Standing Committee on Law and Regulations. But absent of that, then we ought to eliminate the alternative -- well, you knew what was coming, eh? You ought to take away from government that power to be able to take the unparliamentary and secret kind of route that's been used in the past.

THE CHAIRMAN: We thought you'd miss that opportunity. We're certainly pleased that you hadn't forgotten it.

MR. DICKSON: Oh, good. Good. There's something to be said for consistency, Mr. Chairman; isn't there?

THE CHAIRMAN: Well, you know, I don't need to belabour my opinion, but I just don't believe that there is an alternative. I mean, there are emergent situations that we can't rule out. I know there is a possibility that the regulation can be used beyond what was maybe intended, but I'm not sure how you put the right kind of fences around it that give you some protection and flexibility without leaving it open for a little bit of abuse. Hopefully the intent would be that it is a temporary measure. In any event, if the reason for the legislation is often securing a confidentiality, the minister would want that protection in a piece of legislation, because if it's in the regulation under the act, it's always subject to the interpretation of the commissioner. So there would be an incentive in that way to have it used as a temporary measure, and eventually it would be transferred to a piece of legislation. I know it's probably not much comfort in terms of your argument, but I'm not sure what the alternative is.

MR. DICKSON: Can I ask this, Mr. Chairman? What has been accepted by way of regulation that couldn't have been anticipated and dealt with by way of legislation? The health information we've known, because the Legislature has control over Bill 30 and any sequel. The paramountcy project. Those things had been identified and could have been included under this bill. I mean, can somebody give me an example of something that couldn't have been done by legislation in the House and that had to be done by regulation because of urgency?

THE CHAIRMAN: Well, I'm not even sure that that is absolutely relevant. If there was a possibility of it happening, I think it would be sufficient that we would have to consider it. I would even go so far as to say that part of our recommendation is the intent that the regulations should be used as a temporary or emergent measure. I mean, a recommendation like that is simply something that's on paper. It doesn't have any force in law. I think making it would be kind of a wasted exercise anyway. So we have to assume a certain amount of trust, and I guess it depends on which side of the House one sits if that's easily given or less favourably given.

MR. DICKSON: But if you're looking at two competing evils -- one, inflexibility and the government not being able to deal with urgent issues or, the other, basically an abuse of the democratic process. We have evidence, in my view, that there was an abuse in 1995. There's been no evidence that I've heard of the other evil. So it seems to me that you address the mischief that's been experienced and not the one that's imaginary.

THE CHAIRMAN: Anyway, I would debate with you whether regulation-making authority is an abuse of the democratic process. I think it's part of the democratic process. To some greater or lesser degree sometimes it's not as transparent, and I can tell you that I support the concept of transparency in these things to the extent that we can possibly make it happen. That's part of another hat that I wear in a different committee, but I would certainly debate with you that it's not a democratic process.

MS BARRETT: I would like to know what this mischief case that Gary Dickson just referred to is about so I can get a handle on this, please.

MR. DICKSON: The government had to October 1, 1997, to decide what statutes were going to be paramount to FOIP, or what sections of statutes. The government in the spring of 1997 had a paramountcy project. They were going to bring in an omnibus bill to debate what things should prevail over Bill 40. What the government elected to do was not to bring in a bill, and then they simply passed a regulation to take out elements with 20 different statutes and regulations. No debate. It was a fait accompli.

MR. DUCHARME: Mr. Chairman, having had the opportunity of bringing forward a government bill this spring called the Fair Trading Act, I remember on many occasions Mr. Dickson giving me advice not to trust the ministers in terms of setting up regulations. I believe the government did take to heart that information that you expressed to us on many, many occasions. Basically, if you've noticed recently, the Fair Trading Act, as far as the regulation process, has gone back out to the public in terms of getting their input towards it. So I guess it goes back to the aspect of trust that Gary mentioned earlier. I believe that we have to have trust in terms of these things taking place, and it gives the opportunity, in case there should be circumstances, that will allow legislation to come forward.

THE CHAIRMAN: I think we've sort of gone round and round on this. The question really boils down to whether paramountcy should be established in either another act or the FOIP regulations or without the regulations. Perhaps we could have a motion that would get this thing resolved.

MR. DICKSON: Well, I'd be happy to move a motion that

> we recommend deletion of the ability to deal with paramountcy through regulation.

So the sole means of dealing with paramountcy would be through an amendment of a statute.

THE CHAIRMAN: Okay. I won't have to repeat that motion. All in favour? Opposed? It's defeated.

So we will assume that another act or the FOIP regulations would be permitted, which in this essence is the existing legislation.

Okay. There are four more issues related to paramountcy, which is a little twist on the document we've just been on. Question 25.

> Is there a need to provide clarification regarding the interrelationship between section 5(2) and section 38(1) which enables the disclosure of personal information if another enactment of Alberta or of Canada requires it?

I'm going to ask for some clarification on this one. I'm not sure if there is a need for clarification. Can you tell us why there is?

2:18

MR. DALTON: I've been elected to respond. I've looked at the excerpt from the association that made the comment that led to this. I'm having a good deal of difficulty figuring out what the problem is. I'm afraid that I'm going to get people lost on this one, but to me there isn't a problem. Section 5(2) says that if there's an inconsistency or a conflict between this act and another enactment, unless you say something about excepting it, then that other enactment doesn't apply in this act, of course. That's the rule.

Section 38(1) says that if another enactment of Canada or Alberta authorizes or requires disclosure of personal information, then you can disclose it. There's never a conflict, it seems to me, where another act allows disclosure but this act doesn't. So I'm having difficulty figuring out what the problem is. Section 5(2), again, says that if there's a conflict between two acts, then this act prevails. Section 38(1) says: if the other act allows for disclosure, you can disclose it. Then there is no conflict. So I can't figure out what the problem is.

MS BARRETT: Why don't we just scratch if off the list?

THE CHAIRMAN: Well, it sounds like if the other act is intended to be paramount, it should specifically say that, and if it doesn't, so be it.

MR. DALTON: No. It's because we placed in the provisions the ability for the other act to at least provide for disclosure on the basis that there be some transparency. You know, we could see in this other enactment, which specializes in the area, that you can disclose that information. Then we say in FOIP: you can do that. So there's no conflict. I'm having real problems with this one.

THE CHAIRMAN: Okay. So the advice is: leave it as it is.

MR. DALTON: I think so. Also, just to be fair, the comment is framed in collection and use, but section 38(1) isn't collection and use; it's disclosure. So they may have confused a few things here, and I'm having difficulty with it.

MR. DICKSON: I'd just say that I was wondering if what they were getting at was some confusion between 3(a) and section 38. I don't know. I mean, I don't have a copy of the initial submission.

MR. DALTON: We seem to be speculating here.

MR. DICKSON: Yeah. I guess we are. It's not that helpful.

THE CHAIRMAN: Is there a consensus that we leave this alone?

MR. DICKSON: Why don't we just defer it, and if somebody can go back to the source paper and find out . . .

MS KESSLER: What ASBA really meant?

MR. DICKSON: Right.

MS BARRETT: If it did mean anything. If it didn't, then no need to bring it back.

MR. DICKSON: Right.

MR. DALTON: That's fair enough.

THE CHAIRMAN: I'm going to leave it as though we're mandating it, but if there is something to it, you can bring it back, and we'll rejuvenate it.

Question 26 potentially raised a question around topic 24.

> Should the proposed paramountcy of the particular sections of each of the following statutes continue after October 1, 1999?

There's a sunset clause on the five acts that are bulleted underneath the question.

