Title: **Monday, November 2, 1998** Freedom of Information Review Committee
Date: 98/11/02

10:05 a.m.
[Mr. Friedel in the chair]

THE CHAIRMAN: Well, we're five minutes late, but I think we have enough that we can call it a quorum, so I'll call the meeting to order.

Everybody received the agenda. Can we have someone move that the agenda be approved?

MR. CARDINAL: I so move.

THE CHAIRMAN: Moved by Mike. Any questions or discussions on this? If not, all in favour? Carried.

We have the minutes of the October 20, 1998, committee meeting. Can we have someone move approval?

MR. DUCHARME: I so move.

THE CHAIRMAN: Moved by Denis. Any discussions or errors or omissions, whatever happens to minutes? If not, all in favour? That motion is carried.

So we now go on to today's agenda item, which is essentially more review of issues. What I thought we'd do is continue from where we left off last week. This pile of paper is getting so big, and this is only the part that I felt necessary to bring along.

We had left off last time at question 38. If you will look at the back of the document that you received with your agenda, you will see some additional background information. This was one of a couple of questions we were getting a little bogged down on, options and what was happening elsewhere, so we asked Sue to prepare some information as to what is happening elsewhere.

The question is: "Should criminal intelligence records have a specific exception from disclosure in the FOIP Act? (s. 19)" The document that's attached leans towards the B.C. model of three that were proposed. Actually there were four proposed, I guess, including the Canadian one. This does look kind of logical. I think it would be something that we could consider. Do we have any discussion on that?

MR. DICKSON: Mr. Chairman, I'm persuaded, having looked at the way British Columbia dealt with it. It seems to me to be reasonable and sort of a measured response or approach to that particular issue, so I'm happy to see us in effect do what's been done in British Columbia.

THE CHAIRMAN: Okay.

MR. STEVENS: Agreed.

THE CHAIRMAN: Hey, you won one, Gary.

MR. DICKSON: Maybe this will become a bit of a habit, Mr. Chairman.

MR. CARDINAL: Did you lawyers have a caucus before or what?

THE CHAIRMAN: Okay. There's consensus that the recommendation would include something along the lines of the B.C. model.

MR. DICKSON: Mr. Chairman, let me apologize for being late, and you may have already addressed this. There were a large number of things outstanding at our last meeting when we went through, things that required additional information, further advice, further input. Were we going to deal with those things off the top or sort of go through the original sequence and then pick them up at the end? What's the scheduling there?

THE CHAIRMAN: We're going to go through the rest of the questions and then come back and start over with those that were deferred.

MR. DICKSON: Okay.

THE CHAIRMAN: As a matter of fact, you'll note that the document you received essentially starts on number 38 and then towards the end goes back to the unfinished items. On the left-hand margin of that document you'll see a few notes that relate to either earlier discussion or in some cases are suggesting a deferment because there's still some additional information coming.

Question 39 also has a supplement paper. Same kind of a situation, regarding unsolved investigations. The backgrounder shows what is happening also in three provinces plus the Canadian act. There is a recommendation, if you look in the italicized section just above the little box on the bottom of the paper, that is modeled along the Saskatchewan situation but is a slight variation from it. I'll throw that out for discussion.

MR. STEVENS: Looks fine to me.

THE CHAIRMAN: Okay. Would we all be in agreement that a modified version of the Saskatchewan situation would be an acceptable recommendation?

MR. DICKSON: Mr. Chairman, with respect, it seems to me the Saskatchewan one is the widest of the scenarios. As I look at Manitoba and Ontario in particular, they've attempted to give some clarification and some further definition to the scope. I'd much prefer that we look at either section 14 in the Ontario act or section 40 in the Manitoba one. There's no requirement in terms of a reasonable expectation of harm, a reasonable expectation of interference. I just think the discretion is broader than it ought to be.

I see we've got Donna Molzan from the Justice department. Perhaps I could ask Donna, through you, Mr. Chairman, whether adopting, say, the Ontario standard is going to in some way unfairly hamper or impair law enforcement activity in the province.

MS MOLZAN: Mr. Chairman, looking at the different options, I quite honestly am not exactly sure what the concerns were of the police services and why they would pick, versus that of Ontario, which just talks about interfering with an investigation undertaken with a view to law enforcement proceedings, the specific wording: an incomplete or unresolved law enforcement investigation. So quite honestly at this point I'm not sure exactly why the concern was raised. I could discover that and come back with further comments if you wanted to review this at another time or on the next date. I don't feel I can intelligently comment on why they would be concerned with that wording.

THE CHAIRMAN: Okay. What does the rest of the committee feel? Do you have enough information from what's available here, or do you want to defer it and bring it back at the next meeting?

MR. WORK: Mr. Chairman, I'd just remind the committee or suggest to the committee to keep in mind the definition of law enforcement as it presently exists in 1(1)(h). It's pretty broad: "investigations that lead or could lead to a penalty or sanction," and "proceedings that lead or could lead . . ." I just point that out to say that you might have a belt and braces kind of situation. You might be covering the same thing twice, given some of the legislation in the other provinces. I don't know how they've defined law enforcement, but the wording in, say, Ontario's and Manitoba's looks pretty similar to the definition in our act, so we may have some of that there already. Other than that, I'm not prepared to say that you do or you don't, but it just occurs to me that the definition looks quite similar.

10:15

THE CHAIRMAN: Okay. If we're going to defer this, then maybe we can have some comments both from Justice and the commissioner's office as to the desirability of the change, and then we will defer it to next week.

Because there are a couple of technical support people here that aren't normally at the meeting, I'll maybe remind you that as we're going through the discussion, feel free to offer your comments or questions at any point. You don't have to sit back and wait till you're asked, because you're here to help us in case we slip off the slippery centre line. Also, if there are either some concerns that you have representing the agency you're from or some additional background information, we'd welcome it. So wave your hand at me or whatever it takes to get my attention. Refrain from throwing coffee cups, but anything else is fair game.

MR. WORK: Thank you, Mr. Chairman. Actually, I was probably remiss at the beginning. I'm sure the committee has already met Lisa Wilde from our office, but just in case -- it's been a while -- Lisa's on my left. She's counsel with the office of the Information and Privacy Commissioner, and she's been taking the functional responsibility for the review of the act. So thank you for that.

THE CHAIRMAN: Okay. Number 40. We're suggesting that it be deferred until next week because there's still more information coming.

Number 41.

> Should any consideration be given to reducing the time frame of 15 years after which the mandatory exception to disclosure for Cabinet and Treasury Board confidences, advice from officials and local public body confidences no longer applies?

I'm going to advise committee members who were not around in 1994 that this was a significant item of debate, somewhat contentious the last time around. The 15 years that's included in here was already something of a compromise. I forget whether the original recommendation was 25 or 30 years, and the 15 years was a compromise at that time. I'm not sure that expanding it any is going to change the scope of any discussion. You're going to have as many arguments one way as the other as to whether 15 years is too short or too long or just about right, and my suggestion, as a carryover from the last debate, is that we leave it at 15 years.

Okay, Gary. I'm expecting that your earlier suggestion was something much shorter than that. I'll accept your comments.

MR. DICKSON: Thanks. Well, in fact this is one of those times where I take advice from the Canadian Taxpayers' Federation, from the Marigold library system, and the Alberta Civil Liberties Research Centre. All of those three organizations addressed the question.

The Canadian Taxpayers' Federation had a couple of interesting recommendations. One was to reduce the 15-year exemption from 15 to five years. They also suggested that it didn't make sense to have local public body confidences that went on as long as they did and suggested they be shortened to three years except in a case where the documents would reveal confidences from a senior level of government. In that case sections 21 and 23 would apply in any event. Also, I noticed that the Marigold library system had talked about five years being more appropriate than 15 years.

I'd say, Mr. Chairman, that we've had some experience with the act now that we didn't have in 1993 when the Premier's all-party panel made its recommendations. To reflect what a significant number of Albertans would like to see, I think we should be looking at reducing the time rather than just arbitrarily talking about it. I mean, if there's somebody who thinks that there's some great prejudice, some irreparable harm that's going to be done to the province of Alberta by an extra 10 years of keeping these documents sealed, I'd like to hear the arguments. It seems to me five years gets the government past the political embarrassment of the next election, and beyond that, I think that five years should suffice. So I'd be interested in hearing the contrary arguments.

THE CHAIRMAN: The one observation I'm going to make is that there are reasons other than simply political embarrassment. I can appreciate that some people may assume that political embarrassment is a strong lever, but I think there are hopefully a lot more valid reasons for deferring it than simply that. But having gone through that debate quite extensively a little over three years ago, I still stand on my suggestion that this was a compromise of the day, and it's probably not going to get much better than that. Either way you're going to have people debate that it was the wrong decision, depending on which side you stand. The compromise is simply that. It's somewhat arbitrary but nevertheless a solution that keeps everybody a little bit happy and a little bit unhappy.

Any other comments?

MR. STEVENS: Well, on the material before us my observation would be first of all that 15 years appears to be on the low end of the time lines. It's certainly less than the feds' and certainly less than Ontario's, and in the scheme of comment from the public there was relatively little on this particular point. So it seems to me that it probably has been working reasonably satisfactorily.

THE CHAIRMAN: Perhaps on this issue, because we know there's going to be divided opinion, there should be a motion.

MR. DICKSON: I wonder, Mr. Chairman, if there could be two. Because it's been suggested that we treat local public confidences different than cabinet and Treasury Board, can we have two votes? The suggestion has been made -- and I think it's persuasive. Treating local public body confidences as being wrapped up for 15 years as secrets seems to me to be all out of line with the scope of responsibility they have and the kinds of decisions they're making. So I'd suggest two separate votes.

THE CHAIRMAN: Okay. We can handle that.

Can we, then, have a motion to deal with exceptions to disclosure for cabinet and Treasury Board confidences?

MR. DICKSON: I'd be happy to move, Mr. Chairman, that

> the exemption period for cabinet and Treasury Board confidences be reduced from 15 years to five years.

THE CHAIRMAN: Okay. Your suggestion is that we change the

cabinet and Treasury Board confidences as well. I think we've probably depleted discussion. All in favour? Opposed? I guess I have to break the tie. Opposed.

MR. DICKSON: I'd move a second motion then, Mr. Chairman, dealing with local public body confidences, that

> the exemption in respect of local public body confidences be abridged to three years with a discretionary exemption where documents would reveal confidences from a senior level of government.

THE CHAIRMAN: Okay. Can you clarify what you mean by that second part?

MR. DICKSON: Well, I think that if we say that there's a confidence period that applies to activities of the provincial government, then you shouldn't be able to do an end run around it by accessing documents at the municipal level that would be still sealed at the provincial level. This is consistent with the recommendation from the Canadian Taxpayers' Federation.

THE CHAIRMAN: Are there any possibilities of implications other than what we would see here that would cause us to want some additional information or some further explanation of what could happen? I'm sort of accepting your argument that the kinds of things that local public bodies deal with are probably not of the significance of those that would be handled by cabinet or Treasury Board, but is there a possibility that this end run situation or something like it could cause some problems? I'm looking a little towards the technical people in this regard for some insight.

10:25

MR. DICKSON: Mr. Chairman, you could argue that the qualification I tacked on to my motion may be even redundant because you have sections 21 and 23 already that provide a measure of comfort.

MR. WORK: Mr. Chairman, I'm just trying to think of an example to answer your question. Suppose a municipal council votes to implement a transportation plan, and they do this in camera. The transportation plan is to be implemented over 10 years, and it's to involve the purchase of certain lands for right-of-ways and so on. Now, that kind of information would legitimately be withheld from the public, because for them to give away the notion of where they're going to build this thing would escalate land prices and stuff. So there would a legitimate expectation, I think, that they could keep that to themselves for a period.

I don't work for municipal government, so I don't know how much of that kind of thing they do, but it seems to me that councils may plan those kinds of things more than three years in advance. It's not a certainty on my part; it's just a question that councils, in order to do their planning for those kinds of things, may need a certain period of time.

THE CHAIRMAN: The other thing that comes to mind is that those things that a municipal council can do in an in camera meeting are very restricted anyway. They're basically discussing background information. There isn't a whole lot of record of what goes on there anyway, because anything that comes out of it, any resolutions and any action from it, must happen in open council.

MR. WORK: Mr. Chairman, I'm not sure they'd need 15, but I'm thinking they might need a little more than three. That's, I guess, where I come down at the end of the day.

THE CHAIRMAN: That's my inclination, that three might be a little bit tight.

MR. DICKSON: I'd be happy to revise -- the three is somewhat arbitrary -- if people are more comfortable with a five-year restriction. I appreciate Mr. Work's observation, but what we're talking about is something where there's no harms-based test applied. It's just, if you will, an indiscriminate exception of everything that's dealt with. We have a whole series of fault-based exceptions, and I can think of two or three that would apply in the situation that Mr. Work just raised. We've got to remember that what we're talking about is a blanket exception -- it can't be accessed -- and the local public body doesn't even have to meet the test of showing that there's going to be some harm. I'd be happy to substitute five years for three years to address that concern you raised, Mr. Chairman.

MR. WORK: Mr. Chairman, I have to quickly concede that Mr. Dickson is right. With the example I gave, there certainly is a separate exception to disclosure for harm to economic interests which may well cover that.

THE CHAIRMAN: I saw another hand. Yes.

MS SALONEN: Just a comment to compare what we have with other jurisdictions. Right now 15 is the lowest number of years in B.C., and it goes to 20, 25 in Saskatchewan.

THE CHAIRMAN: Does anybody feel uncomfortable about dealing with this now? Is there a chance that there would be other information brought forward with a little bit of research, or would five years be a reasonable limit on municipal and other public bodies?

MS BARRETT: Mr. Chairman, I have no problem with going to five years, and remember, these are recommendations that we don't know will be adopted. I always operate on the assumption of nothing ventured, nothing gained. If the local authorities react vehemently, then we'll get wind of it, but right now I think it would be appropriate to go to five years. So I'll move the amendment to Gary's motion, amending the exemption from 15 to three to five years; in other words, replace his three with five.

THE CHAIRMAN: Gary actually changed his motion, dealing with local public bodies, to five years.

MS BARRETT: Oh, did he do it himself?

MR. DICKSON: I intended to.

MR. STEVENS: Mr. Chairman, speaking personally, I'd like to see some further reflection on this particular point from the perspective of a local public body. I guess that's my way of saying that I'd like to see if there is further comment to be made on this particular point.

THE CHAIRMAN: Sue, would it be possible to very quickly get a little bit of feedback, whether it's from AUMA or somebody like that? Is there a possibility of some problems? I'm reading that there is sympathy and support for the concept of five years for local public bodies but just to make sure we don't step into something that we hadn't anticipated. A quick look at it and bringing it back next week would be a good idea.

MS KESSLER: We could certainly do that. I think I could probably canvass the city of Edmonton and the city of Calgary, who are likely to have the most substantive issues, and bring back their feedback.

THE CHAIRMAN: You know, barring any strong reason to do otherwise, that seems to be the tone of where the discussion is heading. Question 41 is divided. The 15 years as it relates to cabinet and Treasury Board in view of the lost motion would remain unchanged, but we will be getting some advice dealing with the second part of it at next week's or the earliest possible meeting.

MR. STEVENS: Mr. Chairman, I wasn't hanging on each of the words that Gary was using in his motion, but the way I read the legislation, there are in fact three places where a time limit appears. I don't know whether Gary's motion spoke to the other two or whether it was restricted to the local public body, but you end up having another time limit relative to section 23(2)(a), where "15 years" appears again. So when you look at the material in front of us, where there's a summary of issues, you have "Cabinet and Treasury Board confidences," you have the "local public body," and then you have "advice from officials" as a third time line.

THE CHAIRMAN: Okay. If it's advice from officials relating to cabinet and Treasury Board, it stays with that part. Local public bodies is a separate entity, I guess.

MR. STEVENS: That's fine, if that's what we were doing. But just as a matter of clarification there are in fact three spots where the time line appears.

THE CHAIRMAN: Question 42. This is requesting a clarification.

> Should section 23(1)(f) be clarified to stipulate that the exception to protect agendas or minutes of meetings applies only to the governing body of agencies, boards, commissions and other . . . bodies listed in the FOIP Regulation?

Obviously there's some question as to does it extend beyond that? If there is some doubt, it wouldn't hurt to have clarification that the intent is that it only applies to those bodies listed in the regulation.

MR. DICKSON: It sounds like a positive suggestion, Mr. Chairman.

THE CHAIRMAN: If there's doubt, I think clarification never hurts.

Is there anything other than that, Sue, that would be raised?

MS KESSLER: No. It really was intended to narrow it so that it just couldn't be any meeting of any body.

10:35

THE CHAIRMAN: Okay. So is there a consensus that the clarification would be in order?

HON. MEMBERS: Agreed.

THE CHAIRMAN: It's agreed.

Yes, Frank.

MR. WORK: Mr. Chairman, can I ask: if it's restricted to governing bodies of agencies, boards, commissions, is that intended to include subcommittees of those governing bodies? I'm trying to anticipate what kind of thing might wind up in front of the commissioner. Let's see: an agency, board, commission. If the Cancer Board has a subcommittee, is that a local?

MS KESSLER: It's a local. This is to cover the board of governors of the Workers' Compensation Board as opposed to any other committee or whatever that's part of the WCB, which is in essence what it would cover right now.

MR. WORK: Okay. But there's no question that if the board itself broke into a couple of subcommittees, the intent is that they would still receive this coverage.

MS KESSLER: That's correct.

MR. WORK: Okay. Thank you.

THE CHAIRMAN: If we're talking about clarification, I'm assuming that would be addressed in the clarification.

We're suggesting that question 43 be deferred until number 1 is resolved, or we'll do it at the same time.

Question 44.

> Should the protection for the priority of publication of research information apply only to "scientific or technical research information" or be broadened to make it clear that priority of publication of all research information is protected?

We discussed this very briefly. I have to admit that I don't remember exactly the outcome but that there was a consensus this was a fairly reasonable request. Refresh my memory, anyone.

MR. DICKSON: My recollection, Mr. Chairman, is there had been a concern raised by universities in terms of whether research done in the area of the social sciences and that sort of thing, that doesn't have what might be described as a technical or a scientific basis, was covered. I think I remember reading that in the U of A submission, and it seems reasonable. I think what we discussed at the time was that that was the intention, as best we could determine, of the original exception, that it wasn't to be narrowly confined to simply people doing scientific and physics research but also people doing sociology and sort of the soft sciences, the social sciences.

THE CHAIRMAN: So there's a consensus that this be expanded to include all research information? Is there a consensus?

MR. STEVENS: I agree with using the broad approach.

THE CHAIRMAN: All agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. Number 45 we're asking be deferred to next week because we have more information coming on that.

Number 46.

> Is an amendment required to clarify that standardized tests used in schools, such as intelligence tests, are included in the exception to disclosure for testing procedures, tests and audits in section 25?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Now, Clark was supposed to have a little bit more information for us. Did anyone bring some elaboration on that section?

MS KESSLER: I believe we discussed it, and we believe that standardized tests are already included in the definition because

it's quite a broad definition, including testing or auditing procedures and techniques.