My sense is that there is some concern as to how the paramountcy was going to be dealt with. Is there a possibility -- and this is a question to whoever over there might be in a position to answer it -- that the ministers responsible for those acts are going to have to do something related to paramountcy in their own statutes? Is there a possibility that the time lines to October 1, 1999, considering where we're at right now, might be insufficient time to do that?

MS KESSLER: That's correct.

THE CHAIRMAN: So the appropriate thing to do to encourage the ministers to actually do it by statute rather than regulation, as you're suggesting it here, would be perhaps to have a recommendation to extend the sunset by one year, which would in fact allow them to amend their statutes. Would that cover the concerns?

MS KESSLER: I'm not sure what the legislative time frames are for the review of the acts. I would envision that they would likely want to do paramountcy provisions in the context of something else that they were taking into the House. So I'm not sure whether one year would do it. We could certainly consult with them to see if it would.

MR. DICKSON: Mr. Chairman, I'd say: why would we extend it a year? The opportunity is there in the spring session. What's the deadline now on the regulation? Is it October 1 of '99?

THE CHAIRMAN: October 1, 1999.

MR. DICKSON: Well, you know, we're having a fall session here in a matter of weeks. We're going to have presumably a three-month spring session. I understand that Sue is relating what she's imagining departments may be saying, but if a department wants their statute to prevail over FOIP, then surely to goodness it's not such a big deal for them to put together an amendment. They've been wrestling with this since August of 1997. Come into the Legislature; we'll debate it. There's little sense we can make of it talking about it. I'm no expert on electrical utilities or mines and minerals. There are people in my caucus that would have input into that or Albertans that would have input into it. The commissioner had some observation on I think two of these, had some concern in terms of the paramountcy provision. To me the best message we could send the government is: bring it in in the spring session of the Legislature. You know, if it looks like it's not going to get passed for whatever reason, then we can worry about other options. But why would we extend it a further year?

THE CHAIRMAN: Well, I'm not sure if any of the ministries have in fact produced some preliminary material or actually requested a place on the Order Paper for amendments. The process for introducing legislation has some time lines attached to it, and I believe that the deadline for introducing new legislation for the spring from the ministers to the Minister of Justice has already passed. I don't think they could actually prepare and document legislation from here on even if we told them today. It is too late.

MR. DICKSON: But surely that's an artificial constriction, Mr. Chairman. I mean, they may have a policy to do that, but if they

want this extraordinary relief in terms of being paramount to FOIP, surely to goodness in the next five months they can find a means of being able to put in a one-paragraph amendment or a two-paragraph amendment. I can't accept that we have to be subject to what sounds to me like a wholly unrealistic early deadline.

THE CHAIRMAN: I guess we'll just have to agree to disagree on that. If it absolutely had to happen, I guess anything could be made to happen. But I'm not so sure that I would agree with you that you upset the process that's already in place just to prove a point.

MR. DICKSON: We're talking about access rights of Albertans. I don't want to repeat what I said before, but this should be an extraordinary thing, to take an act and say: this is going to prevail despite FOIP. The threshold is sounding like it's getting lower and lower and lower when it should be sky-high. I'm more concerned now than I was before I came into the meeting. I was frustrated with what happened around the paramountcy project being torpedoed. If the new test is going to be that we will use regulation because we need more than six months to be able to pass legislation, it seems to me that the government is signaling how little they think of freedom of information.

MR. ENNIS: Mr. Chairman, I recall when the date of October 1, '99, was agreed to with the commissioner's office. The commissioner was involved in discussions with some of the departments involved with these paramountcy provisions. The notion was that that date would allow at least those propositions to get in front of this committee and then somehow be routed to the Legislative Assembly, but there was also a thought at the time that the public bodies needed some time to see whether they really needed paramountcy in these areas.

These are extraordinary areas. They're not areas where personal information is being shielded in a paramount way. It's in these areas where some other class of information is being shielded, mostly corporate information. I'm not sure that I've heard from any of these departments or through the government submission or whatever that this is still a proposition that's being pursued by these public bodies. This is the existing paramountcy, but it might be premature to consider this without seeing whether the provincial public bodies are asking for this.

2:28

MS KESSLER: They have asked for them. That was documented in the paramountcy paper.

MR. ENNIS: I thought that was an explanation of existing paramountcy, not a request.

MS KESSLER: No. There were segments in the paramountcy paper which indicated the requests of the departments to continue the paramountcies.

THE CHAIRMAN: I'm not aware of each one of these, but I know I've had conversations with several ministers which certainly gave me the understanding that they were requesting some assistance in either postponing or giving them some time to deal with this. The argument was made -- I don't want to go into it at length here right now -- that a lot of these are built around practices where the department and certain industry groups sort of work in a partnership arrangement to do more than simply provide the information for a licence or a permit or whatever. The information is intended to either enhance the industry or the sustainability or to provide information that allows government to make considered decisions based on information it wouldn't otherwise have.

I think one of the big concerns that was expressed to me by several ministers was that unless there was an absolute assurance of confidentiality, this information just wouldn't be forthcoming. It's not information that the department can demand as part of a permit. It's information that's voluntarily submitted, often well beyond that. The industry is just not going to provide certain types of information if it knows that it's going to the general public.

Now, I've maybe oversimplified the issue a little bit, but I think that's the validity for the department's request that there needs to be protection. I'm not sure if we need to do it today, but if there needs to be confirmation that all five of these need some extension, we could wait until the next meeting. I'm certainly recommending that we do make a recommendation of extension.

MS BARRETT: For all of them?

THE CHAIRMAN: Well, do we need to confirm that all five of them are being requested, or do we already know that?

MS KESSLER: The only one we don't know is the Loan and Trust Corporations Act. We have not heard from Treasury yet. They were still doing an analysis.

THE CHAIRMAN: Should we defer the decision until the next meeting then? What's the feeling?

MR. DICKSON: Well, I'd suggest we defer it, Mr. Chairman. Remember that we had this discussion about not getting a further written submission of government departments, and you said that they may intervene at different points in the process if they have concerns. Perhaps we can get some supporting material because the stuff we've got in the paramountcy paper is pretty sketchy. If there are specific concerns that ministers have got in trying to defend any of the five statutes that are mentioned in paper 4, maybe they should give us their material in writing so we can evaluate it. You've had the benefit of speaking to some of those ministers. It would be great if they would be prepared to share with the committee. If they want our support for continuing the exception, then I'd expect they'd be happy to share with us some detailed analysis of why they feel it's necessary.

THE CHAIRMAN: There's a little bit of information in the paper, but I'm not sure it was detailed enough for you.

MR. DICKSON: No, it's not.

MS BARRETT: Well, some is pretty obvious, but some is very specious.

MR. STEVENS: I'm happy to defer it until the next meeting.

THE CHAIRMAN: Okay.

MS BARRETT: How many more meetings have we got scheduled? Two more?

THE CHAIRMAN: We've got several meetings scheduled, but I'm hoping that in one more meeting we'll go through this document.

Question 27 may be irrelevant in view of what we did with the peer review thing. I understand that that was the prime reason why it came up. Do we need to pursue this, or can we drop it now?

MS KESSLER: This is being viewed as a more interim solution

until the legislation can be amended. That's my understanding.

MR. DICKSON: I thought last time Clark Dalton had made a pretty compelling argument that paramountcy wasn't going to save section 9.

THE CHAIRMAN: But earlier today we were suggesting that that peer review can be exempted anyway.

MS KESSLER: That's excluded. That's correct.

THE CHAIRMAN: So do we still need 27 then? Do we need to change the Alberta Evidence Act?

MS KESSLER: No.

THE CHAIRMAN: So we could drop that question then.

Question 28 is probably a rhetorical question.

> Should the FOIP Act Review Committee make any recommendations related to the need to harmonize the proposed Health Information Act and the proposed Health Professions Act with the FOIP Act?

I think there needs to be, obviously, some harmonization. I'm not a hundred percent sure to what extent we would do this other than make the point that it needs to happen.

MR. STEVENS: I think it's fair to say that the point has been made and acknowledged as a result of the work done regarding the health information act. To my knowledge -- and I think Sue can confirm this -- there is, as we speak, a process that has been identified and will be under way shortly, so I don't think it's necessary for us to address it at all.

MS KESSLER: That's correct.

THE CHAIRMAN: My understanding is the way that act is going to come up, it is going to identify itself with a paramountcy. Other than that, there has to be some working relationship, which obviously has to happen anyway whether we say it or not.

MR. STEVENS: Well, specifically there will be people meeting to address the issue of the need to harmonize. That will be the process that I'm talking about, so it will happen.

MS BARRETT: Yeah. Sure it will. Good question. Are we expecting that new legislation in the fall or in the spring, or does anybody know?

MR. STEVENS: The spring.

MS BARRETT: Not until spring, eh? Boy, that's a long gap between October 1, which was a couple of weeks ago, and then -- but I think you're right, Ron. It'll happen.

THE CHAIRMAN: So what are we doing? We'll just acknowledge it for information but no action.

Access to records process. There are several questions here. Some of them are for clarification, and you notice that the IPC office has made comments on some of these. So I'm going to ask John, as we're going through these, maybe to elaborate on sort of the pros and cons.

"Are the time frames within which to respond to an access request appropriate?" Now, that comes from a public submission, but there have been some rebuttals in that letter from Bob Clark. Maybe the most appropriate way is to go in and tell us the pros and cons.

2:38

MR. ENNIS: As I read through the submissions, there are about as many people for as agin on this one in terms of the 30 days, applicants basically saying that it's too long and public bodies saying that it's too short. The one twist in that argument is from some of the school districts arguing for working days, knowing they would have a tactical advantage over hospitals at that point, because hospitals work every day, all day, and some school districts close up for the summer. But that's been sort of the twist in the argument. The commissioner I believe has voiced satisfaction with 30 days as being a pretty reasonable standard for response. I think that's as much as I can say on that section. It is currently 30 calendar days, and at some times of the year that causes a bit of a hiccup, especially during the holiday season time in December and for schools in the summertime. They're anticipating they'll have a problem, especially some of the more rural school districts.

MR. STEVENS: With respect to that school issue, is there not a provision for an extension to reflect the reality of the school closure in certain areas over the summer?

MR. ENNIS: Extensions are based on established conditions, as a finite set of conditions. The inability to respond because you're closed doesn't seem to fit in any of those very well, but it seems that the school districts all are open at some level in some central office. We heard from one school district that actually claimed to be closed for a month or two in the summertime, completely closed.

MR. STEVENS: I guess my point is that I'm assuming for the sake of the discussion that there is such a thing as a school district that is closed for, say, six weeks in the summer except for somebody that receives the mail. My question was: is there facility to grant an extension? What I hear you say, John, is that there isn't.

MR. ENNIS: Well, the commissioner has to be satisfied that certain conditions are in place: the records are too complex, third parties have to be consulted, and so on. Arguably this is something the commissioner could entertain. We've had the request in theory from a school district, and the commissioner has responded that he wouldn't want to do it in the case of summer vacations.

MR. STEVENS: So what you're saying, if I understand correctly, is that the commissioner could consider it in appropriate circumstances without a change to the legislation. No?

MR. DALTON: No, I don't think so.

MR. ENNIS: I'm not sure that he could under the appropriate circumstances there.

MR. STEVENS: All right. Fair enough.

MR. DALTON: The commissioner can give a longer time period. If it's 30 days, then 30 days or longer if the commissioner says so, but you have to meet one of four criteria, none of which is: we're closed.

MR. STEVENS: Right.

MR. DICKSON: I was going to talk about something sort of related but a little different, and that had to do with transfers. The Alberta Civil Liberties Research Centre made two recommendations that are relevant. One was that in the case of a transfer, now there's no mandatory obligation to transfer a request to a more appropriate public body. It's a discretion on the part of the public body that receives the request. That makes sense to me, that it should be mandatory to transfer or forward a request to a more appropriate public body, not discretionary.

The second thing the Civil Liberties Research Centre had urged was that the public body receiving a transferred access request "should be deemed to have received the request on the day that the transferring body received the request." In other words -- well, it's self-explanatory. It just cuts down on time that now can represent significant delay.

Then there was a third recommendation that the Civil Liberties Research Centre had made, that "there should be a specific time limit placed on notification that an extension is required." In other words, in some cases it's clear long before the end of the initial 30 days that there's going to have to be an extension.

Then they also suggest that "when notifying an affected third party of an access request, the public body should be subject to a deadline." Now the time limit only starts to run after the third party has been notified under section 29, and they refer to the federal act that requires a head to notify the third party within 30 days of receiving an access request.

So those are a number of recommendations that all relate to the access to records process, and I don't know if Sue wanted to offer some perspective from her standpoint in terms of those specific recommendations in terms of time.

THE CHAIRMAN: They were part of the public submissions though. I mean, this is all part of what we already have.

MR. DICKSON: Right. Yeah.

THE CHAIRMAN: Well, I'm not sure if it's fair to put Sue on the spot and make observations about whether or not they're appropriate. I'm assuming the recommendations are accurate. I would suggest that they kind of fall into the category of what John was referring to, that there were as many views for change in one direction as there were the other. You know, much the same as we talked about earlier on fees, it's essentially a re-presentation of what happened in 1993, and what we have in front of us in the existing act is a considered compromise. You could make all kinds of changes, but for every change you make to satisfy one party, you're going to equally annoy another one. Do we need to get into that kettle of worms? Are there sufficient grounds for general improvement by making such changes that it would be worth it, or do we assume that the existing act is still a considered and hopefully reasonable compromise?

MS BARRETT: With respect, I'm going to disagree with my brethren from Calgary-Buffalo. I think you can bureaucratize some stuff too much, way too much. When you look at the number of recommendations that Gary Dickson just referred to, you're starting to get into administrivia as far as I'm concerned. When I hear a report from somebody who's working in a neutral office who says that half of the people like it and the other half of the people don't, I think: okay; we've achieved balance on this. So I'm just going to vote to stick with the status quo.

MR. DICKSON: Mr. Chairman, I deliberately didn't get into arguing the 30-day, 60-day, 15-day thing. I'm specifically talking about transfers, because that's an area where there's a suggestion that the federal act, in one example, does better. I'm mindful of that tension between requesters and public bodies. But on the transfers, why wouldn't we make it mandatory to transfer requests to an appropriate public body? Why would we leave that being discretionary? If there's an argument around that, I'd be keen on hearing it.

THE CHAIRMAN: Are you looking for some debate on this?

MR. DICKSON: Well, I guess I'm looking for some explanation.

MR. GILLIS: I guess, Gary, I would say that if you make it mandatory, you're going to have to transfer every request if it's in the law. "I didn't create this record. You created it. Therefore I'm going to have to transfer this request to you." My experience in transfer is that the applicant is generally interested in why I have the record. They ask. So I think that by making it mandatory, you get it over to somebody else where the applicant in some cases won't be happy. They want to know what I have on this subject as opposed to what you have on this subject and why I've got that record and what transpired around it.

I think there's a two-edged sword there, and that's the reason that it's generally in most legislation left discretionary. To do it, my experience again dealing with applicants, it quite often becomes a point of negotiation. I mean, you should be talking to the applicant long before you just transfer the request. You say, "This isn't really my record; it's Gary's record; I think it would be better over there," and work that out with the applicant as opposed to just: "Boom, I've got no discretion. Applicant, here it goes." So I think there's a two-edged sword there.