THE CHAIRMAN: I think that one of the questions that would be raised as well is: is there a definition for standardized tests? Am I correct in that?

MS KESSLER: I think we had discussed it. It may be very difficult to define that, if we were to add it in.

Frank, do you have an opinion on that?

MR. WORK: I think we understand the need for the exception to disclosure to apply to standardized tests. Just looking at 25, is the concern that 25(a), because it groups testing and auditing together, might somehow be read more narrowly? Is that the issue?

MS KESSLER: I think they wanted to be a hundred percent sure that standardized tests were included. I'm not sure that they have elaborated on their concern.

MR. STEVENS: I'm just looking at the material that summarizes this point. It seems to me that the comment is that the section was intended to cover such standardized tests. If this is not clear, an amendment may clarify this. The Alberta School Boards Association's recommendation was that it should clearly specify an exception for standardized tests. So from my perspective, why don't we just do it? Then we don't have it as an issue.

THE CHAIRMAN: Okay. Further discussion? Would everybody be in favour of adding some clarification to ensure that standardized tests are included? All in favour? It is agreed to.

Number 47 is asking for a technical amendment.

> Should a technical amendment be made to section 26(1)(c) to include the provision of legal advice or legal services directly by the Minister of Justice and Attorney General as solicitor-client privilege?

Any problems with that?

MR. DICKSON: Well, after Bill 26 we may want to look at it a little more closely, Mr. Chairman. I'm not sure that it's not already covered. If the Minister of Justice is giving advice to his cabinet colleagues, it's a cabinet confidence. I don't know how often the Minister of Justice is personally going around offering legal advice to somebody other than his caucus colleagues. If he is, it would maybe raise a whole series of other questions and concerns.

THE CHAIRMAN: We're talking here about "the provision of legal advice or legal services directly by the Minister of Justice and Attorney General."

MR. WORK: I tend to agree with Mr. Dickson. The existing provisions certainly would protect staff lawyers in the Ministry of Justice who are asked to give opinions to other public bodies within the government. Certainly if the Attorney General were to give advice to cabinet or something, it would make it easier in applying the act to be able to distinguish the pure legal advice situation from the pure advice as a member of cabinet situation. The proposed amendment seems to maybe blur that line a bit, and I'm not sure that it would be very helpful to anything. I mean, if he's giving a legal opinion outside of cabinet, it's solicitor/client privilege. If he's giving advice in cabinet, then it's cabinet confidence.

MR. STEVENS: Perhaps we might have some explanation from the technical support staff who made the recommendation.

MS MOLZAN: Mr. Chairman, I think that basically, as has already been discussed, it is a case where the minister himself may be giving that legal advice as a lawyer, and certainly the way it reads, it doesn't cover that right now. There may be situations where the minister is trying to give advice or other services that potentially may not be covered by some of the other sections and may not fall into strict solicitor/client privilege. Certainly section 26 is intended to be somewhat broader than simply strict solicitor/client privilege situations when you consider (b) and (c) and how it provides some further protection.

There may be times when the minister is giving certain legal advice or whatever to a police force directly or some situation like that, which may not fall into one of the others but where most individuals would consider that to still be a legitimate provision of advice by the minister. I believe that section 26(1)(c) -- and Frank could perhaps correct me on this -- has not been used extensively in the past. Generally it does fall under solicitor/client privilege, but if a case does arise that is legitimate, it may be a hole where the minister can't be providing that advice himself, which does not seem to be necessarily logical. If one of his lawyers can provide that advice and be protected, why shouldn't the minister himself as a lawyer be able to provide that advice and be protected? So I guess it's just covering the bases. I don't think this is something that would be used a great deal, but it may not be logical to leave him out because he's the lawyer for the entire province.

10:45

THE CHAIRMAN: That's sort of the way I understood it too, that if we're doing some clarifications in the act where there may be situations that haven't been considered before or possibly could arise, now is the time to put in clarifications. If it's used very, very seldom, that's as often as it would apply, but if there's reason to believe that it could occur strictly under these conditions, now is the appropriate time to deal with it.

MR. DICKSON: Mr. Chairman, let me start off by saying that I'm a bit gun shy when it comes to solicitor/client privilege. The reason is that I remember seeing the minutes from meetings of FOIP co-ordinators, and the minute somebody from the Justice department comes in and starts giving advice, which is what they're paid and hired to do, all of that becomes exempt. This is a section that's capable of -- I'm not saying that it's abused in that case, but it's a huge blanket exception. This lawyer is different from every other lawyer in the Department of Justice and every other lawyer working for the government of Alberta. He's a politician; he's a public person. I don't want the Minister of Justice going to speak to the Canadian Bar Association, Alberta branch, offering advice in terms of a section, a recent Supreme Court of Canada decision, and if I'm the Justice critic or just an interested Albertan, when I go to find out what the minister's comments were, have somebody come back saying: well, he was giving legal advice to the Canadian Bar Association. If he meets with the Canadian Diabetes Association and offers advice on some Alberta statute, would our view be that that should be nondisclosable, that that should be secret?

To my mind, what we're talking about doing is making a change which goes under the argument that this is clarification. Frankly, it creates an enormous potential for abuse, not that the current Minister of Justice would abuse it in that way, but a successor might be disposed to do it. I think this is a really important point to make. To me, it's just inconceivable that the Minister of Justice

is going around still pretending he's just a lawyer like any other lawyer in the employ of the provincial government. He can give legal advice to cabinet. He has no business giving legal advice to other groups and other Albertans.

MR. STEVENS: Just for a point of clarification. Gary's comments talked in terms of public comments to bodies. The provision that we're talking about is information in correspondence, and I'm wondering if you could just confirm that the expansion that is suggested in paragraph 47 relates to information in correspondence from the Minister of Justice and Attorney General.

MS MOLZAN: Yes. Section 26(1)(c) would be limited to only correspondence as opposed to 26(1)(b), which talks simply about "information prepared." Section (c) has the further restriction of saying that it must be in correspondence and must include the provision of advice or other services that would be related to, obviously, legal issues as the whole section only relates to legal services.

MR. STEVENS: So in other words, that section as contemplated by the recommendation wouldn't deal with a speech by the minister, as Gary has raised a concern with respect to.

MS MOLZAN: No, not the way the section is written. It should not apply to anything other than the actual correspondence.

THE CHAIRMAN: If we went further in adopting the question under 47, if that be the choice, to clarify that it is relating to correspondence so that there's no misunderstanding that it's expanding the scope.

MR. DICKSON: Well, I take the clarification, Mr. Chairman, but if the Minister of Justice writes a letter to the Canadian Diabetes Association or the Canadian Bar Association saying, "My view of this section or statute is such and such," that could arguably be an opinion, and the minister would be able to say when I go to FOIP, "I'm not going to share that with you; I was offering legal advice to that group." I appreciate the clarification from my friend from Calgary-Glenmore, but it still creates a situation.

The other problem with it: it doesn't say who the client is here. Who's the client, or who's the Minister of Justice restricted in giving advice to? If the correspondence is in the possession of the public body, he may have been giving that advice not to that public body but to some third party. As I understand it, there's no restriction in terms of who that other person is, and typically the way privilege is constructed is that it's a question of the relationship in which the information is provided. There has to be some connection between the lawyer and the client. I think there's been an attempt to paraphrase the law here, but it doesn't restrict it in the same way that common law does. So I come back and say again: this is capable of abuse; it's too broad.

THE CHAIRMAN: Except that those same arguments or questions could be raised the way it is written right now. If an agent or lawyer of the minister provides that service, it presently is protected. You have to come up with the same definition. Is it a solicitor/client situation? That same question would have to be raised in this case anyway, and if there is any doubt, that's what the commissioner's office would be there for. If it's deemed to be a solicitor/client issue, then the commissioner would rule that it would be exempt. If it wasn't, that's the whole purpose of it. So it seems to me a little bit strange that the deputy minister or any agent or any lawyer acting for the minister can provide this information, but the minister in his capacity could not do it. I think expanding it to make sure that the chief can do this would not be unreasonable with the same conditions that apply to the agents and deputies.

MR. STEVENS: I'd like to move an amendment as set out in paragraph 47 to the effect that

> there be a technical amendment made section 26(1)(c), as indicated there.

THE CHAIRMAN: Okay. Further discussion? All in favour? Opposed? It's carried.

Question 48.

> Should a technical amendment be made to section 88(1)(k) to add the phrase "or committee of its governing body" in order to match terminology with section 22(1)(b) of the Act related to local public confidences?

Again this is a clarification issue, but I guess the previous one was debated at some length. Comments? Do we support this? All in favour? Opposed? Okay; agreed to this.

This next section should have some interesting discussion. We did in at least two earlier meetings talk about fees and such. Even earlier today we talked about situations in the existing act which were in essence a compromise, and I'm going to suggest strongly that the same thing applies here to question 49. In 1993 and the act that was passed subsequently, there was a lot of debate about fees, probably the single most discussed issue. The feeling that I carry from that was that the result of the existing act was a considered compromise among all the views that were presented, that the actual fee structure still has the same relevance as it did three years ago, and that any changes now are going to reflect either the pros or cons, depending where you sit on the issue. You know, unless there is strong evidence otherwise, other than possibly some simplification or clarification, the essential fee structure should remain the same.

With that, I'll toss it out for debate.

10:55

MR. DICKSON: Mr. Chairman, I'll just preface my comments by saying that fees are probably the single most important part of the act, because this is the thing that either permits or obstructs widespread use of this useful tool, the act. Once you get past the cumbersome wording of this question in 49, it seems to me that virtually all of the submissions on the issue of fees, not from public bodies but from interested Albertans, argued for a reduction in fees. You can go through the list, all the way from Martha Kostuch , Evelyn Fortier, Susan Platt, the Alberta Civil Liberties Research Centre, Karen Collin, Bob Weber of the Canadian Press, the Canadian Association of Journalists, the opposition, the library association, the Canadian Taxpayers' Federation. These are not government departments but people who have used the act. The message they've sent us is that having the highest application fee anywhere in Canada, five times higher than the fees charged anywhere else, is a barrier to accessing information. Surely we should be spending more time worrying about what Albertans want to see than listening to the Alberta Forest Products Association, the East Central RHA, the chiefs of police, the Red Deer school division. These are all people who are responding to requests, but it's for Albertans that we should have acute hearing when it comes to listening to their concerns. So I can't accept 49.

THE CHAIRMAN: In your presentation, Gary, you spelled out precisely what I said at the beginning, that this is simply a rerun of virtually all the arguments we heard three years ago. Many people on one side would like to see little or no fees, and on the other

side expanding the fees to come closer to cost recovery. At no point are you going to satisfy both sides much more than you do now. I think, as I said before, this is one of those situations where you are not going to satisfy everybody. Hopefully everybody will be a little bit happy with what's happening and probably remain a little bit unhappy that it hasn't gone further in their direction.

MR. DICKSON: But, Mr. Chairman, these aren't two groups of Albertans. You've got a group of people that took the time to participate in the public consultation. You're got some public bodies that would like to see fees higher. This is not two different groups of individual Albertans or organizations who are independent public bodies coming along and saying that they want to see fees raised. Let's put this in some kind of appropriate context.

THE CHAIRMAN: Well, no matter where you're at, they're Albertans, whether they represent an individual view or a group view.

MR. STEVENS: I think context is very important, and I note in our summary of material that the Information and Privacy Commissioner had this to say:

> In my view, generally the current fee structure is appropriate. While there should be some cost recovery, the fees should not be at a level where they become a deterrent to applicants. Furthermore, I believe the fee waiver provisions contribute to this balance by enabling the head or the Commissioner to waive fees where appropriate.

So from my perspective on this score the commissioner does have an independent view, just so I can get my perspective on the entire area of fees on the table at this point.

It seems to me that there's a very good reason to say that the fee structure and fee waiver provisions are appropriate. There are only two areas that I personally wish to have some discussion on, and that's relative to paragraph 51, where I believe the commissioner indicated that there could be some amendment to facilitate the current process, and paragraph 53. Otherwise I will be supporting the status quo.

MR. CARDINAL: I'd support the status quo too because I don't agree that the fees are a barrier to accessing information. They may be a screening factor to determine how important the information is wanted and who wants it and what reason the information is wanted for. I think it's good to have a screening factor, because we could have runaway costs here that we can't afford if it's wide open and there's no process in place to try and work towards some cost recovery and some control in how much information is requested and for what reasons the information is requested. So I would say that what we have, the status quo, would be sufficient.

MR. DICKSON: Two things just in answering Mike Cardinal. First of all in terms of runaway costs, Mike.

MR. CARDINAL: Potential.

MR. DICKSON: Well, that's fair, and that's a concern we probably all share. That's why, when the act was passed, we had a provision that allows the commissioner to be able to deal with somebody who's abusing the system. At the time it was a unique provision. It allows the commissioner to say to the Department of Health: you're being harassed by a frivolous requester; I'm going to authorize you to ignore those requests. We have that power. Rarely has there ever been need for it to be used. I don't think it's ever had to be used. So we have that provision already built in.

The second thing in terms of your comment, Mike, that this doesn't impact access. You don't have to look any further than the province of Ontario, that started off with no up-front application fee. After the Harris government was elected, they brought in an application fee and you saw something in the order of a 40 percent drop in the number of requests for access to information. In fact, in Alberta, after we brought in the fee regulation, the number of general information access requests was dramatically less than what the government had projected months before. So I think there's ample evidence that shows that having a $25 application fee -- never mind that $27.50 an hour charge after that -- does reduce access by Albertans, by your constituents. It's tougher for them to find out how their tax dollars are being spent because of the fee schedule we have in Alberta.

MR. DUCHARME: Mr. Chairman, I've just noticed with the fact sheet that was provided to us that there were roughly a little less than 2,000 requests for information from April 1 of '97 to September 30 of 1998. When you see that the revenue that was generated is in the area of less than $50,000, you're basically talking about an average of $25 per requested item. Looking at that as an average, I don't find that an unreasonable amount. If anything, the people of Alberta should maybe be clamouring that you'd be looking at having a better recovery of our resources for the requests than an average of $25 per request. So I truly believe the status quo is very fair.

THE CHAIRMAN: Further discussion? This might be one where a motion would be in order, including a motion that the status remain.

11:05

MR. STEVENS: I'll move that

> the current fee structure be retained.

THE CHAIRMAN: All in favour? Opposed? Okay. I'm breaking a tie here and assuming that you're voting in favour of retaining it.

The vote on number 49 in essence deals with number 50.

MR. DICKSON: Not really, Mr. Chairman.

THE CHAIRMAN: Okay. I'll hear comments that would say otherwise.

MR. DICKSON: I'm happy to leave the status quo, where the first $150 is free.

THE CHAIRMAN: I'm sorry?

MR. DICKSON: That's fine. I'm going to go back, and as I look at the thing more carefully, your initial statement was probably very accurate. We've effectively dealt with it by 49.

THE CHAIRMAN: Okay.

Question 51. There is a suggestion by the IPC office that

> the fee structure related to continuing requests [could] be changed to simplify it and to ensure that when each cycle of a continuing request is renewed, the 30-day time limit is suspended until an initial down payment is received as recommended by the Commissioner.

John, you were going to bring us a little bit more information or add to the information, I guess, that we already have.

MR. ENNIS: Thank you, Mr. Chairman. In the act it sets out

provisions for access requests, which I think in most people's imaginations are requests where a person asks for information and gets it, and it's just basically that kind of to-and-from activity. But there are also provisions in the act for continuing requests, and these are cases where an applicant is asking the public body to keep the request alive for up to a two-year period. That's set out right in the statute. If the public body grants that request, the public body gets the chance to schedule the releases of information, often on a quarterly basis or something of that nature, over a two-year period.

Some of the difficulties with the act were brought up in a case that came before the commissioner which produced a very detailed order, a 53-page order called 97-019. In that order the commissioner basically put the public bodies through a bit of a clinic as to how to make different parts of the act work together, the parts that deal with continuing requests and the parts that deal with fees. The commissioner commented on such areas as whether the threshold is available on each installment, the $150 free threshold, or whether that threshold is a onetime only threshold over the life of the continuing request.

He also commented on whether the public bodies could suspend the clock if, on each installment, payment wasn't forthcoming from the applicant. So he did lay out a series of rules, and as I understand the IPC submission, the commissioner is asking that the committee look at his suggestions for making the payment of continuing requests possible based on the recommendations or the interpretation that came out of 97-019. What this would do is basically clarify how all of this happens so that public bodies wouldn't be in a position where they felt they had to make up rules for the delivery of continuing requests and where applicants were very clear from the beginning as to what they would be financially responsible for.

Amongst the things the commissioner had found in that order was the idea that public bodies should be providing a complete estimate over the life of the continuing request as to what it would cost. Now, that's very challenging for public bodies because often the records don't yet exist. In fact, in most cases it's a current issue that's being tracked and the records haven't yet been developed, so it's very hard to talk about the cost of photocopying records that haven't even come into being. Nevertheless, public bodies have this challenge in front of them of coming up with some kind of an estimate and a schedule.

The commissioner's recommendations make it possible for them to suspend the clock when payment isn't made, because the clock starts to tick on each installment as though that installment was a separate request. The commissioner's recommendations give the public bodies an ability to suspend the clock as they await payment. They also make it clear that there's one estimate for the entire continuing request and that the threshold applies on a onetime only basis to the continuing request.

THE CHAIRMAN: Am I correct in assuming that since this is a report by the commissioner, in essence that's what happens now as a result of his ruling and that what we would be looking for here would be building that ruling into the act so there's consistency and uniformity in its application? Providing it could be written in such a way that it includes all of this, we're cleaning up the act to conform with what has been through the commissioner's office, a ruling.

MR. ENNIS: Yes. Mr. Chairman, much of the adjustment would be to sections 10 and 13 of the regulations, dealing with the how to, in terms of how you bill someone and how you work out the charges for continuing requests. So if someone were to draft clarification, they would be looking at sections 8 and possibly 87 of the act and 10 and 13 of the regulations.

THE CHAIRMAN: Looking from the legal point of view, is this something that could be -- I was going to say simply written into the act, but there's probably no such thing as simple -- reasonably written into the act?

MR. WORK: Mr. Chairman, keep in mind with the commissioner's order that the commissioner's job is to make sense out of what has been handed to him. We try to avoid rewriting what has been handed in. The order that Mr. Ennis referred to I think we spent a lot of time on, trying to make sense out of a fee regulation that does have some gaps in it. If the legislators are happy with the sense that we made out of it, then we would be pleased to see the regulation amended to reflect that order. If you don't like the sense we've made out of it, then by all means change it. It's our view of what we were given in the first place rather than a recommendation of the perfect state of the world.

MR. DICKSON: Mr. Chairman, I was just going to move that the committee adopt the recommendations from the IPC relative to fees for continuing requests.

MS WILDE: Just a point of clarification before you make that motion. There is one recommendation we made that does change the way the act is currently written. Currently as it stands, for each installment period the applicant must make two payments. The first payment is 50 percent of the amount that exceeds $150; the second payment is what's remaining. What we recommended was that that $150 threshold be eliminated so that the applicant would pay 50 percent of the amount owing in the first down payment and then pay the remainder. We didn't feel there was a need for them to pay 50 percent of the amount over $150. That was seen as being too complex.