THE CHAIRMAN: I think we're dealing with that kind of a situation in a lot of these questions. It was a matter of setting up a piece of legislation that would do the best with what is often conflicting circumstances.

The other point you made was that in the event there's an application received and it is transferred, the party receiving the transfer is considered to have it from the date it was first submitted. I think there's a point of reasonability here too. If it arrived on the second party's desk a few days before the 30-day deadline, you're imposing a restriction that's physically impossible. I think the test has to be: if both parties acted reasonably. I think when we're talking about question 30, that word comes in there. In a lot of cases I think that's the best we can expect. I think Pam's comment about overbureaucratizing the wording could become a big problem if we tried to micromanage how each issue has to be dealt with and not leave a little bit of discretion, whether it's discretion to the commissioner or to the heads of the public bodies. We have to assume that there are somewhat reasonable people working there, and if they're the types of people that can't handle that level of administration, there's another way to deal with that. But, you know, fine-tuning to the point of micromanaging the legislation I don't think is the answer.

2:48

MR. DICKSON: I take Peter's point. That explanation makes sense to me. Just to address the micromanaging thing, the things that people are concerned about in my experience are delay and cost. Delay is critically important, and you remember, Gary, this was a big issue when we did our report in 1993: information delayed is information denied.

What about the suggestion to do what the feds do, to require that there's a time period to notify a third party? Now in the act the

time limit only kicks in once a third party has been notified. The federal act does this. I don't know whether Peter's got some comment on that experience, but that makes sense to me. I've had both of my own applications and people who have made applications involving third parties -- there's a lot of time lost, sometimes before the third party is notified and that 30-day period is triggered.

THE CHAIRMAN: Were you addressing that question to Peter?

MR. DICKSON: I guess I'm asking the question to any of the experts that would like to address it.

MR. DALTON: Well, one of the difficulties you find in these circumstances is that you don't always know there's a third party around until you go through your documents. It's not like we've got a file cabinet behind us that we can open and find the material. It's not always like that. We have to go through enormous amounts of material from time to time. I'm involved in this every day, and I can say all of sudden: holy mackerel; we've got a third party here. But it's taken us time to get there. Putting mandatory time limits, what's the result? Well, if you've got a mandatory time limit, then I think that's an automatic refusal, which then takes it to the commissioner's office for a circumstance that you don't necessarily have to go to the commissioner's office for; for example, if you can get the third party to say, "Yeah, it's fine; let's move it along."

One of the things you'll see in the act is that 30 days is the commencement time period, but there are lots of add-ons, for example third-party notices and things like that, that do extend it. My understanding is that basically public bodies are responding in a proper manner to keeping the time lines as short as possible, but by putting in mandatory requirements, that then triggers, I think, a review by the commissioner automatically, like it does in any other situation. When you miss the time line, it's an automatic review by the commissioner or an automatic ability to review by the commissioner. I guess members have to weigh in their own minds whether they want that to occur or not and whether there really is a time line problem now in any event. Perhaps John could speak to that point.

MR. ENNIS: We had in the first year of the operation of the act cases where FOIP co-ordinators on the 28th or the 29th day of an access request would recognize third parties and give notice, which requires -- track me here -- 20 days under section 29, then up to 10 days to make a decision as to whether or not to give out the information, then another 20 days' appeal period to the third party to come into the commissioner's office, so potentially between 41 and 50 days added to the process on top of 28 days already expired.

I think one of the things we found is that the act does provide a bit of a harvesting mechanism on those kinds of requests to bring them in faster. It does give the applicant the ability to come to the office and request a review on the basis of a deemed refusal. We did have some cases that were set down on that basis, where the applicant said: "Thirty days have come and gone; I've got nothing. I'm appealing to the commissioner." Then we were able to set those cases down for inquiry on a fairly fast track, in a sense propelling the public body to move through its paces as quickly as possible, and not incur any other delays along the way. I think that was pretty effective, and there hasn't been a problem with it since, none that I can recall. We've had cases where people have talked about the delays lasting too long, but the identification of third party seems to be happening now somewhere in the middle of the action. About the 15th day or so, third parties are pretty well identified.

In some cases it takes a fair bit of work to actually notify the third parties. It's not unusual to have an access request where there will be a hundred or more third parties. So there's sort of a bulk mail-out that has to happen, and just organizing that takes a bit of time, doing up a data base and so on. Normally, third party notification seems to be happening right about midstream in the response time.

What happens then? It's kind of interesting in that it's not like there's only one clock operating. It's almost like you're a station master and you've got several trains on various tracks and you're trying to get one of them to the intersection first. What happens once third party notice is given is essentially that the 30-day clock goes into a kind of suspended animation state. It's still ticking, but when it comes to the end of 30 days, if you still have work to do with the third parties, that work continues. As soon as that work is done, the 30-day clock is deemed to be expired as well. So you have basically two converging clocks there.

I guess the gist of what I'm saying is that there seem to be checks and balances in the act to keep abuses from happening.

THE CHAIRMAN: That's sort of my sense, too, much like the earlier argument. I mean, where do you stop micromanaging, and where do you allow some room for, you know, discretion and reasonable administration? Certainly there are some who might not be very co-operative, but I don't think we can write this act or rewrite it, if that's the intent, to assume that the only purpose in life for the heads of the department or the people who are in the departments administering is to make life miserable for the people who are requesting information. I'm going to suggest that most of these people do their best to get the information out, and I think that's the best we can expect. If there are some who are causing problems, that goes to the commissioner's office or you use whatever other means to make sure that they are reasonably co-operative, reasonably responsible. I mean, that word "reasonable" has to come into this. So I don't know where you start shuffling these things around. You're not going to satisfy everybody.

Your point is valid, Gary, but I just can't agree with you that we can keep pushing the parameters to the point of making it unworkable in other areas.

We've sort of spent a long time on this. What do we do with 29 then? Accept the existing time frames, or do we want to make changes?

MR. DUCHARME: Mr. Chairman, I'd like to make a motion that the present time frames are appropriate.

THE CHAIRMAN: All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: I think the next question is a similar question. You could dance around the semantics of it. I'm hoping my memory is good, but I'm sure that the word "reasonable" and much of the arguments we just went through apply. Whether you can put more mandatory requirements or try to make more enforcements, does it gain anything? I'm not so sure. I think the best intentions in the original drafting of the act exist. I'm not going to go through the same spiel I did before; I'll leave it at that. Is there a strong feeling that we need to change that? Okay. A consensus that it can stay?

2:58

HON. MEMBERS: Agreed.

THE CHAIRMAN: Number 31.

> Should provision be made to mandate reproduction of records in alternate formats for the hearing or visually impaired persons?

Is this an issue of freedom of information or privacy, or is this an issue more of, you know, what is a government service?

MS KESSLER: This was raised by the Civil Liberties Research Centre as well as the CNIB. Generally, access is made through copying, and most of the materials are copied in paper form. In some instances electronic access is provided for information, but that really is the exception rather than the rule. Most of it is paper. So what they're asking for here is for someone to take it a step beyond, to put it into braille or whatever other format.

MR. GILLIS: I think you would not want to get into putting it into braille, but you could, for example, produce something in electronic form that a visually impaired person could put on a Kurtzwell reader and be able to read and so forth. I went through this with the national forum, and the current federal privacy act has in it two provisions that came out of that forum which would do the trick. They're not administratively burdensome, and they give time frames, reasonable time frames, for the reproduction of this type of documentation. The federal government's been doing it for I guess six or seven years. It has not proved costly to pay for the one or two requests.

THE CHAIRMAN: My question is still there. What we're dealing with here is an act that, you know, deals with access and privacy. Translating or changing the format or whatever would be a government service or the service of whatever public agency was involved. That has very little to do with providing or denying access to information. If you're changing the format, it's an additional service. I would disagree that this needs to be in this act.

MR. DICKSON: Mr. Chairman, we have a human rights statute that tries to address the fact that in terms of access and services customarily available to members of the public, you can do that without being discriminated against on the basis of disability. I query -- and maybe Clark's got some thought on this -- does the province have an obligation under the Human Rights, Citizenship and Multiculturalism Act to make information available to somebody who has a visual or a hearing impairment?

MR. DALTON: I'm not familiar with that act. I don't work with it at all. I'd be guessing, Gary. So I won't do it; I won't guess.

THE CHAIRMAN: I really believe, Gary, that if the information is made available to anyone on the same basis -- you provide what's there. If you happen to not understand English, do we translate it into Ukrainian or German? It's the same thing. I'm not suggesting there should be an insensitivity to people who are hearing or visually or in any other way impaired. We're making information available. You know, this is the access side of it. The question is: is the obligation to translate it a part of an access to information act? If the government or an agency wants to provide an additional service, they should be commended for doing so, but I don't believe it should be in the act that you must translate the format.

MR. DICKSON: Except I took Peter's comment a moment ago to say that it could be done not at a big cost, that it wouldn't happen very often, would not be a big deal, and has been done by the federal government. I don't know whether I misunderstood you, Peter, but that's what I heard you say.

MR. GILLIS: Yeah. Sure, it could be done, but we could hand deliver all this stuff to your house, too, after you . . .

MR. CARDINAL: You know, if it's not going to be that costly, the consumers can pay for it.

MR. STEVENS: Well, I guess from my perspective, if you have people who are hearing or visually impaired, I can differentiate that from someone who perhaps doesn't speak or read English. I mean, these folks clearly are going to need some assistance with a document that is in a form they cannot deal with as a result of their handicap.

Now, Peter indicated that there is a process that has worked well elsewhere. I wouldn't mind hearing a bit more about that if we could have that between now and the next time, because speaking personally, I'd be interested in expanding the way in which we provide information if it can be done to benefit people, if there's a reasonable aspect to it so that we do not create burdensome cost and time delays associated with it. I don't see a problem whatsoever in taking some initiative if we can do it at little cost and for the benefit of people who are handicapped. I'd like to know more about it before I leap into it, because all I've got at this point in time is a general comment from Peter on that.

THE CHAIRMAN: Again, I'm going to emphasize this so that there's no misunderstanding where I'm coming from. If the service can be provided -- and obviously right now it's totally discretionary. Someone could come in that couldn't see very well and had three documents that were being photocopied, and I say: "Well, gee, you know, I've got a photocopier here, so I can put that on 10 by 14 paper. The photocopier will automatically expand it to this size, and we'll do it for you." But let's say they came in and had 300 pages of the same thing. You know, where does a courtesy service extend into something that could be a problem? All I'm suggesting is: do we want to mandate it? I mean, a good government courtesy would be that you would do that wherever you can, but I just don't like the idea of writing it into this act.

MR. STEVENS: I'm not quarreling with you. I'm not arguing the point. It just seems to me that we have somebody that has an experience in this particular area that they believe has benefited people reasonably and without additional cost. So we can get some additional information on that between now and next time, and perhaps we can assess this issue again with more information. That's really all I'm saying.

THE CHAIRMAN: That makes sense. You can get that for us, Peter? Okay.

MS BARRETT: I'm going to add something. It seems to me that even though our mandate is to be specifically recommending changes to the legislation, we've already made an observation once or twice that, you know, certain things will happen, and we'll just make sure we write it down in our report. It may be that this would be one of them, but it's not a recommendation for a specific change to the legislation.

THE CHAIRMAN: Question 32.

MR. ENNIS: Mr. Chairman, this relates to one of the mystery

areas in the act. I'm just going to carry on here. You asked me to lead into some of these topic areas where it was the commissioner's submission that touched off the question.

THE CHAIRMAN: Before you do that, John. I apologize, Peter. At noon you mentioned that you had some information you had been asked to bring at the previous meeting. I was going to give you the chance to distribute that right after we came back from the lunch break, and I forgot, so much so that I even forget what the topic was.

MR. GILLIS: This is the documentation that was asked for on fee estimates and waivers from Ontario. Gary asked for it.

MR. ENNIS: Going back to question 32 on the issue of: should there be some mechanism for bringing to closure a case in which a fee estimate has been offered by a public body and the applicant hasn't responded and the case just basically sits unactioned from that point forward? The recommendation or the suggestion is to have some mechanism to bring the cases to a close, possibly with a notice requirement to the applicant that that is happening.

There's no telling why in many cases applicants don't respond. Sometimes the fees may be more than they expected. In other cases, the very existence of a fee may be a surprise to them in the end, or sometimes they just might have other things on their minds and have forgotten that they made the request and lost track of it.

3:08

THE CHAIRMAN: Does anybody have any problems with their recommendation?

MS BARRETT: No. I think it's very good.

THE CHAIRMAN: Okay. Agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Exceptions to disclosure.

> Is the mandatory exception in section 15 "harmful to business interests" too broad, or is the 3-part test that must be fulfilled stringent enough?

There is a public submission and an IPC response, so maybe, John, I'll get you to lead us into that one too. Am I putting you on the spot by dumping all of these on you right now?

MR. ENNIS: No. No, you're not. This is very familiar territory.

The act identifies two kinds of confidentiality or privacy: the confidentiality of business information and the privacy of personal information. Section 15 deals with the confidentiality of business information and lists a three-part test, all components of which have to be on the board in order for the test to apply. The disclosure of the information must in and of itself reveal commercial information or other types of information of the third party. It has to have been received "explicitly or implicitly, in confidence," and then it has to precipitate some kind of a harm. The four different harms are laid out in 15(1)(c).

There are some counterexceptions later on where even business information doesn't enjoy this kind of shielding. That has to do later on with information that "relates to a non-arm's length transaction between the Government of Alberta and another party," or information that has to be given out through some other statute.

Going to the test, it's a test we use in many, many cases, especially where we have third parties looking to block access, to block an applicant who is looking to request information about a particular company or series of companies. We often hear from the legal counsel for those third parties, invoking the claim that section 15 requires that the commissioner prevent the disclosure of that information. It is a mandatory exception. So if it exists, it has to be used.

In terms of the public submission, pages 40 and 41 on the rollup that we have, we have a concern that the test is overly broad and that it should not apply to specific types of information; for example, loans and loan guarantees. It does apply to loans and loan guarantees the way it's set up, and I guess I can't really say very much more than that.

In the commentary that we have, Clark, Peter, and I have talked about this a little bit. There's an indication that the loan itself would not be dealt with under section 15(3). We believe it would be dealt with. So if you look at the comments section on page 41 of our summary sheet, the loan document itself would be dealt with there in an access request.

Another concern, the comment from the Consumers' Association that all the RHA contracts for services should be public and related policies fully disclosed, has to do with the tendering process. I'm not sure if that is a problem. It seems to me they would be accessible under the act. There isn't an exclusion for RHA contracts, so perhaps the concern of the Consumers' Association isn't a warranted one.

Also involved is a claim of limitations placed on disclosure of financial and business information of third parties, which severely limits the utility of the act in ensuring close scrutiny of contracts. We've had a number of contract cases. Many of them have been mediated without ever going to inquiry. It seems to be understood across this jurisdiction and others that when it comes to contracts, ballpark figures tend to be accessible. Unit costs, the things that entrepreneurs hold to be quite strategic information, are withheld. That seems to be where the harm cutoff is.