MS BARRETT: Can you go back over that again? I know what exists. What are you recommending?

MS WILDE: Okay. We recommended that that $150 threshold be eliminated so that an applicant would pay 50 percent of the amount owing for each installment period, not 50 percent of the amount over $150. There's no need to refer to $150. I think that confuses the issue.

MR. STEVENS: Gary, just for clarification, is your motion intended to accord with the recommendations of the IPC as contained on pages 28 and 29 of his report, so as it relates to detail, people who are trying to move this matter forward would look to that?

MR. DICKSON: I'm sorry; I don't have his report in front of me. I was just going to incorporate by reference the summary that we just received a few moments ago from the office's agent.

MR. STEVENS: Well, I guess I'm happy to support what the commissioner is recommending, and it's contained on those two pages of the report. So if that's what we're voting on, I'm voting in favour of it. If it's something other than that, I need clarification.

MS BARRETT: I don't have them in front of me either, but I can see the staff nodding yes, that that's what we're talking about

11:15

THE CHAIRMAN: Okay. All in favour then?

HON. MEMBERS: Agreed.

THE CHAIRMAN: The motion is carried.

I believe that question 52 was also answered with 49, but I will take opinions to the contrary if you feel it's necessary.

MR. DICKSON: I'm going to suggest that as you look through the responses we received -- and I'm thinking particularly of the ones from the Canadian Association of Journalists and Bob Weber of Canadian Press. There's only the one commissioner's order I can think of, the one inquiry, the escalator issue, when a reporter with the CBC was the applicant, but I thought it really served to highlight the fact that you've got some people who have a specific responsibility. Again I think of opposition MLAs, indeed all MLAs, not just opposition. They have a responsibility and the media have a responsibility to ferret out information and documents and find out what's going on. This is going to sound self-serving, but I think it's fair to recognize that there are people in our community that have a mandate to hold government accountable, and part of that is being able to access documents on a timely basis.

It seems to me if there is evidence it's being abused or would be abused, that would be one thing. But absent that sort of evidence, it seems to me that elected officials at some of the environmental groups that do a lot of work in this area shouldn't be tagged with a $900, $1,300 bill when they're trying to get information that they're trying to seek out, frankly, on behalf of the bigger community.

I don't think any other jurisdiction has gone this far, but I'd like to move that

> the committee recommend there be provision for fee waivers when the applicant is a member of the media, an MLA, or a nonprofit advocacy organization.

So that's my motion, and I just say in support of it that, you know, the fees we collect don't put much of a dent in the cost of the system anyway. We're a long way from cost recovery. And if we really accept the spirit of the act, that we're trying to get more public information out there to empower citizens, there's no better way of doing it.

MS BARRETT: Mr. Chairman, maybe I'm misreading this, but the way I was reading it was that the request was for a fee waiver for bona fide media, not for elected officials or not-for-profit organizations. Am I reading this wrong?

THE CHAIRMAN: Actually, the request came from several groups, including the media, the Liberal caucus and others, I believe, and some nonprofit organizations. It wasn't a blanket request, but it was a similar request on behalf of several organizations.

MS BARRETT: Oh, I see. You know, the one thing I wouldn't mind is the media or the not-for-profit organizations, but I don't like it when politicians do or appear to separate themselves and make ourselves different from the other citizens. So I guess I'm two-thirds in support of your motion, Gary. I would certainly support the media. I mean, in this modern day and age investigative reporting through the media is virtually the only way we get unbiased information. And with not-for-profit organizations it's clear that they don't generally don't have a lot moolah, and I don't think they're big users of the system in the first place. But I wouldn't want MLAs or city councillors to be fee exempt.

MR. CARDINAL: I don't think it would be fair for anyone to be exempt from paying if you want information, because as soon as you do that -- and I'm not saying it would happen -- then there is a way of bypassing the fee structure. I don't really want to get into that, where half of our information requested gets to be done through another process that's free. I don't agree with it at all. Why have these regulations if you're going to exempt certain portions of society to be free, who may have access from the public to channel information to? I disagree that anyone should be exempt.

MS PAUL: I don't agree with that at all. I agree with Gary's motion. You did make a motion; didn't you?

MR. DICKSON: Yes, I did.

MS PAUL: Okay. I think it should include elected officials. Whether it's perceived or not perceived that we're setting ourselves apart from the public, we still are citizens, and I think elected officials should be encompassed in that.

As far as media, absolutely. I think Pam made a good point, saying that today investigative reporting is a sign of the times and that's the only way business can be done and reported to the public. I would exempt them completely.

So I'm in support of Gary's motion.

THE CHAIRMAN: I'm going to go back to a bit of the argument that I made on question 49 relating to the discussion three years ago. This was certainly a part of it, a very significant part, that there are two reasons why you have a fee. One is to recover some of the cost, and the other is to make sure that there is some kind of a reasonable restriction on abuse of the system. I'm not suggesting in any way that every request by media or MLAs or whoever they might be is abusive, but it certainly opens the door for that possibility, whether it's a fishing trip or someone just deciding this would be a good way to bog down the system, to have continuing requests. And we are going to be dealing a little bit later with frivolous and vexatious requests. Nevertheless, this is the area where it could start.

If the request is deemed to be in the greater public interest, the commissioner can waive a fee on any request, which is sort of the reason this was asked. It says, "For issues of public interest." That provision is there now, and it certainly is at the discretion of the commissioner, but if these are reasonable requests, he or his staff can waive the fee for any group, not just the ones that are listed here. I think that still keeps a balance on available and free, if necessary, but without opening the door to abuse.

MR. DICKSON: In terms of the abuse thing, just to go back to what was said before, we put in the act section 53 -- and you remember you were one of the people, Mr. Chairman, that was anxious to see it in there -- and that was the means to address abuse. I'd just say again -- I tried to make the point earlier -- that fees are not the way you deal with abuse, because you're using the proverbial sledgehammer to swat the mosquito. We have a targeted provision that allows dealing with abuse, and I hope we can get away from trying to treat the fees that way. In other jurisdictions where they don't have a counterpart to section 53, that's the way they do it, but we've got a better answer here. Let's use it and let's have confidence in it.

MR. STEVENS: I guess there are two things that I see in the motion as put. First of all, what is attempted is to set aside certain persons or certain organizations as being special in our society

relative to the access of information. I'm quite frankly surprised that that motion is being put.

The other thing is that I don't see it as a matter of abuse. I see it as a matter of people balancing the value of the information they are seeking with the cost of it. If people think this is information that is worth receiving, then there is some cost to it. I think that that, quite frankly, is a very salutory way to have this system operate. Free information would be perceived differently. So for the media who are wishing to do investigations of government, they have to ask themselves the question at the outset: is the money that we anticipate paying for this information worth what we are going to get? I just don't see the media or elected officials for that matter as people who should be treated differently than Joe Q. Public or Joanne Q. Public, as the case may be.

11:25

MR. DICKSON: But, Mr. Chairman, if I could just respond to Ron Stevens, we already have that mandate. We've been elected. What for? Well, to hold government accountable, to represent those citizens. They may not care what tools or techniques we use, but they have an expectation that we're continually challenging government to do better. FOIP is a wonderful tool to enable that to happen. We already have that position. It's not about claiming some preferential treatment. It's simply a question of: how do we facilitate elected people, members of the media discharging their mandate, discharging their function?

THE CHAIRMAN: But by the same token, you're also given an additional budget to help accommodate that role, and for every cost when any one of these groups, whether it's a nonprofit, the media, or an elected official, uses the service, which under the terms of your resolution would be provided free, someone else has to pay for it. I think that's the other side of the picture, that Joanne or Joe Q. Public, who may or may not benefit from this information, is paying for the cost of any group that is given special privileges. I think that's part of the balance, as was looked at last time.

MR. CARDINAL: Mr. Chairman, the breakdown of requests from October '95 until September '98 shows that 33 percent of requests are from the media and elected officials now, so it's quite an amount we're dealing with here that some members want exempted.

THE CHAIRMAN: Okay. I think we've gone around and around it. We're repeating ourselves now.

Gary Dickson has a motion on the books that would provide for a blanket waiver on behalf of the groups specified in question 52. All in favour? Opposed? I guess I have to vote there too.

Our lunch is going to be coming in, as it did the last time, probably in about 10 or 15 minutes. We'll adjourn at the end of whatever question we're dealing with and have about a 20-minute lunch break. At our first meeting we said that we'd eat on the run. Obviously that doesn't really work, but if we can hold it down to about 20 minutes, that gives everybody a chance to make a phone call or two, stretch, eat, do what other little things nature prescribes, and come back. So as soon as they pound on the door, we'll finish whatever question we're on.

Question 53.

> Should section 87(4) of the Act be amended to require that requests for fee waivers must first be submitted to the public body and require the head to make a decision before the Commissioner can review it?

For clarification on this, I understand that this is one of the few areas, if not the only area, where the commissioner's office has to deal with an issue before it's actually presented to the public body. There's obviously going to be some debate on whether this is reasonable or not. I'm not sure of the historical background as to exactly why it came in, but there certainly was some suggestion that it should be consistent, that a decision should first be requested of the head before the commissioner acts on it. I'm assuming at this point there may be a difference of opinion, even from those people here from the commissioner's office, so we'll open it for debate.

MR. DICKSON: In fact, the proposal simply codifies the existing practice. The commissioner already follows this practice of refusing to waive fees unless there's first been an approach to the head of a public body. But let me try and make the argument -- whether it's persuasive will be for the committee members -- that the difficulty is that routinely heads of public bodies don't like giving out information. Because a lot of your cabinet colleagues, Mr. Chairman, share your view, I think an erroneous view, that fees are your intake control, I think it's highly, highly unlikely that heads of public bodies are going to embrace the public's right to know in the same way that the Information Commissioner will.

So I disagree with this proposal and I disagree with the commissioner's practice, with respect. I understand why he's taken that position, but I think we're living in a fantasy land if we think that it's going to be a productive use of any applicant's time to go to the head of the public body asking for fees to be waived. Talk to Martha Kostuch. Talk to the environmentalists. Talk to the Canadian Association of Journalists and the people who use the act all the time. Some of those people have attempted to get waivers from the department, and they're typically laughed out of the office.

I think this is an exception in the act where there's a good reason to have a concurrent responsibility. I think it was the right thing to do, and I'm opposed to the recommendation and to the existing practice.

MR. WORK: Mr. Chairman, I've been sitting here squirming uncomfortably throughout the whole fee discussion. It is very difficult. This point isn't huge to us. Mr. Dickson hit the nail on the head. It would facilitate what our existing practice is, and that is to ask the applicant to first ask the head of the public body for the public interest waiver. The reason we do that presently is because the whole scheme of the act seems to be that the commissioner reviews decisions of heads of public bodies, and it just seems simpler if everyone knows what the issues are all along. You know, go talk to the head first, and then the commissioner will see if he thinks the head made a good decision. It gets them focused on the issue.

I didn't bring the empirical evidence to really discuss this with any kind of exactness, but I think our experience is that a lot of the public bodies -- and it varies. I think the worst that can be said is that practices vary from public body to public body. Some of them are very creative and very good about getting fees now. Of course, I think what Mr. Dickson would say in answer to that is: yes, that's all well and good, but (a) it's arbitrary and (b) it's inconsistently applied. I think in fairness to the public bodies it should be said that they're not across the board. They don't use fees to totally freeze people. Again, the practice is inconsistent. Some of the heads of some public bodies are less understanding about fee waivers than others. Again, where someone feels strongly enough about it, the provision is there to take it to the commissioner.

As I said, this isn't a huge issue for us. It just seemed that it would help the process a little bit if people knew where to go,

because sometimes they'll come to us and sometimes they'll go to the head of the public body. We just thought it might be simpler if there was an established routine to follow.

MS MOLZAN: Mr. Chairman, just a legal point here. With the section set the way it is and the commissioner basically having the ability to do what would be called a de novo hearing -- reviewing the issue without, you know, an appeal, not reviewing someone else's evidence -- the difficulty is that the commissioner is put in the position where he would not necessarily have any evidence from the public body at all on the volume of records involved or how the search is going to progress or any sort of evidence from the body. So he is looking at this without really being able to perhaps make a decision with all the evidence or all the facts before him, whereas on the appeal -- and that's the way he's handled it, you know, in the past -- he does, then, have the ability to look at what the head has done. The public body then provides all the evidence they have. When you're looking at things like "for any other reason it is fair to excuse payment," there may be issues related to that individual that only the public body knows or the records for that person.

11:35

So to some extent, in a legal sense, doing a de novo hearing can be difficult when you're not the person that has the best evidence or when you don't have access to the evidence. There's no real ability here for the commissioner to go to the public body and then start asking about issues related to -- I suppose he could, but it's not really the way it's been set up. It would not forestall the ability of an individual to have their day before the commissioner to have him hear an appeal, and then he has the evidence that the public body looked at and everything that they would have considered in determining whether a fee waiver was acceptable or not. Certainly he has the ability to determine as he has in many cases, as in the CBC case, that he felt the refusal to waive the entire fee was not correct and made the ruling that it would be entirely waived, and the public body then refunded. So it doesn't necessarily hurt the applicant in that. But I just say that in a legal sense he doesn't necessarily have the evidence if he is the first stop rather than the head of the public body.

MR. STEVENS: In my view the comments of the previous two speakers clearly outline why there should be a change here, so I would like to move that

> section 87(4) of the act be amended as outlined in the material before us.

MS BARRETT: Well, I didn't know a motion was going to be made, because I would have made the same one. The reason I speak in favour of this is because, number one, somebody with the power and authority of the Information Commissioner shouldn't have to be asked to look at anything in a vacuum. Number two, it's pretty obvious that you go to the public body to begin with to get the information. Those should be the people that you ask for the fee waiver if it's going to be asked for. I see the role of the office as being to analyze after the fact whether or not the decision was appropriate and give them all the information. So I guess I'm speaking in favour of the motion that I otherwise would have moved.

MR. DICKSON: Just in listening to Donna Molzan's explanation, I was thinking we should also be really clear, though, that the discretion of the commissioner is shrunk considerably. There's a big difference between hearing a de novo application and reviewing after the fact to see whether the head of a public body erred. I mean, it's a narrower kind of thing. The commissioner in effect is put in the position of simply leaving the initial order as is unless he's convinced that there's been some error in the application of the discretion. So it seems to me that we're constricting the ability of the commissioner to be that kind of umpire. If you look at the decisions of the commissioner -- I don't have the book of them here -- the commissioner has on at least three inquiries been at pains in terms of talking about the view he's going to take when he sits in judgment on reviewing a decision made by a head of a public body.

THE CHAIRMAN: I think one of the key things we have to look at here as well is that a good part of the exercise we're going through is to clarify the existing act and its application. If the commissioner in a ruling has determined that this is an appropriate method, that the applicant should go to the head of the public body to start with, having it in the act would spell out the practice so that someone who's picking up this act for the first time isn't going to have do a tail-chasing exercise to find out what they can do or can't do. You might as well have it spelled out clearly what the operating practice is. This strikes me as doing just that, and it adds consistency to how the act relating to the commissioner's involvement is carried out.

I think this now in itself maybe isn't going to accomplish it, but one of the things that we should expect as the act evolves and matures is that government departments, personnel, and whoever is working with the act and public bodies are going to have to see that information management is a key part of what they do. We're fairly new in this business right now, and you're probably right, Gary, that a lot of the reaction is people resenting having to do this. But once you have a generational turnover in the department, hopefully we'll find that the whole attitude about how information is stored and managed and given out will change. You're probably never going to resolve the idea that someone in a department or a public body seems to feel they have proprietary ownership of information. You maybe never completely get rid of that. But there at least needs to be a process where it gives them the benefit of the doubt and hopefully have consistency of application.

MR. WORK: Mr. Chairman, actually what Mr. Dickson said caused me quite a bit of concern. I would be very concerned if the effect of this change was to restrict the commissioner in his ability to override the head of the department on that, and we had never thought that would be the result. At a bare minimum what we were wanting was direction that the applicant go to the head of the public body first.

Section 68(3) says:

> If the inquiry relates to any other matter, the Commissioner may . . .
>
> (c) confirm or reduce a fee or order a refund, in the appropriate circumstances.

Now, I see what Mr. Dickson is saying. He's basically saying that this change could bring us into section 68(2), which does limit the commissioner to either saying yea or nay to what the head has done in some cases. Our view was it would still be 68(3), and the commissioner would still have a very broad discretion to override the head on any basis. I'm hoping that's still the case, because we certainly didn't intend to narrow that. We just procedurally wanted the applicants going to the head of the public body first.

MS MOLZAN: Mr. Chairman, certainly that section can try to reduce a fee but not allow the commissioner to increase the fee. Now, that's the hole I can see in terms of saying: if he looks at it before a head does, he could in fact increase the fee, like a court of appeal may increase a sentence. They have the ability to look at

it fresh. But under this, the only thing the commissioner could do is either say, "Yes, the fee is correct," and confirm it or reduce it or order a refund. So it can stay the same or go down; it can never go up. Right now I guess the commissioner could increase it if he felt he wanted to.

THE CHAIRMAN: But I don't think that's what Frank is saying. Frank is saying that the terms under which the commissioner can rule on it would be restricted. I don't think he's concerned about whether or not he can increase the fees. It would be the restriction as to the scope of why he would review it and deal with it. Is that correct, Frank?

MR. WORK: That's correct, Mr. Chairman, and I think this was Mr. Dickson's concern. I think the commissioner would want to be able to say -- for example, if I go with the escalator inquiry, CBC went to the Department of Labour in doing a report on escalator safety. The Department of Labour said: no, we don't think this is public interest. The commissioner said: I think, with respect, I disagree; I think this is public interest. I mean, the issue is the same. Is this or is this not in the public interest? It's just that the head of the public body might have applied different criteria of public interest than the commissioner did. We would not want to give up that ability, the ability to differ with the head of a public body over whether or not something is in the public interest.

Again, the intent wasn't to forsake that and put the commissioner in the position of just saying yes or no to the head of a public body. The idea was simply to get him to talk to the public body so that the issues come out there, and then the commissioner would not narrowly review under 68(2) but fully review under 68(3). I hope that can be retained if the committee sees fit to go along with this amendment.

11:45

MS BARRETT: What I would suggest is that we table this motion -- we meet a week from today; don't we? -- and let the lawyers from the office come back with specific wording, recommendations to the committee.

THE CHAIRMAN: I'm not even sure that we would need the legal interpretation. I think it's a matter of which direction we would want to go on this. One suggestion would very seriously limit -- I'm not sure how seriously, but it certainly would limit -- the scope of the commissioner's ability to deal with an appeal. The other one would simply put into place a process where the applicant goes to the head of the public body first, and for any reason otherwise afforded the commissioner, that individual could appeal to the commissioner's office anyway. So it's a simple matter of how far you want to go with this thing. My understanding originally was that it only extended to the process of going to the head of the office and simply that, that the commissioner's authority as it presently exists would stay in place.

MR. STEVENS: I must admit that I found the discussion on this point riveting. But I would point out that 68(2) says: "If the inquiry relates to a decision to give or to refuse to give access to all or part of a record." Those are the operative words of that section. Then you have the other inquiry provision, under which you find the matter dealing with fees. I mean, it seems to me that if we're dealing with fees, then the section dealing with fees is going to be the operative section, especially when the only issue is one of fees, which, with respect, probably doesn't relate "to a decision to give or to refuse to give access to all or part of a record." Now, I'm happy to put it over for a week so that legal can give further consideration to it, but I think, in my own view, we've been spending a little time on an issue that's not there.

MR. DICKSON: I was going to say that there's a simple way of resolving this, and that is to say that the concern is a shrunken scope for the commissioner in terms of dealing with it. I'd say to Ron that if you look at his decisions, the commissioner tries very hard to ensure that tests are common and to make the act as simple as possible. Why wouldn't we simply say to go with the recommendation but specifically say that this doesn't fetter the commissioner's discretion to treat it as a de novo hearing? There seems to be general agreement around that, and it simply ensures that by going down this road, you're not moving to a narrower ambit of scrutiny by the commissioner.

MR. STEVENS: I think that the comments have been made. Let legal look at it and comment on it a week from now so that we have the benefit of further insight on the point.

THE CHAIRMAN: Do the legal people agree that this would help? Okay.

I think that brought us well into our lunch break, so I'm going to declare the meeting adjourned for 20 minutes.

[The committee adjourned from 11:49 a.m. to 12:16 p.m.]

THE CHAIRMAN: Okay. I think everybody is back. We might as well start the afternoon portion of this very interesting meeting.

MR. DICKSON: It gets more exciting, Mr. Chairman.

THE CHAIRMAN: It does. Okay. I said interesting. You talk about exciting.

The next question is 54.

> Should section 32 be clarified by substituting the phrase "by or under an Act" with "an enactment" to make it clear that authority for collection may be in an Act or regulation?

Comments?

MR. DICKSON: Mr. Chairman, as long as we have regulations pass in Alberta without any all-party oversight or without the regulations being published in advance, I think it's really dangerous to encroach on personal privacy simply by way of regulation. There are times it might be more efficient to do it by way of regulation, but I think if that were the case, then we'd have to ensure the Standing Committee on Law and Regulations in fact met on a regular basis and did what it was set up to do.

THE CHAIRMAN: Okay, Gary. I would have been disappointed if you hadn't brought up that argument at least once more.

MS MOLZAN: Mr. Chairman, if I might offer some information. My understanding is that one of the concerns was that presently there is an issue as to whether it would include a bylaw, and I wanted to provide some information to the committee that the actual term "enactment" in the Interpretation Act includes an act or regulation, and then "regulation" is defined to include a regulation, order, rule, form, bylaw, or resolution. My understanding was that there was some concern that the present term "by or under an Act" may not actually include bylaw resolutions of local public bodies; therefore if it's changed to "enactment," it clearly would under the definition of regulation in the Interpretation Act.

THE CHAIRMAN: Not only that; we've gone through the debate on whether regulation was an appropriate method of having some action brought into the act, and I think we've kind of debated that one to death anyway.

Further discussion? In spite of the objections I guess we should have an opinion as to whether the clarification is appropriate. All in favour?

MR. WORK: Sorry, Mr. Chairman. Could I just explain? There is a difference between the collection of information under section 32 and, say, the disclosure of information under 38. With section 32 basically you can collect it two ways if you have to have it in order to do what a public body does, and that's the functional test. I mean, if you need the information to run your program, the act says that you can have it. Short of that, as Mr. Dickson pointed out, you have to go to the extent of getting an act to authorize it, not just a regulation or an order. At least that's our interpretation of that section. Our understanding was that in the first place the Legislature must have thought that if you're not collecting it because you need it for a program -- right? Because you can do that. You can collect what you need to run a program. We thought the logic was the Legislature saying: look; if you're not collecting this for a specific program, we're going to make it tough for you to get it; you can't just get it by reg; you have to get it from us in person by statute. That made sense to us. Once you've gathered it, once you've collected it under 32, you go over to 38, and it's a little easier to disclose what you've got. You could do that for the purpose you collected it or for complying with a treaty or for any purpose that an enactment authorizes or requires a disclosure. Legally we understand enactment to include regulations. It's tough to collect information. This act presently makes it tough to collect information about Albertans unless you're collecting it for a specific program, and that may not be a bad thing.

THE CHAIRMAN: Under the present wording, though, how would a municipality be able to collect information that isn't specifically in or under an act?

MR. WORK: It'll be tough. They'll either have to show that the information relates directly to a program they run or that the Municipal Government Act gives them specific authority to do the collection. Short of that, they've got a problem. So we agree. Short of those two scenarios, local public bodies will have a problem.

THE CHAIRMAN: One of the concerns we have is now that the MASH sector is coming under the purview of the act, we need to make sure that we haven't strangled them while we're doing it.

MR. WORK: Yeah. There again the social purpose that serves is that it means you folks in the Legislature are always going to have to decide if a collection of personal information is appropriate, unless the public body can say: we've got to have this to run our programs. In that case they can have it without going to the Legislature, without a regulation, without anything other than maybe proving to the commissioner that they've got to have it under 32(c). But anytime they want stuff that they don't have an immediate and direct need for, they've got to come back to the source. I'm just putting that before you. It's like a big bolt on the door, and I would suggest you think carefully about when you want to throw that bolt open.

MS MOLZAN: Mr. Chairman, perhaps I could offer a little bit of history. Unfortunately, the wording "by or under an Act" in section 32(a) is actually unique as compared to the rest of the act. The rest of the act either says enactment or an act. In fact "by or under an Act" has been interpreted in different ways. One of them certainly is that the only thing that can be under an act is a regulation or, you know, some other form aside from the act. If it was intended to just be an act, it would just say "by an act." So there's some debate in a legal sense what that even really means.

With some sort of embarrassment I say that I don't recall from the first go-round in '93-94 any real attention being paid. I guess what I'm trying to say is that it seems to me that it may simply be a drafting error that occurred, because that language is no place else in the act and certainly doesn't restrict it simply to an act by saying "under an Act." In interpretation rules a court would look at all the words and try and see what each one means. Where other areas just say "by" an act," the "under" would have to be interpreted to mean something possibly. So it may be simply a matter of clarifying exactly what that means. Many of the interpretations that have been followed by different entities are that "by or under" includes regulations currently. So I guess it's sort of debatable.

Changing it to read "by an enactment" would bring it in line with the other sections of the act that say an enactment or an act or a regulation, something to clarify it rather than saying "by or under an Act."

MR. ENNIS: Mr. Chairman, at this point the commissioner has looked at these words and has come to the conclusion that "under an Act" means under a coherent reading of the act. If something isn't specifically referenced in the act as a collection authority, it might be that the actual construction of the act and the purpose of the act make it logical that you collect that information. An example might be an act that I used to work with, which was the Public Service Act, under which government staffing is done. In that act there's no place that says that government bodies shall collect résumés and application forms for staffing purposes, but given the function they have to perform, it's logical that they do collect those things. So the commissioner's interpretation is that "under an Act" means under a coherent reading of the act but not under a regulation.

It behooves me to mention, as a person who works with cases, that I find this anomaly in the act, the existence of the word "statute" in section 32, to be a very interesting distinction in the act in that it allows us or forces us to look at the whole purpose of a statute when we're looking at whether or not a public body has exceeded its collection limits. We often get questions like that, questions such as: can a public body collect a social insurance number for some purpose? We find that the social insurance number is being collected for efficiency reasons but isn't something that fits well with or has any relation to the actual purpose of the act. Having the reference to an act in section 32(a) is helpful in allowing us to look back at what the entire legislative scheme is rather than something that's been passed in a regulation, which sometimes leaves you very little sense of why it is in a regulation.

I think those comments are ones that my colleagues would share as we pick up cases and try to determine whether a public body has breached someone's privacy by an overly zealous collection of information.

12:26

THE CHAIRMAN: I'd still like to get a little more clarification on what the municipalities might really be faced with. I can appreciate that there needs to be some definitive authorization. Is

it possible, with the advent of this act affecting municipalities, that some of what they have historically done, legitimately so, might be curtailed severely? Does anybody want to take a stab at that? Should this be something that we maybe want to bring back with a view to looking at what the lack of expansion might limit?

MR. WORK: I don't know, Mr. Chairman, how much municipalities do aside from the programs that they operate as public bodies. Again it's okay to collect information for those. A lot of what they do is governed by the MGA. Their elections are governed by that. I'm not sure whether or not there's a residuary where they would need to authorize collection by their own bylaws. Maybe more to the point, I'm not sure if they should be allowed to do that. I mean, if they're not using it for a program, what do they need it for? So if the Legislature hasn't given them authority for collection under the Municipal Government Act and if they're not collecting it for the purposes of an operating program or activity, which is pretty broad, then what do they need to collect personal information for?

MR. STEVENS: Perhaps the question could be asked: are there some specific purposes for which this recommendation is put forward and what are they?

MS MOLZAN: I don't think I have any specific examples to offer the committee today. Certainly if you wish to defer it, I could try to obtain more information on it.

Aside from the municipalities, we have to remember that the MASH sector includes universities, school boards, and there are a lot of entities when school boards may be middlemen. Pulling it off the top of my head, a school may be enforcing certain things under the Young Offenders Act. Sometimes a judge makes a provision that a person has to attend school or something. There may be involvements there where they have to collect things and it's really not their program; it's someone else's. I guess I'm thinking about where they're a middleman. Potentially there may be situations with the universities where they provide certain health services or financial aid to students. It's not their program, but they're kind of the middle guy in helping the student or sending it on for their benefit. We've got hospitals. There are a lot of groups besides just municipalities that would be affected by this, because of course they have board resolutions which are caught by the term "enactment." So certainly I could try and provide more information to the committee at the next meeting.

THE CHAIRMAN: Okay; we'll defer that. I might also add that depending on the nature of the information, if some of this is going to be by way of a paragraph or two, one page of briefing, if you can get it to me, we'll pass it on to the committee members in advance. It'll not only save time at the next meeting, but it will make sure that people have a chance to think about some of these things. That applies to a lot of the information that we're talking about bringing back, and I'll leave it up to the staff members to decide if it's appropriate or if it's something that's only relevant to the discussion. I know we've got a lot of information that keeps getting added to the pile, but as much as we can get out in advance the better and I think of more help to the committee members.

Moving on to question 55.

> Should section 33 be amended to allow for the indirect collection of personal information about an individual in health and safety emergencies?

MR. DICKSON: I was going to move the recommendation that we'd received from the IPC at page 17 of their submission, which would be to add a new subsection (l). Just let me back up. Section 33(1) says, "A public body must collect personal information directly from the individual the information is about unless . . ." My motion is to

> add a new sub (l) which would say that the information is collected for the purpose of providing emergency medical services and the circumstances do not permit collection directly from the individual.

THE CHAIRMAN: I think it covers the intent. We have been reasonably careful that we didn't sit here and try and draft legislation though. We have to be careful that the recommendation doesn't go in where we're changing the wording or something, that the Department of Justice or whoever eventually drafts these gets caught up in our terminology.

MS BARRETT: I think we could just say: in principle reflects what Gary Dickson had suggested with his wording. Then the committee knows what to do. Oh, sorry. What is it called? Leg. Counsel? Counsel anyway.

THE CHAIRMAN: Okay. Gary has made a motion.

MR. STEVENS: Well, his motion is specific.

THE CHAIRMAN: Yeah.

MS BARRETT: Well, like I say, we can just say: as long the principle behind those words is reflected in the recommended changes.

THE CHAIRMAN: I agree with the intent. Not having gone through the actual wording, I'm not sure, you know, whether that reflects how I've been looking at this clause. I think it does. I'm going to be skeptical until I see how it's actually interpreted.

MR. DICKSON: The reason I just read out the wording from the commissioner is that clearly we're not drafting the statute. In some respects that's also a bit of a challenge for us, because in the recommendation the commissioner has neatly tucked in some checks and some balances, so the wording can be changed. I was anxious to ensure that it be a specific mischief we're trying to remedy and not simply an unfettered, too broad kind of discretion. The individual words don't mean so much, but I think that the conditions as set out in the commissioner's recommendation make good sense.

THE CHAIRMAN: Not being a lawyer I'm not sure what the word "mischief" means. To me it would sound more like there's something deliberately happening, whereas I think the correction here is to amend an omission that causes some problems.

MR. DICKSON: Well, I'll give you an example. He talks about "emergency medical services" in the section we're looking at and the provision where "the circumstances do not permit collection directly from the individual." I think those are two important qualifiers.

MR. STEVENS: Well, Gary has put forward specific wording. I'm going to vote against it. My own perspective is that it's a matter of principle and that the people who draft this kind of thing can worry about the specific wording.

In paragraph 55 we talk in terms of "collection of personal information about an individual in health and safety emergencies." It's not as if this is a broad thing. It's an emergency situation. From my perspective I'd like to vote on a principle rather than

specific wording.

MS BARRETT: So we just vote yes. Should we change it? The answer is yes. We all agree.

THE CHAIRMAN: Except there's a motion on the table.

To deal with the motion, let's vote on it and see what the outcome is. Do you want it read back, or does everybody understand what the intent is? Okay. On Gary's motion. All in favour? Opposed? Okay.

Now, that doesn't solve the problem. We would need another motion to move the principle of the question.

12:36

MS BARRETT: Well, I'll just move that

> we answer the question in the affirmative.

That's my motion.

THE CHAIRMAN: Okay. Moved by Pam. All in favour? Opposed? That's carried.

Question 56.

> Should section 33 be amended to allow for the indirect collection of personal information if the purpose of the collection is to determine the suitability for an honour or award, including an honorary degree, scholarship, prize, or bursary?

THE CHAIRMAN: All agreed? Mike?

MR. CARDINAL: I have a question. How broad does that go when you look at "honour"? Of course I don't mind: award, honorary degree, scholarship, bursary, et cetera. But "to determine the suitability for an honour" -- there are two different things there. Could I get some clarification on that? How broad is that? What does that cover? Is it an elected position, or could it cover an elected position? If it is, then we'd better be careful because we might exclude a lot of candidates in the future.

MR. WORK: Actually it's a good point. The last four were requested by postsecondaries because they want to know who they're going to give honorary doctorates to. [interjection] Yeah, no problem there. The broad term "honour": my understanding was that where a municipality might want to give a person of the year award, which is not an "honorary degree, scholarship, prize, or bursary," or a citizen of the year award or the keys to the city, they wanted to be able to -- I don't know. I'm not sure what they wanted to be able to check, but I guess they wanted to make sure that the recipient was deserving and maybe had no skeletons in their closet.

MR. CARDINAL: And that's exactly what I'm getting at in relation to public office.

MS BARRETT: But you know what? Those things are awards by any other name, so you can strike "honour" out of it.

MR. CARDINAL: I'm not thinking of the MPs or MLAs here. We have a cross section of people: school boards, hospital boards, municipalities. If this stuff applies to those areas, then it is pretty serious.

MR. WORK: It's certainly a very broad term though.

MR. CARDINAL: Can we exclude that?

MS BARRETT: Sure, we can. You know, citizen of the year, et cetera, et cetera: those are awards.

MR. CARDINAL: That's understandable.

MS BARRETT: So, yeah, strike "honour." Boom, boom.

MR. DICKSON: I'm just trying to find a little consistency with the position we took on the last question. I mean, either we're drafting legislation or we're talking about principles. Does nobody see an inconsistency between what we did a moment ago in terms of saying that we're just talking about a general principle and now we're suddenly saying: well, the definition of honour is all important, and if it's too broad, we might be uncomfortable with it"?

THE CHAIRMAN: I really hate to catch myself agreeing with you, Gary, but that was the point I was just going to make.

MR. DICKSON: Sorry to scoop you, Mr. Chairman.

THE CHAIRMAN: I was going to say the same thing. We're in the process of nitpicking here unless there's a really strong reason for excluding the word because it means something outside of the intent or principle of what we're debating.

Okay. With all that clarification -- and I'm sure everybody understands it -- do we agree with 56?

SOME HON. MEMBERS: Yes.

MR. CARDINAL: Except me.

MS BARRETT: And you want that vote recorded; don't you, Mike?

MR. CARDINAL: Of course. It's recorded already, Pam.

MR. ENNIS: Mr. Chairman?

THE CHAIRMAN: Yes, John.

MR. ENNIS: I deliberately waited to speak until after you'd made a decision on 56.

THE CHAIRMAN: So now you can rule on it, you mean.

MR. ENNIS: This is a section that comes to our attention quite a bit, especially from school districts and also from municipalities and universities, the whole issue of how a public body can congratulate or honour, if I can use the word as a verb, people that are in their midst.

As I've thought about it, certainly an amendment to section 33 seems to do it in terms of collecting information, but there's another half to this. When those awards are given, they're often given through public announcement or some kind of ceremony. Rarely in my experience do people actually check out the message with the person who is about to be awarded the prize, especially if they don't know they're getting the prize. So I think that from a technical point of view, if we're amending 33, some thought should be given to another amendment to 38 on the disclosure front so that information that is of an awards nature or commemorative nature or something like that can be disclosed through section 38.

THE CHAIRMAN: Okay. I haven't forgotten that part of it. As

a matter of fact, I have a little blurb that I wrote up a few weeks back. I still intend that we will go back and revisit at some point what kind of information should readily be made available that isn't considered harmful and such. You know, a lot of these things have a historical background. They've been done for years. They're only for good purposes, and there's concern that the way the act is presently written, particularly as it reflects the MASH sector, is going to severely curtail what they're doing. I think the interpretation both from your office and from the department is that that isn't the case, but as long as there's some serious doubt, I think we need to clarify it. We definitely will get to that, I can assure you.

MS MOLZAN: Mr. Chairman, if I could offer just a brief comment on that. It may be that that type of information is quite caught in 37(a) or 38(1)(b), which allows for disclosure "for the purpose for which the information was collected." If it's collected to honour someone and part of that honouring is to put an ad or an announcement in the paper that this person has received an award, it very likely could be disclosed by the public body as part of the purpose. Most honours or awards tend to be quite public, and that's part of the intention: you want to encourage others to be good citizens, too, so that they may in fact potentially receive an award in the future. So the actual publishing of a notice may be quite consistent with the purpose for which it was collected. That may already be covered off, but I'll just put that as an aside.

THE CHAIRMAN: I think it is, and I think that's the basis for which some of the advice has gone out to school boards and the like. My feeling is that there needs to be some clarification that says what kind of information it would be in order to give out without having to be concerned about harming the individual that it's about. I'm talking about generally available public information. Since you weren't at the earlier meetings, I'm talking about the fact that you did attend a school, that you were part of an alumni, that you were a graduating class, that you were on a football team, whatever it may be. It's simply that an observant person would have seen that you're there anyway if they wanted to and without getting into the semantics of: is this or is this not personal, private information. We need to do something that clarifies that because I feel that there is enough doubt, and this is one of the things we can address as a committee.

MR. CARDINAL: Mr. Chairman, that last vote probably excluded me from ever being an honorary chief. That's why I was a little worried. I have to run as a real chief now.