The onus in section 15 is on the third party to make the case that they are being harmed by the disclosure. Often the case they make is that they do accept that the global price of a contract they have with a public body is public business but that the unit prices that went into making up that global cost is a closely held business secret, and they would like to maintain that secrecy to ensure that they don't lose any advantages in future bidding processes. So far, that balance seems to be holding up in the act. I don't want to be any more leading than that.

Going back to the question -- is the section too broad, and are the tests stringent enough? -- I think the people who have to face the tests would say that they are quite stringent and a difficult bar to get over.

THE CHAIRMAN: So this would be another one where there's a little bit of compromise involved.

MR. ENNIS: It's interesting that these cases rarely go to inquiry. We very often mediate them through negotiation, and there's some kind of a middle position that satisfies all parties. We don't have a lot of jurisprudence, I think it's fair to say.

On section 15 we're pretty light in terms of decisions. We have yet to have a decision that's bang on on the point of the issue of significant harm. The commissioner has addressed harm amongst other things in some of his decisions, but we haven't had one that's gone to the issue of quantifying significant harm for a company.

MR. DICKSON: This is a section that my colleagues and I have had actually quite a bit of experience with. It's frequently used when we've been trying to access loan guarantees and things like

that. It just seems to me, Mr. Chairman, that when you can't even access what the interest rate is, what the maturity date is, and what the term is of a transaction in which the province of Alberta and Alberta taxpayers have financial exposure, there's something wrong.

There are a number of submissions that suggest that section 15(1) is overly restrictive. In terms of how we modify it, I guess there are different ways of doing that, and I appreciate the commissioner's perspective. I always appreciate the commissioner's perspective, but from an applicant's point of view, section 15 is probably one of the most frequently cited exceptions by public bodies to lots of the access requests I see. There are things that on reflection you'd say, well, surely the act wasn't there to deny what the interest rate would be, what Alberta taxpayers are getting for having been involved in a loan to a private-sector entity. I don't know what the position of other members of the committee is around that, but I think we have to be able to restrict section 15, limit it, modify it, because from the perspective of just speaking as an applicant and working with other applicants, section 15 is just too major a hurdle for many groups to get over.

The other thing I'd mention is that this is an area where costs are often very large as well. It may be one of the reasons a lot of these applications are abandoned: simply because many of the costs tend to be prohibitive.

MR. ENNIS: Mr. Chairman, in terms of the jurisprudence available in section 15, there is a large number of cases before the commissioner on this particular section at this point. They seem to have come in the third year, so we have them now. I would think that there are about a dozen cases in front of the commissioner at inquiry dealing with section 15 as we speak, so over the next few months there will be a falling out of a number of orders dealing with section 15. I guess that will be very educational in terms of how that section is intended to be used, but to this point we really haven't had the test. I understand from what you said, Gary, that you've got the front position from public bodies as to how that section works but not a lot of determination yet from the commissioner.

3:18

MR. DICKSON: Yeah. That's true.

THE CHAIRMAN: Any other observations?

I guess we could get into similar debate. I mean, what changes do we make or should we make from what was the intent of the original legislation? I'm sure, in any case, that you're going to get the argument that the requirements are difficult. On the other side you're going to get the same argument that they're not unreasonable. I personally am inclined to agree with what John said about the existing definition being adequate. I can see the frustrations from that, if you feel that it's being used specifically to deny you the information, but I think that when the original legislation was written, whether we or everybody agreed or not, that was the intent, that there was explicit inclusion in the act that those tests had to be in place. I'm not so sure that the criteria has changed.

Go ahead.

MR. DICKSON: Well, Mr. Chairman, if it helps to sort of focus the discussion, I'd be happy to move that

> we recommend to the government that they look at a narrowing of section 15 to ensure that information about loans made by the province of Alberta and loan guarantees given by the province of Alberta, that particulars in terms of interest rates, maturity date, those kinds of particulars would be accessible under this act.

So, in other words, modify the exception so that Albertans would be able to find out how much they're on the hook for. Whether it's Treasury Branches or a pulp mill in northern Alberta, they should be able to get that. That doesn't necessarily prejudice proprietary information on the part of the third party, but it just deals with finding out what our exposure is. I think that's pretty fundamental.

THE CHAIRMAN: Well, how would you build that into this particular section? This is a harms test. Excluding interest rates, I can't see where it comes in under this section.

MR. DICKSON: Well, the easy way is this -- and it may be a cop-out. There are lots of bright people in the Department of Justice who are going to be able to draft the legislation. I think we don't have to go further than simply make a recommendation in terms of a general principle, and then it's going to be for the bright lights in the department to look at how to craft the wording. I took your point earlier, Mr. Chairman, that we're trying to deal with broader issues here and not get caught up in the minutiae of writing specific amendments. I think my motion simply is a direction for a way of limiting section 15 in what, I suggest, is the public interest.

MS BARRETT: Specifically what you're getting at is the Alberta government or agencies that it controls and any financial arrangements it makes in either loans or loan guarantees.

MR. DICKSON: Right.

MS BARRETT: I think that would be pretty easy to do.

THE CHAIRMAN: I'd have to be a little bit concerned just on the spot here whether or not we would be opening something -- like, we were talking about interest. Does it get involved in, you know, AOC or Treasury Branches or any other lending institutions? Are we opening something that might be a problem? I would certainly be willing to look at getting some information that would give the pros and cons of that. Whether or not I'd be able to support a motion at this time, I'd have to seriously think about it.

MR. CARDINAL: I wouldn't support a motion like that, Mr. Chairman, because we do have legislation in place now not to be involved in loans and loan guarantees at this time. All the motion would do is make it retroactive for loans. All the farmers out there that have existing loans through ADC, for example, thousands of farmers, would then have to participate in a process like this. Now, maybe to you guys it's okay, but as a rural member I don't think Albertans in rural Alberta would accept something like that. But, you know, that's only my own personal opinion.

MR. DICKSON: I appreciate Mike Cardinal's advice. Maybe, Mr. Chairman, your suggestion makes sense, that we propose that the experts, having heard the discussion, look at what sort of changes could be fashioned to provide a greater degree of transparency without compromising third-party privacy. That's always a fair concern. I think that there may be a way of doing that, and you may have given us the road map, Mr. Chairman, in terms of dealing with that maybe at a subsequent meeting.

MR. CARDINAL: The reason I say that is that you may have half a dozen loans that are in existence now, but you're talking about thousands of individual loans, which include the home mortgages, the personal financial small business loans for individuals, and also the farm loans. So when you're going in that direction, then you're

hitting the individual operator out there, not necessarily the big business. There are only very few left. In fact, how many would there be?

MS BARRETT: I think Gary was saying that we don't want to look at individuals for the most part. There's got to be legislative fences to use a current handle on this.

MR. DICKSON: Don't give it too much currency.

MS BARRETT: No, I'd better not give it too much currency.

Anyway, to accomplish the kind of protection that you're looking for and to allow Albertans a peek at some of the big, big, big loans and loan guarantees that were done by past governments, I know, but still . . .

MR. CARDINAL: How many?

MS BARRETT: Well it doesn't matter. I don't know. I'd like access to the books. I would. There is a lot of tax dollars, a huge volume of tax dollars in loans. So, I mean, I'm sure there is a legislative way to do this, to accomplish what both perspectives are trying to do.

THE CHAIRMAN: Okay. I'm assuming, Gary, that by accepting the concept that we would get some more information on the pros and cons of some changes related to interest rates, you're withdrawing your motion then. Or do we still vote on your motion?

MR. DICKSON: No. I'm quite content to see if we can come back with some more information. I think we all know what's sort of at issue, and there may be more than one way to skin the cat.

THE CHAIRMAN: But you have a motion on the table.

MR. DICKSON: I'm withdrawing my motion.