THE CHAIRMAN: In our mind you're always an honorary chief, Mike.

MR. ENNIS: Mr. Chairman, just on the last point that was raised by Ms Molzan. The difficulty that we're hearing from public bodies is that they're not confident that they can jump to 38(1)(b) because of the existence of the term in there, "a use consistent with that purpose." That's strapped in their view by section 39, which puts a test on how you reference the term "consistent." It puts a two-part test where both conditions have to be present, and one of those conditions is: "necessary for performing the statutory duties." So on occasion we do hear, for example, from school boards -- and this is their imagination at work, not ours -- that say that they can't see a reasonable connection between an awards ceremony and the School Act. I suppose they're taking very narrow interpretations on the use of the term "consistent." That's why they don't seem ready to rely on 38(1)(b). I'm not sure if they're right on that or not. It seems that they are constricting themselves unduly there, in my view. That is the reason that they're not ready to rely immediately on 38(1)(b) without some kind of amendment in that.

12:46

THE CHAIRMAN: My only concern is that if you're going to have an act like this, that affects so many people, you shouldn't have to be a lawyer to be able to interpret it.

MR. ENNIS: Agreed.

MR. DICKSON: Let's avoid regulations. Agreed.

THE CHAIRMAN: Ron, were you trying to get my attention?

MR. STEVENS: Well, in my mind this sort of goes back to that earlier discussion we had regarding paragraph 54, which, as I understood it, was essentially that you have to find an act that tells you you're allowed to collect the information. So I listen to a discussion like this, and without knowing what legislation specifically we would be talking about, I think it might be interesting to see whether there is any such legislation, whether it be act or regulation, that would allow a university to collect information relative to an honorary degree or for a municipality to do the same thing. I mean, what we're talking about is something that we take, I think, for granted in our society, that such things would happen, but we start out with the proposition that you can't do it unless you can find some statutory authority for it.

Anyway, I raise that because my question was: well, what are we talking about here? That might be something that you can just give some thought to, because we raised it in the context of sections 33 and 38 and 39 and 40.

THE CHAIRMAN: That would be one of the reasons why we'd have to bring it into this act. That would be the enabling legislation that would permit that collection, for one thing, other than clarification, as I would see it. This act is as good as any, in other words.

Okay. We've actually voted on 56 anyways.

Question 57 has two parts.

a) Should section 33 be amended to allow for the indirect collection of personal information for the purposes of targeting individuals for fund-raising?

The second part would be:

b) Should it be restricted to published/public sources of information?

Question (a) asks the broader question, and then question (b) would determine whether there should be some restrictions on it. Let's discuss (a) first, but if you want to make your points together, I have no problems with that.

MR. DICKSON: I feel a little constrained only having two options. Actually we had a really good paper, paper 7 on postsecondary educational institution issues, and we were presented with four options, Mr. Chairman. Option 4 isn't reflected anywhere here. I mean, clearly this is responsive to what we heard from the postsecondary educational consortia, the U of A and U of C and so on. One of the options was to "allow continued use and disclosure of alumni information for fund-raising purposes for a limited time period, while consent is obtained from individuals." That's on page 8. Then one of the other options was 57(b), which was restricted to published or public sources. Would it not make more sense to sort of deal with the same four options that were in the paper and go through and

accept or discard? Frankly, I was attracted to a combination of options 3 and 4.

THE CHAIRMAN: Okay. What pages are they in that document?

MR. DICKSON: Pages 7 and 8 in paper 7, and they're outlined in bold, option 1 right through option 4. It seems to me really what we're about is looking at all four and determining which one we're comfortable with as a committee.

THE CHAIRMAN: Okay. Which one are you recommending we look at?

MR. DICKSON: Well, if you look at option 4, that's the one that says that from now on you ought to obtain consent when people enroll in your institution to be able to use their information down the road for fund-raising purposes and other purposes but in the meantime have a grandfathering provision.

I see Sue has got some comment on this.

THE CHAIRMAN: Sorry; I was busy reading. Go ahead, Sue.

MS KESSLER: The one question is dealt with under question 62, and that's the continued use and disclosure of alumni lists for fund-raising. So part of your question, Gary, is dealt with in question 62.

MR. DICKSON: I see them all sort of rolled in together, and we're having to make some choices. Should we sort of make them all at one time on the same issue?

MS KESSLER: One is a collection issue; the other is a use and disclosure issue. So that's why they were grouped this way. But I can see your point. It's a related theme.

MR. ENNIS: As I understand question 57, it relates to situations where institutions are collecting information about people who may not have any connection with those institutions, be they alumni or not. They are people who appear to have more money than they have to spend on themselves, and the fund-raising institutions would like to have them direct some of that money to the institutions. So these could be strangers to the institution, as I understand it.

THE CHAIRMAN: Any other comments?

MR. WORK: Mr. Chairman, on the narrow issue as it is stated in 57, the commissioner is opposed to public bodies, even for a good cause, building dossiers on private citizens. There is very scant evidence that this is really a very effective means of fund-raising in the first place. They're not allowed to do it in B.C., and the hospitals haven't plunged into darkness or the universities had to take to the . . .

MR. STEVENS: Yet.

MR. WORK: Yet.

So in the absence of evidence that this is a crucial fund-raising mechanism for these bodies, it just seems in principle wrong that they can go around assembling dossiers on people without their consent or knowledge. I don't know that there's much more that can be said for that. I suppose the point of contention is that the universities will say: well, this is for a good cause. But who decides what's a good cause? I mean, what if the Ku Klux Klan wants to collect information on people to fund-raise from them? They'd want to find the people that have the most hate-mongering reputations in Alberta. I don't know that that's such a good cause. So the commissioner would just prefer them to not do this or to get people's consent to do it.

Now, I said that this is on the narrow question, because when we come to the later question about whether or not the university fund-raisers should be able to know who the students and alumni are, I think the commissioner is prepared to say that that's okay. The university can tell the alumni association who the students are so that they can go to them and say: can we have some money? But the idea that they can just sort of keep track of people in the meantime, possibly unrelated people, and figure out who likes the opera and who drives a Mercedes and who drives a Porsche and who's been seen with who at what social activities is just not pleasant.

MS BARRETT: I agree.

MS PAUL: I agree.

MR. DUCHARME: I guess I'll have to add a little bit of disagreement. I just try to compare it in terms of talking to any of the service clubs that you have in any of your communities. As you go out to set up a certain project, whether it be playground equipment or team uniforms, basically the discussion takes place around a table somewhere with all types of different individuals. "Well, we should earmark, let's say, this individual because I understand he's had a good business year. Maybe he'll be able to contribute." So I have problems with that. I think you'd be limiting it, and all of a sudden you'd be closing the door on any kind of discussion as to who you should earmark as far as fund-raising.

MR. STEVENS: For the purposes of the record, I think it should be pointed out that the Ku Klux Klan is not a public body.

MR. WORK: Good point.

12:56

MR. STEVENS: I guess from my perspective section 33 deals with exceptions, and you have to have a policy reason for these things. From my perspective the universities and other such bodies have been following this particular procedure to raise funds. It's a necessary part of today's life. They are a regulated entity. I'm prepared to extend the trust. From my perspective I am concerned about what will happen in the event that they are not allowed to continue this. This process can be measured, and if in fact there are problems, we can address them later. I'm not aware of problems today from a process that has been in place for some time, and I'm prepared to give these institutions the benefit of the doubt going forward. So my vote, when we get to it, is in favour.

THE CHAIRMAN: I think that emphasizes an earlier discussion we had on this topic. Historically there have been avenues available to public bodies, particularly universities and hospital foundations and such, that allow them to pick up the slack for areas of operation which government funding doesn't provide. If we slam the door on them, we're going to be creating some problems.

I agree with Ron, and I think the emphasis, first of all, is the fact that it is a public body. Fund-raising for them has been an historical practice, I think to the point of becoming essential, and it's important to them to continue. If there are going to be some

restrictions, whether we decide to do it now or at some subsequent time if there appears to be any abuse of the privilege, they should be in the nature of maybe limiting the kinds of information that you would assemble as opposed to the ability to do it.

I'm assuming that we would not think very favourably on collected information about somebody that would be very embarrassing and where you could coerce them into committing funds as opposed to simply -- I think you mentioned, John, that someone obviously had more money than they really needed to satisfy their own needs, and the university or the hospital foundation or whoever could very well use a little bit of it. It's essentially talking about names, addresses, and things like that. From there on, whoever does the fund-raising uses the information in some ethical kind of way. I would really hate to see us restrict that ability.

MR. DICKSON: Mr. Chairman, it's interesting in terms of listening to your arguments and those of Ron Stevens. I have a difficulty with arguing that because we've done it in the past, we'll continue it. We're in this brave new information age. You know, when the Premier did his little video introduction, part of the training video -- I don't think it's in there anymore, but in the initial training video that came out in '94-95, the Premier talked about this bold new age of respecting privacy rights and that there's a new set of rules. That was seen as being responsive to a challenge that never existed 20 or 30 years ago in terms of abuse of personal information. So we have a new regime, we have a new piece of legislation, and hopefully we're developing a new culture.

I'm not unsympathetic to the challenge of universities. I know that's the way they've raised dough in the past, but I also don't want to lose sight of the fact that this is a different age. It's a new challenge, and we've got to be mindful of that. So I'm uncomfortable just in terms of saying: well, this sort of hasn't been a problem in the past; therefore we're just going to continue going down the road. I think we're trying to develop a new culture. There's a heightened respect for personal privacy. Why? Because there's more potential to abuse personal privacy now than has ever existed before. That's the concern I have with the thesis advanced by both of the last two speakers.

THE CHAIRMAN: I'm going to go back and refer to what you said earlier though, Gary, about the existence of some form of mischief, and I'm assuming that's a legal term maybe that qualifies some action. I'm sort of interpreting it as: well, if it ain't broke, don't fix it. I agree that we're possibly tossing back and forth, depending on how it suits our purposes here at the meeting, the interpretation. I guess that's what I'm saying here, that there is no reason to believe that the existing practice has either been misused or harmful. Unless we want to clarify that, why would we want to put an extra burden on some of our public institutions? If it turns out that after their involvement with it, which in some cases is happening or about to happen in the MASH sector -- then it may have to be revisited. But I don't think there's anything right now that would suggest that the historical practice should be curtailed.

MR. STEVENS: My comment was essentially the same thing. My comments were in part in relation to what I heard Frank saying. I think it's important to understand that this is a recognition of what is; it's not a matter of trying to create something new. We're trying, those who would support this amendment to allow for indirect collection, to deal with a current situation. It's not a matter of saying to people: give up what you're currently doing and go in this direction.

I think for those who would speak in terms of what is going to happen, the reality is that it is happening. So what you see today is likely what you will get. Has there been a problem of a practical nature dealing with this? I can understand the philosophical point, but I haven't heard anybody come to the table and say that there is a practical problem.

MR. WORK: If the committee is of a mind to go along with 57(a), I would ask you to seriously consider 57(b). Mr. Stevens talks about present practice. I believe present practice is for fund-raisers to keep clipping files basically: you know, Ron Stevens' company declares a huge stock dividend, that kind of thing. Section 57(b) I guess would allow clipping files to be kept, like you get from a clipping service. At least 57(b) would eliminate the possibility of public bodies -- and don't laugh, because I think it's within the realm of possibility -- actually following someone or investigating someone to a greater extent than you can from public sources and publicly available information. So if you are of a mind to allow indirect collection generally, I would ask you to seriously consider restricting it as set forward in 57(b).

MR. ENNIS: Mr. Chairman, just speaking on the heels of what Frank has said here, that might have implications for the current method of doing it, which in some cases is to contract with firms, some of them out of this province, to research the prospects that are being pursued for fund-raising. An amendment of this nature would have some restriction on what those contracts would look like, I would presume.

I also have a couple of questions on things I'm somewhat unclear on. Section 33 has a notice requirement in it. If you collect information from people that it's about without their consent, you're obligated under section 33 to notify them. Is the thinking of the proposal that's being discussed here today that there would be no notification? Then the other issue is: would there be access to those records under the access to information parts of the act? I think all those questions kind of roll up as a solution to the issue.

THE CHAIRMAN: Very interesting questions. I would assume that the last question you asked -- would the individual about whom the file is being kept have access to that, at least for the purpose of verifying its accuracy? -- should be a given.

MR. ENNIS: If there's access, perhaps the issue of notification becomes somewhat secondary, because a person can check the situation out. As I understand it, the notification is in there so that people know that a record is being kept about them by a public body, whether or not they contributed directly to that record.

1:06

MS PAUL: Then would that include people that are hospitalized? I think a few years ago there was a big concern about, you know, somebody being hospitalized and all of a sudden a flood of requests saying: you were in the hospital X number of whatever, whatever; would you please donate? I'm not really familiar with what kind of information that, let's say, the universities are using to determine if you can contribute, like check your car and check where you live. My flags just go up when it's sort of an invasion of privacy. I'm not in favour of including that kind of information for fund-raising purposes unless you have declared -- let's say that you go to university for five years or whatever and you sign a waiver saying that in the future you will allow soliciting for fund-raising purposes to be done. I think that just collecting this kind of information is an invasion. I don't want anybody to know what kind of a car I drive. I don't want them to know where I live

or how much I paid for my house, what my mortgage is or isn't. If that's the kind of information that's being given out, then I think it's a sad state.

MS MOLZAN: Mr. Chairman, just a point of clarification. I'm not sure if I misunderstood John's previous comment. The notification to the individual only applies in 33(2) if you're collecting it directly from them. In fact in these cases that we're talking about under 33(1), it's creating an exception. You don't have to collect it from the person, and there is no requirement to even tell the person that it's being collected. So someone could be creating a file for an individual, and they will have no idea that this is going on. The only time you must tell the person is when it's being collected from them, and if you're collecting from a specific individual, you then have an obligation to tell them the purpose for the collection and so forth prior to obtaining that information. That obligation does not apply. As I said, you could have a lot of secret files about individuals or files where the person has no idea that this entity has compiled a file about them, and there's no way for them to find out unless they almost by chance perhaps put in a request for their own personal information to almost every entity that potentially could collect information about them. So they are not notified about this.

THE CHAIRMAN: Take, for example, an individual who suspects that they were on some kind of fund-raising list from the university alumni and wanted to check, even though they weren't notified that the file was being assembled. Could they inquire and find out what was in that file?

MR. WORK: Yes.

THE CHAIRMAN: Then there's nothing that limits them from doing that?

MS MOLZAN: No. They can make an access request for their own personal information. Also, whatever entity they send that request to can also transfer the request if they know someone else has it and they don't or whatever. So there's certainly still an ability for someone to find out what information is collected on them, and certainly that applies at all times with all public bodies, which would include potentially, as the act applies to them, all the MASH sector as well.

THE CHAIRMAN: You were going to add something to it, John?

MR. ENNIS: Yes, and I appreciate the thought that Donna has added to this. The difficulty that I see is that the kind of collection that's going on is often of a nature where a person has had information collected from them but they don't know it's happened. The information has been collected directly from the individual -- it's not indirect collection -- but no one has told the individual that it's been recorded and sent off to a file. So that's why I brought up the issue of notice.

For example, if you're at a golf tournament and not aware that the person that you're teeing off with has an agreement with a fund-raising organization to bring home comments that you might make about a certain topic, you might disclose information about yourself. That person might collect it, but you don't know that activity has happened. In that case I think that the notice requirement would still be there for a public body to notify you that those things you said on the tee or on the 19th hole have been added to your record. That's sort of an outlandish example. Actually golf tournaments are a great source of information for these kinds of endeavours, but the case there is that the data subject has actually contributed directly to the information, has given the information directly, but doesn't know they've done it.

THE CHAIRMAN: The other thing, too, that concerns me. We discussed a little bit the harm it could do to a public body, and I'm talking now universities and hospitals, who have legitimate reason to fund-raise. Apart from the harm it could do to them, if the restrictions started to appear in the act, that activity is still going to go on. It's just going to go on underground. There are going to be more innovative ways of gathering information, and then it becomes a bit of a free-for-all as to who can be the most innovative, you know, what you can do under the table. I strongly favour keeping this aboveboard. Unless there's a good reason to restrict or stop the historical activity, it should be allowed if it's not a bad thing in itself and, if necessary, put a few fences around it to make sure there's some consistency in how it operates. We haven't got any proof, other than maybe some suspicions, that it could be abused. I would like to see that we continue this and, as I say, if necessary, either now or later put a few fences around it. Simply pretending it isn't going to happen isn't going to make it go away.

MR. STEVENS: Pages 2 to 5 in the postsecondary educational institutional issues paper is where you find the material that specifically deals with this issue, and I think it's worth noting on page 5 that the postsecondary educational institutions in their argument to this committee, in arguing that compiling research on individuals should be allowed to continue, made the following points:

- This is a long-standing and accepted technique in the fund-raising community.
- The institutions' activities are governed by the Charitable Fund-raising Act.
- The information they compile is publicly available. The FOIP Act allows public bodies to disclose publicly available information, and likewise should allow such information to be used and compiled.
- Institutions keep the information confidential.
- Institutions will destroy the information if an individual so requests.

So it's in that particular context, from my perspective, together with the points that are made on earlier pages, that this matter comes before us. Do we have a motion at this point in time?

THE CHAIRMAN: Yes.

MR. STEVENS: We do have a motion?

THE CHAIRMAN: No, we don't. I thought you said can we.

MR. STEVENS: I would like to make a motion, and that would be that

> section 33 be amended to allow for the indirect collection of personal information for the purposes of targeting individuals for fund-raising.

THE CHAIRMAN: In other words (a) as it's written.

MR. STEVENS: That's correct, (a).

MR. DICKSON: I'm going to move an amendment which in fact incorporates (b) so that it restricts the kind of information that can be collected. We can deal with that, and then we're back in the same position. I think we have to deal with it in that sequence --

that's what I mean -- rather than as two separate motions because one follows the other.

THE CHAIRMAN: Okay. For the sake of clarification, however, I'm going to ask that the wording in (b) be changed slightly, because it now says "published/public sources." There's quite a difference between public sources and published. If it had words something liked "published or other public sources of information" -- the way it's written now, you might as well take the rest of the public sources off if it wasn't published. To me a slash between the words really doesn't give it much of a definition. So it would need some grammatical correction, I think. Would you have any objections to that?

MR. DICKSON: I thought it was reasonably clear. If there's some alternate wording you'd suggest.

1:16

THE CHAIRMAN: I would say to insert the words "or other" where that slash is now.

MS PAUL: You want "other" in front of "public"?

THE CHAIRMAN: Yes. Where the slash is now, insert the words "or other."

MR. DICKSON: Okay. Let's read it: "published or other public sources of information." That would be my amendment to Ron Steven's motion.

THE CHAIRMAN: Further discussion? Ron's motion is (a). Gary's amendment is (b) with the words "or other" in it. So we vote first on the amendment. All in favour? That's carried.

So on the motion as amended, which includes (a) and (b). All in favour? That's carried.

Question 58, after reading it over, looks like it relates also to number 65, which we're still working on and are deferring to the next meeting. So I'm going to suggest that we defer 58 as well and tie it into 65.

Number 59. There's actually a typo in there. It should be:

> Should section 33(3) be amended to either:
>
> a) delete the ability to dispense with notice to the individual about collection of information; or
>
> b) amend the section to allow the head to decide that collection does not have to be made directly or notice of use given only if there is reasonable certainty that the information provided would be inaccurate; and/or
>
> c) amend the section to allow only the Minister to make this decision?

I discussed this -- and I forget with whom, whether this was earlier in the committee; now, I apologize if this wasn't in the committee. I felt that (a) was not entirely appropriate. With the upgrading of the wording, where the italicized "reasonable certainty" would be substituted for the present wording "might result," I think "reasonable certainty" would be stronger wording. I don't think there was support for (c), so it was almost as though we were voting on (b). Now, I don't remember which arena this was discussed in. I've discussed it with so many people and some individual members of the committee. So you can feel free to debate that in any direction you want.

Go ahead, Gary.

MR. DICKSON: Mr. Chairman, I'll start off by telling you that I'm sure it wasn't an arena I was part of. It sounds like we're abandoning 59(c). I'm trying to understand what advantage was seen in narrowing it to the minister so it wouldn't apply to heads of other public bodies. What is that about?

MS SALONEN: That was a submission from the Civil Liberties Research Centre. That was their proposal: that only the minister responsible for the act would make the decision.

MS KESSLER: That's the B.C. approach.

MR. DICKSON: Okay. So in this case the Minister of Labour would be the minister making that decision.

Is there some perspective of the IPC on this, Mr. Chairman?

THE CHAIRMAN: We can ask him.

MR. WORK: I must confess that I'm not sure exactly, Mr. Chairman, what they're trying to accomplish here. I think I understand sub (a); I don't think I understand sub (b) at all. In fact, off the top of my head it seems to me that (b) sort of misses the point of the exercise.

MS SALONEN: The point that they raised with (b) was that the wording that's in the act now, "might result in the collection of inaccurate information," wasn't strong enough, that there should be some "reasonable certainty" that that would be the case.

MR. DICKSON: Mr. Chairman, can I ask: in our almost four years' experience with this, to anybody's knowledge has this ever been used? I mean, has this been something that's been wrestled with in a real fact situation?

MR. ENNIS: I believe the real fact situations would normally be in the area of fraud investigation, especially the eligibility for ongoing programs. This would be primarily in places like the Department of Family and Social Services, on the income support side, or the Workers' Compensation Board for continuing benefits of a claimant. I haven't heard of cases where those public bodies followed through with notice to an individual that the information has been collected.

MR. WORK: So, Mr. Chairman, if I understand this correctly, the idea would be that a public body like, say, the Workers' Compensation Board should be allowed to go to my neighbours and say: Mr. Work has a claim in with us for a bad back; have you seen him shingling his roof or shoveling his sidewalk? Now, you'd be allowed to do that unless the head of the public body suspected that the information would be inaccurate, and then you should not do that.

MR. ENNIS: I think more to the point here, Frank, might be if the Workers' Compensation Board was under an obligation to advise you that you are being videotaped. Should they have that obligation, knowing that if they are videotaping you, you likely will not be lifting bales of hay on the weekend?

MR. WORK: I see.

MR. ENNIS: So you would be giving them inaccurate information.

MR. WORK: I've got it.

MS MOLZAN: Mr. Chairman, the only circumstances that I can relate from some of the experiences that I'm aware of would relate to situations where you may have an individual that is

incompetent; for example, under 33(1)(h), where the Public Guardian tries to get information to determine if they really do need to step in and help this individual with either medical care or with their finances and so forth. So there are situations where an individual may have certain mental illnesses or physical disabilities where they cannot maybe discern what is truth or what isn't or they may provide inaccurate information when in fact they do need care or they do need someone to step in and help them with their estate. Those would be some situations that I'm aware of, when this was originally drafted, that were considered in this. Someone under a mental disability may give inaccurate information if they are personally asked or if they're aware that it's being collected, in which case it may not be to their advantage in helping them with whatever care, estate care, or guidance is needed.

THE CHAIRMAN: Getting back to my somewhat fuzzy introduction of this, just to make sure there's no misunderstanding of what I intended, my suggestion was that we reject (a) and (c) and accept (b) because (b) would clarify or emphasize the information, which now says "might result," and change that to the words that would say that there is "reasonable certainty." In other words, it can't be hypothetical. The head would do as they do now but can't think of hypothetical excuses; it would have to have reasonable certainty.

So abandon (a) and (c), or not approve them, or whatever word you want to use.

1:26

MR. STEVENS: I'll make that motion.

THE CHAIRMAN: Okay. On the basis of that what I hope is clarification, is there more discussion? All in favour? Opposed? It's carried.

MR. WORK: I must say, Mr. Chairman, that part of my confusion on that was that I was remembering section 51 of the act, which allows the commissioner to authorize indirect collection. I guess that power is in 51(1)(h). That power still exists in the hands of the commissioner. So I'd just add that as an aside, if you like.

THE CHAIRMAN: Which would still apply.

MR. WORK: Yeah, or he could authorize it.

THE CHAIRMAN: Number 60 we're going to defer; there's more information coming.

Number 61. I'm not a hundred percent certain that we haven't debated this, certainly in some fashion. There are three parts to the question again.

> Should security and protection measures be specified [a] in policy as they are now; [b] more specifically in the Act; or [c] in the Regulation?

I've added the "a", "b", "c" just to clarify where we're at.

I think in earlier discussion we've rejected the concept that policy is a strong enough vehicle to decide whether or not an issue should be in or out of the act. The part about specifically having this security in the act would possibly go in the discussion of whether or not the statute is flexible enough to deal with emergent problems, which would allow that to happen in the regulation under the FOIP Act, making sure that it's clear that we're not talking about regulation in an act outside of FOIP. In an earlier vote we had determined that it was only in regulations under FOIP that these determinations could be made.

Discussion?

MR. DICKSON: I think that this is really an important issue. I remember seeing recently that Alberta had entered into another interprovincial agreement for some data matching in terms of social service recipients. I think we have agreements now with at least three other provinces to compare people receiving SFI and so on. So this is going on all the time.

I like the model that's used in the Ontario bill around health information. Ontario has specifically addressed it in statute. They have a part of their bill, that those of us on the health law steering committee had a chance to look at, that sets out some rules in terms of if you're going to use data matching -- and clearly this province does -- then there are some factors that should be assessed. In fact, in terms of data matching and so on, if I look at the extent to which this province is privatizing services that formerly had been government functions, there is enormous potential for information to be exported outside of Alberta, potentially to the head office of an insurance company in the U.S., whatever. There have to be some safeguards around that, and you can't put them appropriately, in my respectful submission, anywhere other than in legislation.

There will still be work that has to be done by way of regulation, but in terms of setting out what your basic protections are, what the principles are that should be followed with data matching and data sharing, I think those have to be in the statute. As I say, in Ontario we have an example. I think that's in fact one of the recommendations from the health committee chaired by Ron Stevens, as I recall. I don't have that report in front of me, but I think one of the things we'd urged was that there be some provision in the statute that addressed this very issue. If in fact it's good enough for the health committee and health legislation, why would we be concerned about it similarly applying in nonhealth areas?

MR. WORK: Mr. Chairman, I'm assuming that this is what it refers to. Section 36 presently says:

> The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

I'm assuming that the notion would be to allow -- rather than just leaving it up to the head of a public body as a general duty, there would be some actual specifications put in there like, "You will use this kind of encryption on your computer," or "You shall use this kind of password," or "You shall use this kind of machine," or something. I understand what Mr. Dickson is saying about putting those in the statute. I think it's good that they be set out somewhere so that the heads of the public bodies know what the security requirements are. I just wanted to point out that the technology changes so fast that to put very technical security measures in a statute might not be very practical. It wasn't long ago that computer encryption was 32 byte, a couple of years ago, and now it's up to 64-byte encryption. It changes that quickly. I think the idea is good in principle, to give some certainty on these kinds of technical things. I'm just pointing out that you might need to move quickly on some of them as well.

THE CHAIRMAN: That's been the basis of the debate we had earlier, that there needs to be enough flexibility so a regulation could in fact deal with it but that using the policy is probably just a little too loose because there's no certainty. You know, the same transparency isn't available.

MR. WORK: I think that's probably correct as well.

MR. DICKSON: I think my comments, Mr. Chairman, have been misapprehended by Frank. I'm not talking about spelling out in

the statute if you're going to use a biometric encryption or some specific mechanical system. I'm just saying that you would say that if information is going to be shared or data matched, there are some tests that have to be met. It's a middle ground, if you like, between setting out what the specific technology is going to be and simply saying that the head of the public body must take some safeguards. What I'm saying is that the middle ground is what they did in Ontario, which says that you can't share data outside the jurisdiction unless you've entered into an agreement with the other jurisdiction that's going build in some certain safeguards to be met and so on. So it's a middle ground.

MS BARRETT: I also misunderstood what you were getting at.

MR. ENNIS: There are sort of three phenomena that I think this section has to really deal with. One is called data sharing, one is called data matching, and one is called data linkage.

Data matching is basically checking to see that you've got common clients but then breaking off as soon as you've verified you do have common clients. For example, if Alberta and Ontario are paying the same person income support, a data match would pick that up, but it would still be Alberta's problem to investigate the case. They wouldn't use Ontario data to do that. They would just know the match is there.

Data sharing is a little bit more involved than that, but at least the clients of a program know the data is being shared; for example, between Advanced Education and Career Development and Human Resources Canada. There's notification in place.

The difficult one is data linkage, where you have an interconnectedness of information systems, and the data subject doesn't know that that's happening. The data subject is excluded completely from the collection of information by the subsequent systems. So I think that if you're looking at a possible regulation, perhaps it should address data linkage, which, by any information rules that we've seen, is an illegitimate practice simply because the data subject doesn't have any chance to contribute to or control that process.

THE CHAIRMAN: I think the concern here is that because we're using the example of computer data, which is such a moving target, there needs to be the ability at least to keep up to it. I'm going to suggest now -- I don't know if this will satisfy it, because we're talking about the generality, and we're not even sure how effectively it's going to be administered or what the wording is going to be -- that we recommend that this protection measure be specified at least to the extent of regulation. In other words, it could be regulation or legislation but nothing below that; in other words, not policy. I would argue that there needs to be the flexibility, and we don't know there's enough certainty in using a broad definition in an act that it would cover the purpose. This is what you're suggesting, Gary. A very broad definition may or may not be sufficient to provide the protection.

1:36

MR. DICKSON: But there's no specificity in terms of saying that the head of a public body can't export outside the province personal data about Albertans without entering into an agreement or meeting certain kinds of safeguards. I mean, that's more in the nature of a general principle, but it affords some measure of protection so that seniors' health information isn't being sold to an outfit headquartered in Tucson.

THE CHAIRMAN: I think that we're now getting into the realm well beyond what was intended. I think we're talking here of data matching, not whether data can be sold or dealt with in any other way.

MR. DICKSON: I read "data sharing," Mr. Chairman, in the last part of the example.

MR. STEVENS: My comment on this area would be, first of all, that section 36 gives a general direction relative to what you're supposed to be doing if you're the head of a public body and the issue is one of risk of "unauthorized access, collection, use, disclosure or destruction." It seems to me, on the basis of what I know, that if you're talking about information with respect to Albertans going outside of this province for storage or for any other reason for that matter, the only way that you're going to be able to deal with it is through contract because of the way things currently are. No one has been able to really identify a solution to that problem.

I think the issue here today is, first of all, that we don't understand nor will we the detail of this particular matter and how the actual protection is going to roll out in any given case. But what we're saying is that we recognize that whatever is out there today is a matter of policy and we think it should be bumped up. I hear what you're saying, Mr. Chairman: let's make it regulation, and it may be appropriate in certain cases to put it into legislation, but let's not leave it at the policy level. So as far as transparency, as far as access, we're certainly increasing that, and there are going to be people out there, outside of this committee, who will be telling us what the words look like in any given situation, but we're not going to know how that looks in this committee. This is, in my opinion, a very general direction but an important one that we're giving to people, and that is: let's get it into regulation and, if appropriate, into legislation to the extent reasonable.

MR. DICKSON: I have no difficulty with that.

MS BARRETT: I don't either. Then what becomes of Gary Dickson's notion of proposing the spelling out of jurisdictional arrangements when it comes to security of information? Would that go in regs?

THE CHAIRMAN: Well, it seems to me that is taking one step beyond what this particular section . . .

MS BARRETT: Yeah, I acknowledge that, but I don't think we should ignore it.

MR. DICKSON: With respect, Ron's suggestion creates that as an opportunity. I mean, there may be an opportunity that some of those things would be spelled out in legislation, some in regulation.

MS BARRETT: So we just see what comes back to us.

MR. DICKSON: Sure.

MR. WORK: Mr. Chairman, the act will still operate on those. If any Alberta public body wants to give out personal information, they still have to look at section 38 and find a justification for doing it. That doesn't change. So if Advanced Education in Alberta wants to tell Canada Manpower the names of everyone who got a bachelor's degree in engineering this year in Alberta, they'll still have to go to section 38 and say: "Well, okay; where's our authority to disclose this? Does it comply with an enactment? Is it necessary for determining suitability or eligibility for a

program and so on?" I mean, that is still there. They still have to have justification to disclose.

THE CHAIRMAN: What we're actually doing, I think, is addressing a concern that certain information is there and what is the transparency of how well this is protected. We're saying that we should maybe step that up one notch to at least the minimum transparency of a regulation as opposed to a policy, which could be changed at the whim of the person drafting it depending on what side of the bed they got up on in the morning.

I see a strong hint that it's getting a little cold in here.

MS BARRETT: I'm probably the only one. Everybody else looks comfortable.

THE CHAIRMAN: We can turn it up a little bit. I think Diane turned the heat down because this morning it was awfully warm.

MRS. SHUMYLA: It's the opposite; I turned it up.

THE CHAIRMAN: You turned it up? Okay. I'm so busy here that I haven't had time to notice whether it's warm or cold.

Okay. So we're agreed on the interpretation of what we're heading to in question 61?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 62.

> Should provisions be made to allow post-secondary educational institutions to continue to use and disclose alumni lists of information for fundraising and to provide other services?

We dealt with something very similar in question 57, but this is a little bit more specific to postsecondary educational institutions. It's probably the same principle. I think that with the handle that was put around it in 57, based on that it be "restricted to published [or other] public sources of information," the same likely solution could apply here.

Any debate on that?

MR. WORK: Mr. Chairman, the commissioner, in talking to the respective ministers and the public bodies involved, said that he would prefer that over time the alumni associations get consent, like when you register for a university or a college or something, just like you do now on your income tax form: do you mind if we give this information to the Chief Electoral Officer?

MS BARRETT: Or Elections Canada.

MR. WORK: Yeah. Thanks, Pam. Elections Canada.

The commissioner would prefer that that eventually be the case here, that you tick off on your form -- can we give this to the alumni association? -- yes, go ahead, or you don't tick it off.

However, the commissioner also said that he appreciates that there's going to be a gap there, that it's going to take a while, you know, to bring about this change. Also, there are all the good folks who have already graduated from whom it's probably totally impractical to ask for consent. So he has said that he sees the need for this kind of provision in the past tense, but he would hope that in the future they would get consent.

That's all I have to say.

THE CHAIRMAN: I think that would be quite appropriate, Frank. I'm assuming you deliberately stopped short of putting a sunset on it because if you assume someone could graduate when they're about 23 or 24 years old, you'd have to have about a 75-year sunset clause on it.

MR. WORK: Having been accused of being a professional student at one time in my life, no, I'm not going to go that far. No sunset. I think the commissioner understands that for the information which they have to date gotten on this basis, there's no way of getting retroactive consent, whereas in the future they could modify their forms ever so slightly in order to obtain that.

THE CHAIRMAN: It wouldn't have any legal status, but I'm wondering: if we recommended the approval of 62 with the same proviso clause as we had in question 57 and then with a footnote to suggest that institutions be moving towards whatever it was you called it -- getting permission from the students -- so that there is a deliberate move. But it would at the very best be a suggestion, because you couldn't put that in legal words.

1:46

MS BARRETT: Well, I think, Gary, I would argue that you could do it in a statute: that by such and such a year all such institutions requiring collection of new names make the acquisition of those names voluntary by the student.

THE CHAIRMAN: My point, Pam, when I addressed what Frank earlier said, is that if you assumed that it may be impossible to get all the consent forms from anybody who has now graduated -- and that could be someone as young as 24, maybe 23 years old -- as long as there is the ability to target them for fund-raising and assuming that the older they get, the more money they have and the less likely they're going to spend it, then you have to have that sunset until they're about 80 years old or so.

MS BARRETT: Well, in any event, Mr. Chairman, I'm okay as long as the message gets out to the institutions, because citizens have to have the right to opt in or out of data collection.

MR. WORK: I might add anecdotally if you're interested, Mr. Chairman, that I'm told by the Chief Electoral Officer of Canada that for the box on your income tax form -- you know what I'm talking about -- he's got just about an 80 percent consent on that. So this shouldn't impair the abilities of the alumni associations to get a pretty healthy list of potential donors if it works as well as it has with Revenue Canada and Elections Canada.

THE CHAIRMAN: Not only that; I've actually had the opportunity to talk to people from a couple of universities, and in most cases people are actually quite proud to be on this list. It shows that they have achievements. That rate of pride seems to increase, however, the further away they are from their graduation, because at the beginning they may not be so proud of their achievements.

So I'm agreeing that it probably wouldn't be that difficult. It would send out a message that we're not going to pull the rug out from under you, but hopefully you are going to look at the consent method more than less.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Agreement on that.

I think 63 is just a technical change. Any problems with that?

MS WILDE: Actually I have a comment regarding 63. To my mind, the terms "collected" and "compiled" could potentially mean two different things. The *Oxford* dictionary defines the word

"collected" as meaning simply to assemble or to accumulate, while the word "compile" could arguably have a broader interpretation. It could include things such as assembly and accumulation of information but also the mixing, compounding, and combining of information. So my recommendation is that those two words remain in the act. The FOIP policy manual also seems to support this interpretation that the word "compile" could have an extended meaning over and above "collect."

THE CHAIRMAN: I knew there was a problem if you let a lawyer talk on this. I'm just teasing you. I hope you understand that.

MS MOLZAN: Mr. Chairman, with all due respect to the legal profession, myself being one of these creatures, basically the reason the suggestion is coming up to take out the word "compile" is that lawyers tend to have a bit of a habit of using two words when they only need one, like cease and desist, null and void. You know, instead of just saying it once, they can say it twice; then we're really serious. So I think the information we have or the feeling we have in terms of the definition of "collected" in the act is that it certainly would be broad enough to involve -- like, you have to collect it before you can compile it. Once you've got it collected, you can do whatever you want with it. You can compile it. You can leave it the way it is. You can take a bunch of collections and separate them.

So we see it as really being more of a drafting issue, again "compiled" and "collected" -- we said it twice, so we're really serious. "Collected" encompasses whatever you do with it. Once you've got it in your hands or in your records, you can compile it or do other things with it, yet you still have it collected. So "collected" is the overall broad concept we see capturing it. I guess it's sort of an attempt to make it a little bit more plain language, because I think the average Albertan would probably understand what collected means. If you've got it, it's collected. It gets a little bit more complicated the more you try and add other phrasing to it.