MR. CARDINAL: Just one comment on it: as long as the information we're receiving is just information and not the department having to decide what we're supposed to do in the area. This is a very, very, important and critical area. The information we get is just information; there's no decision-making.

THE CHAIRMAN: Some information that would help us deal with this thing further.

I'm having a little difficulty understanding everything related to section 34. My sense is that there is a need for some simplification. If I read all the way through -- and again I apologize, Sue; I should have maybe discussed this with you a little bit more last week -- even some changes are not going to make it any less complex than it is now if a test is to be blended. Now, maybe I'm not reading this right.

MS KESSLER: That was one of the commissioner's recommendations. John, do you want to speak to them?

3:28

MR. ENNIS: I'll try to do justice to the people back home on this one. Section 16 is the heart of the act in many ways. This is the section that, when an access request is in motion, indicates the rules for giving out information about another person. So the third-party rights of individuals are at stake here.

The section has four subsections to it. The first subsection basically lays out that you breach the act if you disclose personal information about a person that constitutes an unreasonable invasion of a person's privacy.

In the second subsection it actually lists the kinds of things that are presumed to be an unreasonable invasion. The FOIP co-ordinators attempt to read that as though they are an unreasonable invasion. They take the words "presumed to be" as "is" an unreasonable invasion.

Subsection (3) gives you some things to juggle in your head when you're thinking through whether or not you really do have a case of unreasonable invasion or whether you have some factors here that would push you to disclose the information anyway; for example, if somebody is making an aboriginal land claim or something like that. Those would be cases where despite the fact that disclosure of the information to an applicant would be an invasion of somebody's privacy, it isn't unreasonable if subsection (3) is active.

Then in subsection (4) it gives a whole lot of counterexceptions where you wouldn't recognize somebody's privacy rights, and these tend to be leveled at public servants: things like, for example, a public servant's job description, a public servant's set of duties. Someone who receives a licence or permit or other similar discretionary benefit from the government wouldn't have privacy rights under subsection (4).

There's a lot of confusion as to what would constitute a challenge to the presumptions in subsection (2). I'll go back to the example the chairman used about an hour and a half ago, when he distributed a paragraph of thoughts on this issue, the issue of educational history. To disclose somebody's educational history is presumed to be an invasion of privacy. Are there cases in which that isn't true, where you could disclose someone's educational history and there would not be, in effect, an invasion of their privacy? That's something that's left to the FOIP co-ordinators to work through. Of course their first recourse is to simply read: educational history, automatically it's an unreasonable invasion of privacy.

I guess the difficulty in the writing of section 16 is that it doesn't bring you to that point where you get to test the presumptions. It establishes them for you. It doesn't give you very much in the way of philosophy around what is an unreasonable invasion of privacy, so it doesn't allow for someone to develop their own test as to what's an unreasonable invasion. It just tells you that these are presumed, but it doesn't tell you what would be adequate criteria to go against that presumption.

Another issue, too, is: do you have to go through sections 16(1), (2), and (3) before you can deal with an issue in 16(4)? That's the subject of a current inquiry that has to do with licences. So in a sense there are some architectural issues with section 16(4). It's the heart of the act, though, and some of the valves don't seem to line up very clearly with other valves. I guess that's the issue in it.

THE CHAIRMAN: Now, having said all of that, which I have to admit I totally understand . . .

MR. ENNIS: If you do, you're a little ahead of me on this one.

We bump into it, and you get moments when people say: "Aha. I see the problem now." An example might be if a document relates that someone is the fire boss of a coal mine, and everybody who works in the coal mine knows who the fire boss is. The fire boss is part of that individual's employment history. Does the FOIP co-ordinator sever off reference to the fire boss's job title because that's a personal history of the individual, or does the FOIP co-ordinator say: "Sure the act tells me that that's presumed to be an unreasonable invasion of his privacy, but everybody

knows he's the fire boss. What's the point of taking it off the document?" If the document says that the environmental inspector spoke to the fire boss, it renders the document sort of silly to take that information off. Some of the departments that I work with have maybe taken the gamble of leaving some of that information on documents so that the documents have some meaning to the people who request them, especially when they're dealing with company officials, just to make it clear who they're dealing with.

THE CHAIRMAN: Okay. My question, though, just about the time I made that facetious comment, was that we're kind of understanding the problem, but what is the solution? I mean, here we're talking about a recommendation to simplify, but do we have some kind of suggested wording that would do that, or is it sort of a hypothetical suggestion?

MR. DALTON: Ms Barrett is ahead of me here in line.

MS BARRETT: No. That's exactly what I was going to ask. So go right ahead. Take it away.

MR. DALTON: This is probably one of the more important sections of the act, if only because it deals with people's personal information that we have as government. What we've done, therefore, is tried to be as comprehensive as possible when someone makes an access request in relation to personal information. So that's why it looks complex, and that's a natural product of trying to be as comprehensive as you can. The option is of course to just simply say, "You can't have access to personal information if it's an unreasonable invasion," full stop. So we tried to be helpful here.

Now, the reason we built in presumptions was that these are the kinds of situations where in ordinary life you'd say: gosh, that's personal information, and that shouldn't be released by the government to whomever. But it allows the opportunity -- and this is the law -- for the other side to say: yeah, but this is a different situation.

Let's take your example earlier on of the class list. They could make an access request for a class list that everybody knows about, and I guess what I want to underscore here is that when we're operating under this section, we have to operate under common sense. I believe this was raised earlier by Denis. You know, when you're dealing with this, you've got to be sort of the average person thinking: well, what would you think? If you think, "Gee, everybody knows this," and they've made a good case to me that everybody knows this, then we should give that out.

But take the example of the same situation at a school where there's a single parent who has sole custody of a child and there's some information about that child in his school that the other parent wants to get at for purposes of doing something. They have no access rights or something of that nature. They're trying to get the information. You assess that information and say: "Gosh, no. In these circumstances I don't think I want to give this out. I think the presumption is there, and I haven't had a good case made to me that I should be giving it out." It's common sense.

Now, if they make a mistake, there's still a provision in the act that says: look; if you act in good faith, nobody can even bring an action against you for breaching the act or anything of that nature. What can happen is that if the commissioner happens to disagree with you, well, at that stage then we have (a) some law and (b) some remonstration from the commissioner himself that you've done something wrong. But I've never really seen a problem with this section. I've always thought it was quite helpful. It's just that the fear of doing something wrong maybe has got into co-ordinators. I think the rule should be: look; just use common sense in this, and if you're worried about liability or whatever, that's certainly covered in the act.

THE CHAIRMAN: Can you write that legally into the act, to just use common sense?

MR. DALTON: Well, I thought that's what it was meant to do.

Furthermore, when we have these presumptions, the law is generally that if there's a presumption, the other side has to overcome that presumption. So they have to give you facts, and you weigh them as a co-ordinator as to whether one is better than the other. Again, it's common sense.

If people are saying, "We don't want to operate on that basis," then that's a different story. That's when people are saying, "Look; we want to give away our powers under this act and make someone decide for us." That's a policy decision which would then, I think, bring you back to what I said earlier. If you wanted to make the commissioner make all the decisions, just make the section really simple. If it's an unreasonable invasion, then make the commissioner decide in every case.

I think it's a workable section. I don't have a lot of problems with it. I didn't like where subsection (3) is. I thought it should be at the end, but that's only structural. Other than that, I don't have a lot of trouble with this particular section.

3:38

THE CHAIRMAN: I'm not sure that we then still have a solution.

MR. DALTON: I'm not suggesting a solution. The solution is the status quo.

THE CHAIRMAN: Your suggestion is to just leave it, which is different than what the IP Commissioner is requesting. When I see something like make something simpler or make something clearer, my ears perk up, and you know, that always sounds like a good idea. We obviously have a slight difference of opinion here as to how it can work though. John said one thing, that there is a problem, and you're saying that from the legal point there isn't, but I guess there's still a question. If one was to accept -- and I'm using the word "if" -- that there is a problem, is there a way that the wording could be done to simplify it, or are we playing with semantics?

MR. DALTON: I sort of skirted that issue, if I may, Mr. Chairman, and that is this. In the drafting world if you want to make it clear, you make it longer, more precise, which makes it longer. It has more detail to it. If you want to make it simpler, then you use less detail but lose the certainty. So it gets back to my saying that I think it's clear because of the amount of detail we've used and the tests we've used. It's presumed, but someone else can just make a better case, and if you agree with them, then you can give it out. If you want to simplify it, you just simply say: if it's an unreasonable invasion, then you can't give it out. But that makes it uncertain. When is it an unreasonable invasion? So what we've tried to do is balance those two in the section as it now stands, and I personally think that it works.

MS KESSLER: I was going to suggest that possibly the technical team could take this one back and see if we can come up with some ways to possibly simplify it, which we could bring forward to the committee for the next meeting.

MS BARRETT: My question was to John. Did the IPC office have any specific wording recommendations that would help you people in that office in particular and all the co-ordinators feel like

they're in less of a pickle than they sometimes feel?

MR. ENNIS: No, not that I've seen, Pam. This suggestion on essentially the architecture of section 16 comes from the legal counsel in the office who work with it when they are assisting the commissioner in the crafting of orders. In fairness to them, I don't think they would be satisfied to have me speak to the submission on this point. There is, I hope, an opportunity for the commissioner and/or the director of the office to be speaking later on in this process, and what I can do is raise this as an issue that either Frank Work or Bob Clark should be addressing as part of the commissioner's submission. I don't really feel confident in my explanation of it.

MS BARRETT: That's fine. Thanks.

THE CHAIRMAN: Sue is suggesting that we bring this back to the next meeting with a little bit more -- I'm not sure -- consensus or a little more clarity on what did happen. I think the last 15 minutes of this meeting is getting too complex.

Are we going to get into a similar kind of discussion on 35?

> Should section 16(4)(g) be eliminated or be amended to limit disclosure of personal information related to the receipt of a licence, permit, or discretionary benefit?

This also comes from the commissioner's office.

MS KESSLER: Both 35 and 36 I think are quite complicated; 37 is probably relatively easy to deal with.

THE CHAIRMAN: I just didn't want to get into something that was going to take more time than we have left. Mike has to leave at 4 o'clock, so I was intending to adjourn right on time. We can stop almost anytime.

MR. DICKSON: Can I suggest we deal with 37. I think Sue has signaled that we can probably deal with 37 with dispatch, and we may not be able to deal with 35 and 36 before 4 p.m.

THE CHAIRMAN: Okay. I think 37 is just a technical rewriting. I don't think there's any debate on that. Is there consensus? Agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 38. "Should criminal intelligence records have a specific exception from disclosure in the FOIP Act?" Does it need it?

MR. DICKSON: No.

MS BARRETT: Yeah, that would be my instinct too.

MR. DICKSON: Paranoia. It's been this way, Gary, since 1993. The Alberta Association of Chiefs of Police, you remember, have made all kinds of representations. They have all kinds of concerns around the act, and I've got to tell you, many of them are reading it differently than I am. Unless somebody can show me where the act's deficient, frankly I think section 19 is one of the broadest exceptions we have now in the act. It was deliberately written broadly to allow law enforcement activities to proceed unencumbered. I just don't see the lacuna; I don't see the gap in the legislation.

THE CHAIRMAN: From the submissions that were received and I guess from the legal and the administrative points of view, is there some basis for their argument, or is it a misinterpretation?

MS KESSLER: Well, the police community very much think that it needs to be done. We have checked with British Columbia, and they have made an amendment of that nature as well. The police services are included in FOIP in B.C.

MR. GILLIS: I don't know what the amendment is, though, just that they're included. I guess we could look at that amendment.

THE CHAIRMAN: If there's legitimacy to their concern, that's one thing. I wasn't sure whether this was one that someone was misinterpreting or whether there was a basis for some concern.

MR. ENNIS: As I understand the concern, they want to be able to except from disclosure information relating to criminal intelligence without having to apply a harm's test to it, so they don't have to prove that the disclosure would harm any particular law enforcement matter. Is that how people are reading that?

The act currently would require that they meet the gate of section 19(1)(a). Criminal intelligence operations information would be within the definition for 19(1)(a), but they would have to show someone that disclosure of this record, this report on whomever, would actually harm some kind of law enforcement matter. I guess the difficulty in police work is that criminal

intelligence often isn't targeted towards any particular law enforcement matter. It's targeted towards an apprehension of potential crime down the road or something.

MR. DALTON: An example being gang intelligence.

THE CHAIRMAN: So there might be some valid argument that there should be an exception.

MS KESSLER: We have just found the B.C. amendment. It enables an exception to disclosure if it would

> reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities.

MS BARRETT: Well, that's much clearer than this recommendation. You know, you protect criminal intelligence under a blanket and all the reporters who were advised that their wires were being tapped at home and at work and everything else would have absolutely no ability to get to the bottom of which policeperson was in charge of deciding which reporter was going to have their phones tapped and stuff like that. My feelings are somewhat ameliorated by the second part of what you just read out, because it does specifically say: related to investigations that are likely to lead to the bad guys involved in organized crime.

3:48

MR. ENNIS: The impact of an amendment like that is that it gives the independent review of the commissioner some criteria to work with in testing whether or not they're onside or offside with using that exception.

MS BARRETT: What I was saying, though, is that the specific language makes all the difference in the world to this request. You can see the police saying: hey; we don't want to get looked at under FOIP. My natural instinct is to say: too bad.

MR. DICKSON: A few minutes ago, Mr. Chairman, you were talking about the importance of common sense. I think sometimes what happens is that people who haven't had the benefit of looking at the commissioner's rulings over the last two and a half years or so are nervous that there's going to be some wild, unreasonable decision made by the commissioner. I think people who look at the commissioner's rulings find that the office is being quite cautious in terms of adequately protecting the needs of government/public bodies and so on.

If there's a problem down the road, we have the opportunity to address it, but I'm loath to expand section 19 more broadly than it is now, particularly when there's no compelling, cogent argument, I submit, that it can't do the job currently.

THE CHAIRMAN: Well, I'm hearing a little bit of an argument here, particularly in light of the section that Sue read out. If there is the kind of exception that B.C. has introduced in theirs, I think that circumstance would be valid. It may need to be fenced in a little bit more than just the general, open statement. Again, I think we're in the situation where this has just now arrived at the table, and maybe we want to think about the implications of that.

MS BARRETT: I just want to say to the members of this committee that I don't think there's anything the matter with accommodating any of the administrators' need for a comfort zone, whether it's spelling something out more than it's been spelled out or, as Clark suggested, getting shy and vague on stuff. If we can facilitate a comfort zone, I don't see any harm in that.

THE CHAIRMAN: Could we maybe have you folks look at that a little bit in light of what B.C. has done?

MS KESSLER: We can contact B.C. to find out their experience with it and what led to that kind of amendment.

MS BARRETT: That would be interesting.

THE CHAIRMAN: We're just a few minutes shy of 4 o'clock, and we're getting into a handful of these things that are similar. I'm going to have to admit that both my top end and bottom end are running into a severe exposure problem.

MS BARRETT: Okay; a motion to adjourn. Is that what you wanted?

THE CHAIRMAN: That's what I really would love to have. All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: The motion is carried. We're adjourned.

[The committee adjourned at 3:52 p.m.]