So that is the intention behind the suggestion. It's certainly not to in any way change what happens or the definition under the act. It's seen that "collected" already encompasses "compiled."

THE CHAIRMAN: I would really love to continue this debate; it's so exciting. How strongly do we feel about . . .

MS BARRETT: I say leave it as is.

MR. STEVENS: I'm persuaded by the explanation we just had.

THE CHAIRMAN: Which one?

MR. STEVENS: You can't compile something if you haven't collected it. If you've got it, you've collected it.

MS BARRETT: So?

MR. STEVENS: So "compiled" is redundant. I mean, if you've got it, you've collected it. I'm happy to go along with the technical support staff recommendation.

THE CHAIRMAN: You're making a motion that the word "compiled" be removed from both of those sections?

MR. STEVENS: Correct.

THE CHAIRMAN: Further discussion?

MS MOLZAN: Sorry, Mr. Chairman. One thing I omitted to mention is that it actually is in additional sections: 37(a), 38(1)(b), and 39 all use "collected" or "compiled." The suggestion is that it all just read "collected" in those three sections, which are all connected to use, disclosure, and then the definition of consistent use.

THE CHAIRMAN: Sections 37(a), 38(1)(b), and 39?

MS MOLZAN: Yes, sir.

THE CHAIRMAN: Okay. On this very important issue?

MS BARRETT: Yeah, okay. You got my vote.

THE CHAIRMAN: Are we in favour?

HON. MEMBERS: Agreed.

MS BARRETT: Oh, oh. Barrett capitulates.

MR. STEVENS: What do you want?

MS BARRETT: Cabinet.

THE CHAIRMAN: Question 64.

> Should a correction be made to resolve the technical drafting error in the introductory clause of section 39 to reference section 38(1)(b) rather than 38(b)?

Is that clearly technical?

MR. WORK: Mr. Chairman, yes.

THE CHAIRMAN: Is everybody agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. We have more information coming on question 65, so we'll defer that.

Number 66.

> Should section 38 be amended to also permit disclosure for the purpose of verifying if an individual is still eligible for a program or benefit that he or she is already participating in?

There are some submissions to that extent. I guess the argument is that it's permissible to get this information to determine eligibility, but it's fuzzy as to whether you can continue to do it for ongoing eligibility. Is that correct, Sue?

MS KESSLER: That's correct.

THE CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

1:56

THE CHAIRMAN: Question 67: "Should section 38 be amended to include specific provision for the release of teaching and course evaluations by students?" This is a submission that was made by the universities and postsecondary institutions. As soon as it was found out, I believe the staff associations or whatever the legal term would be objected to it because they are the beneficiaries, I guess, of that scrutiny. The universities are arguing that it is one of their better techniques for evaluating courses and the professors that teach them and enables students to make some kind of a considered judgment of courses they might get into. This is one of

those historical practices that obviously has proponents and opponents.

MR. DICKSON: My question was going to be -- in the original recommendation they wanted to do it in section 4(1)(e) rather than in section 38, so I'm wondering if there was a decision made that that's not acceptable. It's probably more appropriate to be done in section 38, but that was the specific recommendation from the University of Alberta. I'm interested if there's a process . . .

MS BARRETT: And you're saying it would have been under . . .

MR. DICKSON: Well, section 4 is the things that are absolutely excluded from the act, that the commissioner never has even the authority to review and that sort of thing. It's completely outside the act. That's what they'd asked for. If we choose to do it in section 38, that may be a preferable way of doing it.

THE CHAIRMAN: Well, the advantage of section 38 is that the commissioner can then rule on whether it's appropriate or that it isn't possibly an abuse of that privilege.

MR. DICKSON: Yeah. I'm comfortable with that, but I just want to flag the fact that the submission was for even stronger protection than this expressed provision in section 38.

MR. WORK: Now, I understand the issue is that section 38 would be amended to allow course evaluations to be disclosed; right? So this is where the interest in privacy and the interest in accountability and transparency kind of smack headlong into each other. Our position was in favour of allowing the disclosure of course evaluations. We're assuming in this that it's responsible. You know, the amount of personal information about -- I mean, the purpose is to evaluate the course or the way it's taught, not to slag the instructor or somehow defame the instructor. That's what I mean by this being done responsibly.

THE CHAIRMAN: And this is the position that the university has made. The catch is that the information being provided by the student is done anonymously, that the information is there and it's up to the institution to determine whether or not that information is in fact valid or vindictive, you know, eliminating all those other possible abuses.

MR. DICKSON: I support the proposal.

MR. STEVENS: Let's vote on it then.

THE CHAIRMAN: Okay. All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. All agreed.

Question 68.

> Should section 38 be amended to allow the disclosure of older class lists for social and historical functions such as class reunions and alumni activities?

This is one step in what I was talking about a little bit earlier, but it wouldn't be conflicting if we approved this one at this point. Agreed?

HON. MEMBERS: Agreed.

MR. WORK: I would just note that whoever wrote this did the right thing and said "older class lists," because again there is, unfortunately, in this society concern about people trying to obtain new class lists for bad motives. But it does say "older class lists"; I think that will convey the intent of the draftsperson.

THE CHAIRMAN: Okay.

Question 69. There's a possibility that this has connections to question 35, which we're still working on. I'm wondering if we have the information we need on 35, Sue, to deal with this, or should we defer it until next week?

MS KESSLER: We haven't quite completed the analysis of section 16, so we should probably defer it.

THE CHAIRMAN: Okay. We will defer the last item to next week.

MS BARRETT: Which one was 35? Otherwise I have to dig for half an hour.

MS KESSLER: It was related to the clarification of . . .

MR. ENNIS: Licences, permits, and other discretionary benefits and whether there should be an elimination of that section, 16(4)(g), that makes that automatically accessible.

MS BARRETT: Oh, I must have missed that meeting.

MR. ENNIS: It was deferred.

MS BARRETT: Good. I'm glad it's coming back.

THE CHAIRMAN: So that'll be coming back.

MR. DICKSON: I was going to say that questions 70 and 71 really belong with the health process.

THE CHAIRMAN: It was going to be my recommendation that we deflect 70 and 71, to be dealt with with the health information. Does anybody have any problems with that?

Okay. Question 72.

> Is there a need to revisit section 16(4)(i) and section 38(1)(aa) regarding the restriction on access to information or disclosure of personal information about the deceased?

My understanding is that there is discretion now and that there probably would be no need to do this. Does anyone feel strongly otherwise?

MS BARRETT: Sorry; I'm still back on that other one. Mr. Chairman, where are we?

THE CHAIRMAN: At 72.

MS BARRETT: Okay. Thanks.

THE CHAIRMAN: I don't see a strong desire to change this. I take that to be consensus that we would leave it unchanged.

Question 73. "Is there a need to define the phrase 'clearly in the public interest' in the Act?" Does anybody here not understand what that means? Gary doesn't understand what it means.

MR. DICKSON: Constantly I'm befuddled, Mr. Chairman. I'm just going to make the observation that I'm torn between the lawyer's bias which says, "The more you particularize something, the more limiting it becomes," on the one hand, yet on the other hand, as somebody who has tried to invoke section 31 in what I

thought were all kinds of meritorious circumstances, you begin to wonder when, if ever, we're going to see something that is determined to be in the public interest, other than sex offenders being released. I think there can be some further definition that doesn't unreasonably limit it, but I think there has to be some nudging of public body heads and the commissioner to animate this wonderful opportunity. I don't have specific wording.

Let me back up and say this. When we dealt with the act and the initial bill back in '94, there were many of us who thought we could live with the exceptions, which we thought in many cases were too broad and too many, because we saw section 31 as being the balance. That was the way that imported some overall reasonableness to sort of mitigate against the harshness, if you will, of all the exceptions. Looking back on four years' experience, it's only been invoked in that one case I can think of, unless there are other cases, when the Justice department wanted to release the information. So I'm not sure that section 31 is serving the purpose that the Legislature and the Premier's all-party panel thought it was going to serve back in 1994. Mr. Chairman, you may have some sense of that.

THE CHAIRMAN: A very persuasive argument, Gary, but I'm not sure I see other people sold on the idea.

MR. STEVENS: Well, the personal bias I think came through loud and clear on that one.

MR. WORK: Mr. Chairman, in a very early order we tried to define public interest, and we wound up coming up with an incredible list of some 13 items that might be in the public interest. Justice Cairns, in another order which he adjudicated for the commissioner, came up with some more enlightenment on exactly what the public interest is. At the end of the day, while both I guess are helpful, neither one is probably conclusive, and I'm just not sure if you might kind of lose more than you gain by trying to define it in the act.

2:06

MR. STEVENS: Gary, this is one of the really good advantages you have in being in opposition. You can continue to push this one and see if you can get a better definition out of it.

MR. CARDINAL: You're just trying to define effective representation.

MR. DICKSON: Yeah. Don Quixote behind us, just over here. Sorry; I was getting excited about item 74, sir.

THE CHAIRMAN: Do we agree or disagree that there is a need to define the phrase?

MR. DUCHARME: Disagree.

THE CHAIRMAN: Okay. So that means there is a majority of opinion that we will not change the definition.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question number 74. "Should the use of section 31 be reported on in the annual report by either the Information and Privacy Commissioner or the government?" My understanding is that the IPC office can divulge any information that's in presently and include it in their report.

MR. ENNIS: Mr. Chairman, I've done a little bit of work in this area just in terms of looking at what we've had in the area of section 31 notices. I guess the reason that you have to point to IPC on this is that the information is not gathered by the Department of Labour, by its information management and privacy branch. The notifications come to the commissioner, so it's quite likely that the Minister of Labour and his staff will not be aware when a section 31 notice has been given, whereas the commissioner's office will always be ultimately aware of it.

This is the file. You can see this is three years of notifications. Most of them are from -- I'm of course not at liberty to share that, but I just wanted to show the volume, basically, of the activity. All of the activity we've had to date has been from law enforcement authorities, predominately the Edmonton and Calgary police services. These are notices where they are warning parts of the public, normally past victims or immediate families or people in the community, without going so broadly as to notify all of the public. So these are cases in which they've done that kind of notification. It is possible for us to count them.

One aspect of section 31 that's interesting is that we face it in another way in that applicants sometimes point to 31 and claim that a minister or a head of a public body has failed to give notice under section 31. We could count those as well. We've had a couple of cases like that.

I don't know if people have questions about how that process works or what it is we would be reporting on, but the suggestion you hear is that somehow it would be reported on in an annual report.

MR. DICKSON: Well, that was part of my submission. It just seems to me that the report would be a whole lot more useful if there was an indication from the IPC in the annual report that's filed that to the knowledge of your office the section has been used as authority for disclosure in 21 cases or two cases or whatever and for that reason I mentioned before, that that's seen as part of the balancing mechanism in the act. Even for those Albertans -- and there are a few -- who keenly follow the activity of FOIP, you don't know whether it's used at all. That information you just shared with us is the first time I've heard those numbers.

MR. ENNIS: Well, in most cases when a section 31 notice is given, it's only a few people who get the notice. We received a notification on Friday about an individual that is coming out of some kind of penal institution. The notice was given to a family with whom he's got a very bad history, especially with the children in that family. That's a very narrow use. The police go through a checklist that involves work with the penitentiary people, the corrections people, the parole service, and so on and come to a determination as to what the scope of that notice should be. So it's less likely, especially in the larger cities where there are community referral agencies available, you'll have a broadcast notice. In a smaller centre you'll more likely have a broadcast notice.

MR. DICKSON: I'm not thinking that we need copies as an appendix in the report but just an indication that it's been used X number of times in the area of people being discharged or warrant committal time in its alert to the community. That would, I think, be a helpful bit of information. I don't know how other members feel, but I don't know what the harm would be including it in the report if it helps us to better understand how it's being used.

MR. STEVENS: Two comments. One, John, you've referenced a file, but I don't know that you've made any comment about

what's contained in it, and people may read what's going on here. So I wouldn't mind if you in your words would describe what's there.

The comment I have with respect to this particular point is that it seems to me that it's unnecessary to specifically direct that this matter be reported on. It's permissive. The commissioner may or may not, as he chooses in reporting, do that, and I'm just as happy to leave it as a permissive rather than a directed matter.

MR. DICKSON: But he's chosen not to report on it in the last number of years' reports.

MR. STEVENS: Fair enough, but I mean that may be because in his opinion it doesn't warrant being reported on.

MR. ENNIS: If I can just interject here. In the first year of the act I'm not sure that the protocol was finalized between the Minister of Justice and the chiefs of police on the use of section 31. So most of the activity that we've seen has actually been in about the last 12 months. There was a gradual take-up of this option.

We're about to see it expanded, we believe. We've had requests from some public bodies to be able to give notice to other public bodies when there's a dangerous client in their midst, not necessarily someone just being released from an institution but someone who in the past has a very violent track record or whatever of perhaps assaulting front office staff, and departments want to be able to establish a protocol. There's a committee of management and labour in the government -- I forget the name of the committee; it's an occupational health and safety committee -- that's now looking at the issue of whether protocol is needed so that front office staff in one department can warn front office staff in another when there's a dangerous client present. That all goes back to a fatality that occurred some years ago and thoughts that have emerged since then.

MR. WORK: Mr. Chairman, I will suggest to the commissioner that he can and should in his annual report always report on the incidence of the use of section 31, respecting the confidentiality of the people involved. But as Mr. Stevens and Mr. Dickson both said, statistically saying the number of times it's been asked to be used and the number of times it's been used I think is probably good practice for the office.

MR. DICKSON: Thank you.

THE CHAIRMAN: A similar argument I think would apply to question 93, which talks about "including more detailed statistical information." In the act there is a fairly general section, 61(1)and (2), as to how the annual report must be made up. I believe that's fairly consistent with the very general requirement for annual reports by other officers of the Legislature, and I'm not so sure that we as a committee want to get into detailing what should or shouldn't be in the report, because this thing could end nowhere if we want to get into that. I'm going to suggest that the concern perhaps -- and I'm sure he's already read it himself -- be conveyed through yourself, Frank, as you suggested, and judge himself accordingly.

Are you going to have any real problems if we do that, Gary?

MR. DICKSON: I've got a whole number of things that I'd like to see when we get to 93, so I'll hold fire, but I just wanted to alert you. Question 93 goes far further than 74 does.

THE CHAIRMAN: Okay. We'll hear your arguments when we get there.

Question 75. "Should a recommendation be considered related to whether the position of the Information and Privacy Commissioner should be a full-time position?" This is another one of those arguments that has been made ad nauseam, I think. I think Gary and I agree to disagree on that, or maybe we don't even go that far. The argument was made that the IPC office is a part-time job, also in conjunction with the present Ethics Commissioner. I have taken the liberty to ask Mr. Clark whether this is an unreasonable problem, and he assures me that it is quite a workable arrangement. I leave it, therefore, to the committee to debate.

Gary, go ahead.

2:16

MR. DICKSON: Well, I'm happy to take you up on your invitation. I don't have it , but at one time in the Legislature, when the government brought in amendments in the spring of 1995 that actually permitted having a part-time commissioner, I'd done a list of I think 13 reasons why one person shouldn't hold both positions. I'd just go back and say that the unanimous recommendation from the Premier's all-party panel in the fall of 1993 was that this be a stand-alone position, that the commissioner not hold any other jobs.

There are problems in a number of different ways. I think one of the chief ones is that as you have this huge expansion in responsibility that comes along with the MUSH and MASH sectors now being covered, the potential for reviews, for audits, for involvement on the part of the commissioner is expanded hugely, never mind what may happen in terms of the health legislation when that comes onstream. So what we're talking about is a huge jump in terms of the kinds of responsibilities that the IPC is going to have within the next number of months.

At the same time, by having this person also hold another position -- and this has nothing to do with the individual, Mr. Chairman; I'm simply talking about the responsibilities -- it just seems to me that what happens is you hamper your Ethics Commissioner from doing the kind of expanded role that he could play in terms of deputy ministers and senior bureaucrats and being able to give advice and so on and to adequately be able to manage the FOIP thing.

Without going through all of the reasons, I think it's important that there be a separation. We didn't know how it was going to work in 1995 when the amendment was passed in the Legislature to allow this to happen, but I think now, looking back at it and looking forward, we can see that this is a model that, frankly, isn't going to get us very far down the road. Ann Cavoukian, the commissioner in Ontario, and Flaherty in British Columbia: those are full-time positions, and those people are busy doing what they do. I think this becomes a limiting factor in terms of us realizing the potential of our FOIP regime.

If anybody is interested, I'm happy to resurrect my list of 13 reasons why the office should be separate. Gary Friedel has them committed to memory anyway.

THE CHAIRMAN: I can assure you that I have.

Before I go on to Pam, I want to clarify one thing. You said before that it was by unanimous consent of all members of the original review committee that the Legislature consider this as a full-time office. I'm going to remind you that I was opposed to that at the beginning and remain so now. The debate at that time was similar to what it is here. Each item was discussed and either won or lost based on a majority vote. At the end of the day all members of the committee signed off unanimously the report

presented, but that doesn't mean that each individual supported every document or every clause that was within it. So for clarity: I did not support that during the original debate; I do not now.

With that, I'll turn it over to Pam.

MS BARRETT: My opinion on this is that if the incumbent says that it's getting to be too much, then we can turn it into a full-time job. This committee doesn't have to meet to do that. He says that he's doing fine. I say: fine. If the position comes up again -- it will inevitably sometime in the future -- let the applicants have their say as to whether or not they want it to be full-time or part-time and let the hiring committee decide.

THE CHAIRMAN: Other discussion? Okay. Who wants to keep it as it is now, potentially the part-time split with Ethics Commissioner?

SOME HON. MEMBERS: Agreed.

THE CHAIRMAN: Opposed? Okay.

At this point, just while we still have the majority of our members here, we have to look at additional meetings. We have a meeting scheduled for next Monday, and I'm reminding everyone that the 16th is the first day of the fall session. That means that at least for the next few weeks the best we can do is have morning meetings maybe for a couple of hours.

MS BARRETT: When do we have to report, Mr. Chairman?

THE CHAIRMAN: Well, we were hoping to send a preliminary report before the fall session adjourned. I'm starting to have my nails chewed to the first knuckle determining whether that's a physical possibility anymore. I think we have to keep chugging along, though, and get done as best we can.

We have been using Mondays, which seems to have worked fairly well, but it being the first day of session, it's probably going to be a bit unusual for just about everybody. Is there a chance that on Tuesday the 17th we could maybe meet for a couple of hours?

MR. STEVENS: It works for me.

MR. DICKSON: Mr. Chairman, that first week is going to be particularly hectic. My suggestion is to go with the second week, Monday or Tuesday of the week after.

THE CHAIRMAN: We could do that. The problem is that then we're just about certainly not going to make the end of the session. I'm sort of hopeful that if we had two two-hour meetings, we might come close to a preliminary report. We could easily get through the remainder of the questions today, and then with next week and a couple of short ones, we might be able to finish up the unfinished business. As I say, even if we could do it, say, for two hours, from about 9 to 11, for a couple of days and see what happens.

I'm going to suggest Tuesday the 17th and then back to Monday the 23rd to stay with the Monday pattern. If we go with the 23rd and December 7, I would say that the chances of meeting a deadline with the House still in session become very remote.

MR. DICKSON: Why don't we do the 23rd and 24th, do a couple of hours each of those two mornings?

THE CHAIRMAN: I could live with that. The problem is it doesn't give the staff very much time to do follow-up work, and each time we leave them with more work. I know you're trying to leave the first week open, Gary, and I sympathize with you certainly. My week of the 16th is equally ugly.

MR. DICKSON: It's a personal problem. We've got about five health bills, and I'm Health critic, so I'm swamped throughout the whole fall session. I'm trying to find some time that works, but I guess the committee will decide when it's going to meet.

MR. STEVENS: To your suggestion, I'm personally available on Tuesday the 17th and the following Monday.

THE CHAIRMAN: Two. What about the others?

Can you possibly make it for two hours on the 17th if we had it, say, 9 to 11?

2:26

MR. DICKSON: Possibly. It's not meetings; it's preparation for a gazillion amendments on five different statutes.

THE CHAIRMAN: What about Mike and Dennis?

MR. CARDINAL: I can make it.

MR. DUCHARME: Yeah.

THE CHAIRMAN: Okay. Let's try it and see what happens.

MR. CARDINAL: At what time? At 9?

THE CHAIRMAN: Let's do 9 till 11 on both days. That way it leaves a little bit of time afterwards for prepping for the afternoon session and also a little time before for those who get in earlier.

Okay. The 17th is a Tuesday.

MR. CARDINAL: We're still on the 9th also?

THE CHAIRMAN: Yeah. Next week, Monday, we're on from 9 till 2. Just to be on the safe side, should we maybe grab the 30th as well for two hours?

MR. DUCHARME: The same two hours?

THE CHAIRMAN: From 9 to 11. It's also a Monday.

Okay. Question 76.

MR. DICKSON: I so move.

THE CHAIRMAN: Okay. Is everybody agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: That's agreed.

MR. DICKSON: I'll move 77 too.

THE CHAIRMAN: Is everybody agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Don't quit now. You're on a roll.

Question 78.

MR. STEVENS: I'll move that one.

THE CHAIRMAN: Agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Why didn't we do this before?

Question 79 we're going to defer. There's more information coming.

I understand that questions 80, 81, and 82 are technical amendments even though the recommendation looks a little bit complicated. Does anybody have any problems with any one or all of those?

HON. MEMBERS: Agreed.

THE CHAIRMAN: On all three?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay.

Question 83 is requested for clarification. I think that would also qualify as technical, but we should maybe have a look at it because it doesn't come from the same source. What it reads is:

> Should sections 71 to 76 of the Act be clarified to provide a clear understanding of the conditions under which an adjudicator might be appointed when the Commissioner is unable to hear a case, to make clear who may request the Minister to commence the adjudication process, to clarify the processes involved in confirming the Commissioner's conflict if an applicant requests the Minister to appoint an adjudicator and the powers of the adjudicator?

This in fact has happened. The suggestion here is that there should perhaps be some clarity as to the circumstances and the conditions under which this may apply.

Gary.

MR. DICKSON: Yeah. This wasn't just from the technical support staff; this was a concern I'd raised in our caucus submission. When I was involved in the thing that ended up in front of Justice Cairns, what happened is that all of the time lines that we currently have -- we're asking for a review -- are out the window, and it took us months and months and months to have a justice appointed. There are no time limits. In fact, Frank Work will remember that I was phoning around -- and I had a devil of a time -- after the inquiry was finished trying to get a copy of the text of the judgment and having to go down, it's my recollection now, to the court reporters. Frank and I have discussed this, and he may remember better than I. I think we in fact had to pay money to the court reporter to get a copy of Justice Cairns' order. At that point it wasn't even listed in sequence with the numbers of the orders that are routinely published by the commissioner's office.

So there are a whole series of problems. Hopefully this isn't going to come up very often, but it would be just crazy for us not to learn what lessons we can from that session in front of Justice Cairns. Part of that is that we've got to particularize and set up some time limits and set out a process so it's a whole lot clearer.

THE CHAIRMAN: You're agreeing with this then?

MR. DICKSON: Yup, but there are some things in here -- I guess I'm specifically trying to focus on time limits which may be suggested but not set expressly. Time limits are the biggest single problem when you end up with an adjudicator's intervention.

MR. WORK: I would only say that what Mr. Dickson has said is our experience. I guess the technical support staff has recognized that. There are some gaps in the adjudication process. Part of the problem is that when it goes to adjudication, basically the commissioner is out of it. That's exactly what's intended to happen. It punts the commissioner from the proceedings, so there really isn't anyone to drive it. I suppose that works against the applicant who may have wound up getting the adjudicator. So the concern is there.

THE CHAIRMAN: I'm assuming that concurrence with this question would mean that clarification applies to all things, including time lines where they're applicable.

MS MOLZAN: Mr. Chairman, as far as some legal insight into this, one of the difficulties that exists in the adjudication process is that it in fact goes into court like a court case, and there are a lot of pressures, obviously, on the system to try and have matters heard quickly. As it is now, there are times when there are certainly long trials and so forth. I believe the adjudication that was heard was quite a lengthy one, five or six days of actual court time hearing it. It's a matter, then, of finding a judge who can block off that time to hear the matter, so it goes into the regular scheduling. As it is now, when a party has filed to get a hearing, it does take a number of months, especially the long trials, to find a judge who can block off that much time.

So part of the problem with this is that you're almost looking for an expedited hearing of a matter when other parties may have been waiting for years to get to the process where they can actually get into court and be heard by a judge as well. You're almost having to pull a judge off other things and bring them into this. That adds to the delays, I think, in this process. I know that certainly with the balance between trying to ensure that all individuals, litigants, have their cases heard quickly, deal with criminal matters quickly, which is required by the Charter and so forth in not allowing certain delays, yet at the same time ensure that there's frugal spending of resources or proper accountability in how many judges there are that are available and so forth, it does put a lot of pressures on the system.

In terms of the process I think there has been some confusion as to how things have transpired in the past with adjudicators. However, some of the delays are just inherent in the whole court process, and as I said, that creates difficulties with the minister being able to allocate the judge and make sure they have enough time and so forth. They are often double-booked on trials, hoping that one party is going to settle so they don't actually have two people at their door and have to now send someone away and give them a new date.

2:36

THE CHAIRMAN: Well, I thought of that when Gary made the point, but I think that when this is written, as best as possible knowing the restrictions of the judicial time lines, it'll be written to expedite as much as an act can determine that in the courts. So we do the best we can, I think.

MR. DICKSON: I've been thinking about an alternate solution. There are people like Herb Laycraft, a former Chief Justice, and a number of retired judges who now actually are involved in terms of doing arbitration work. I'm not sure that's always been the case in Alberta, at least in my experience. It's a more recent phenomenon where you have people who are well-respected jurists who are now available. You don't have to go through the Chief Justice and wait for him to find a courtroom and so on. I can't imagine anybody being uncomfortable with any retired justice,

whether you say Court of Appeal or Queen's Bench. Those people aren't caught up in all of those scheduling problems to the same extent. We must have at least five retired judges now doing that kind of work in Calgary. There may be some opportunity there to take advantage of that resource that maybe wasn't available to us a number of years ago.

I might just say parenthetically that this is sort of one of the problems or one of the prices we pay by having one person as both Ethics Commissioner and FOIP Commissioner, because the potential for conflict and requirement to use an adjudicator is heightened in that sort of context.

THE CHAIRMAN: I thought you were going to miss that point. I was really getting disappointed.

Rather than going to the long complications of doing more than agreeing to this, I think there are enough people sitting here who are going to be involved in the potential rewrite that the message is going to get through, and if nothing else we'll urge them to read *Hansard* again when the time comes to indicate a variety of concerns. With that, I'm assuming everybody agrees with 83.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay.

The entire section of offences and penalties is being deferred till next week. Clark was supposed to be bringing more information, and I'm assuming we will see that next week.

Question 89.

> Should a technical amendment be made to the Act to ensure that the time allocated to consult with third parties automatically alters the time limit allowed to process a request without requiring the public body to request an extension from the Information and Privacy Commissioner?

Any problems with that?

MR. DICKSON: I'm not sure I agree. Let's be really clear in terms of what altering the time limit means.

MS KESSLER: Diana is going to speak to that.

MR. DICKSON: Well, maybe we can come back, Mr. Chairman.

THE CHAIRMAN: We'll come back to that.

MS KESSLER: She's going to speak to both 89 and 90.

THE CHAIRMAN: She's going to speak to both?

MS KESSLER: Yeah, both 89 and 90.

THE CHAIRMAN: How about 91?

MS KESSLER: Oh, there she is.

THE CHAIRMAN: Okay; back to 89. We're not even going to tell you what we're talking about. Question 89, you were apparently going to give us enlightenment.

MS SALONEN: This should be near and dear to the commissioner's office's heart. It's the time a public body is running into a time crunch when they have to notify third parties and the third-party consultation process kicks in. A public body has 30 days to answer a request. They can extend another 30 days in particular situations, if there's a large volume of records or the conditions are in the act. Sometimes they'll come along well into their second set of 30 days, say day 45, and find that they have to consult a third party. We then kick into the third-party consultation section of the act, which has another set of time lines, 20 days, time for the third party to make their representations, which will delay past the 60 days. The way it is now, if they go past 60 days, they have to go to the commissioner's office and request an extension. Well, it seems silly. Of course you're going to get an extension because you have to give the third party time to make their representations. So it's an administrative silliness.

MR. WORK: If I may, Mr. Chairman. I know the concern would be that this would be a way by which public bodies could delay dealing with requests. Keep in mind that a lot of times when they go to a third party, they're saying: "We would like to give out this information that you have an interest in. How do you feel about that?" In a lot of cases the third party isn't in a really big hurry to see that information given out.

But the answer to that is, no, it will not facilitate a delaying process, because as Ms Salonen said, what happens is that you drop out of the regular time line and into the specific third-party time lines, and you have to chug along according to those before you come back into the regular time line. When they drop into the third-party time lines, it's just a way of keeping them from having to go back to the commissioner and saying: "Well, we're still doing this third-party thing. Can we have more time?" Of course you can have more time if you're following the act with respect to third parties.

Did that make sense at all?

MS BARRETT: Yes.

MR. DICKSON: So we're just operating under the 20-day period, then, for third-party response.

MS SALONEN: Uh-huh.

THE CHAIRMAN: Is everybody agreed then?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 90.

> Should consideration be given to clarifying the test, in the Act or in policy, that should be applied to determine whether a minor has the ability to provide consent under the Act?

There is also a briefing paper, I believe. It was a separate one that was handed out this morning. Were you going to speak to that, Diana, or is this reasonably self-explanatory?

MS SALONEN: I think the briefing should be. I hope it is. Each of the public bodies that as a rule occasionally deal a lot with minors has developed policies and practices, particularly in a child welfare program or in health, that take into account the discretion in each of the situations. Across the board a one-size-fits-all policy hasn't been the case to date. That's what we tried to say.

THE CHAIRMAN: So there isn't any pressing need to change.

MS SALONEN: We don't see it.

THE CHAIRMAN: Okay. Is there concurrence that the existing provisions are adequate?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 91. "Should there continue to be a requirement to produce a Directory of Records under the Act?" In

an outside discussion -- and this was possibly with Sue -- we were looking at the benefits, and what I'm going to suggest is that we continue to have the directory for now but recommend that a further assessment of the cost benefit be done about the time of the next review of the act. There is some question as to whether it in fact is worth the cost, but I don't think we're in a position to determine that now. Maybe a review a couple or three years down the road would give more information as to whether it should or shouldn't be continued.

Okay? Is everybody agreed?

2:46

HON. MEMBERS: Agreed.

MR. DICKSON: We talk about two-year intervals; that's the existing statutory obligation in terms of the directory I think. Can I just ask what other provinces are doing? What are British Columbia and Ontario doing in terms of directories? Are they on the same cycle or a longer cycle?

MS KESSLER: I believe they're on the same cycle, but they're erratically produced, I think, when the jurisdictions are able to produce them. So I don't believe they're being done faithfully every two years.

MR. DICKSON: We haven't done a directory since 1995; have we?

MS KESSLER: We need to build a technology to do the directory. It's under development, but it's costly.

THE CHAIRMAN: Okay. Question 92.

> Should an amendment be made to section 82 to specify the definition of "personal information bank", particularly regarding electronic files, as it relates to the Directory of Records and local public body listings?

I'm not sure that it would add much to it. To me it looks fairly self-explanatory. I guess I'm going to ask the same question I did before: does anyone feel that this is too vague, that you might have trouble understanding it?

MS BARRETT: I don't think I'll see a big problem.

THE CHAIRMAN: Does that mean we have consensus that no change is necessary?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 93.

> Should the FOIP Act Review Committee make any recommendation related to including more detailed statistical information by public body and other detail on the workings of the Act in the Annual Report?

We discussed this in a somewhat related fashion. Gary indicated that he wanted to expand on this question. I think the comment we made earlier was related to section 61, which is a very general requirement of what the annual report would be. I believe this is in essence similar to the requirements of other legislative officers. I would question that we would need a lot of detail on what goes into a report, because at that point then, you know, it could be a limitless list.

I'm not sure it's necessary, but I'll let you argue the other side, Gary.

MR. DICKSON: Yeah, Mr. Chairman. Thanks for parading all the horrors first.

The observation I was going to make is that it takes some time and some resources to put together this annual report, so why wouldn't we make sure that the annual report has the kind of information people most likely want to see? If you contrast it with the Ombudsman's report, for example, he goes through and he'll tell you which departments he's getting complaints from and the number of complaints and so on. Now, here we're dealing with requests in terms of public bodies. To me it's pretty basic. The report should be the tool with which Albertans, never mind MLAs, can look at and judge whether the system is working, whether there are some departments that are compliant -- and there are many that are -- and whether there are some departments that have a really high rate of refusing access requests or whether there's a huge number of appeals to the IPC from a given department or whatever.

This information is all available. Sue Kessler's department spends a lot of time and energy tracking all kinds of statistical information. I don't have the report here with me, but if you go through it, there are all kinds of things. There are some things highlighted, but there isn't a comparison/contrast between public bodies. I find -- and this is feedback I've received from others, librarians and people who, you know, look at these things and compare them with some of the reports you get; the Ombudsman's is sort of the best, most analogous annual report -- that there's just a whole lot of information that isn't in the report that would be useful for comparison purposes, things like the identification of public bodies, the number of general access requests received, the number of access requests met in full or in part, average fee estimates, the number of applications deemed abandoned after a fee estimate has been provided. I'm not saying that all this stuff necessarily, Mr. Chairman, has to be included in the section in the statute, but I think it's fair to say that the report that's produced now simply isn't useful enough to people trying to monitor the effectiveness of the FOIP regime.

MR. WORK: The problem is, Mr. Chairman, that we don't get a lot of that information because we don't know how many requests for access are made to Family and Social Services. We only get the ones that Family and Social Services doesn't accept and that come to us for review.

MR. DICKSON: But I didn't take this to be your office. In '93, as I understood it, there were two reports that had come out. Actually, the IPC report is far more informative I think. There are some things I'd like to see added to that, but that's far more informative. But they are only dealing with sort of the tip of the iceberg. It's the Department of Labour report that I'm addressing all my comments to, Frank.

MR. ENNIS: This is the one that's entitled Freedom of Information and Protection of Privacy Act annual report?

MR. DICKSON: Right. Yeah. I'm sorry; that's the way I read number 93. If it was intended to just be the IPC report, I've misread it. I was taking this to be the department's, the government's, summary report in terms of the way it's working.

MR. WORK: Okay. I'm sorry, Gary. I took you to be referring to section 61. You're quite right. Section 81 says, "The Minister must prepare an annual report" too.

MR. DICKSON: Right. That's the one that I find problematic and deficient.

THE CHAIRMAN: That one is even more brief than 61.

MR. WORK: Yeah.

MR. DICKSON: That may be part of the problem, Mr. Chairman.

THE CHAIRMAN: I don't think the level of detail is much different other than the subsections. But my argument still holds. I'm not sure that this is a requirement that we have in similar circumstances. To what level of detail are we going to prescribe it? Obviously I disagree with your position.

MR. STEVENS: I'm sure Sue will show the minister your comments, Gary, so that he can take that into account when directing the preparation of the next report.

THE CHAIRMAN: Does anyone else feel that that needs to be changed? No action on question 93.

Question 94.

> The delegation powers for government are in section 80 and for local public bodies they are in section 89. This is confusing. Should the sections be redrafted to clarify?

That sounds like a reasonable request.

MS MOLZAN: Mr. Chairman, if I could just provide a brief comment. The Department of Justice has looked at this issue, and it does appear logical to include section 89(b), which is the delegation powers, in section 80. To roll them together would therefore remove any confusion. Section 89 is intended to just apply to the local public bodies and sets up a slightly different process. They first have to designate who their head is going to be, and then they can delegate the powers. Section 80 really fits the public body more appropriately, the true government first level of government public bodies, but we do recognize, as I think was said earlier today, that you don't want to have to be a lawyer to understand the act. Certainly it may be more effective to roll 89(b), the delegation powers of the local public bodies, into 80 and make it just one section on delegation for government proper and local public bodies as well.

2:56

MR. CARDINAL: Just a question for clarification on delegation of powers in relation to Indian bands and child welfare. Would that cause conflict there? Because they have delegated authority now from the province to deliver child welfare on the reserves, for example, and it is definitely delegated authority for a period of time. If we make this change, how would that impact, or would that have any effect at all?

MS MOLZAN: I haven't looked at all the legislation that's involved, but it would strike me that whatever exists now -- it wouldn't change the process that exists now,
though we have an issue of Indian bands being under federal legislation versus the Métis settlements, which are caught in the act. So they may not even be subject to our act. They may be only subject to the federal act.

MR. CARDINAL: You see, the bands are not under their own legislation either, as far as child welfare. They use the provincial child welfare, but it's delegated; like, it's not theirs.

MS MOLZAN: They may not be subject to this act. I'd have to look. This particular amendment, I can say with a fair amount of certainty, would not affect the process. All it really does is move it from one place to another so that everything is in one section instead of having two different sections to look at. That would be the intention, I believe.

MR. CARDINAL: Okay.

THE CHAIRMAN: So with all that, we agree on 94?

HON. MEMBERS: Agreed.

Question 95.

> Should the FOIP Act Review Committee address the concerns expressed by local public bodies related to the cost of implementing and administering FOIP (particularly in regards to records management requirements)?

I think this goes back to some of the submissions that came from the MASH sector public bodies that would have preferred not to be in the act and as a result used the argument of the cost of implementing and administering. Quite frankly, I think those are the facts of life. Either you're in or you're not, and if you're in, you live with the same rules. Unfortunately, there are some expenses involved, but that's the cost of being a public body.

Does anyone feel a strong urge to make any changes?

MR. DICKSON: I take it that means we're saying no . . .

THE CHAIRMAN: We're saying no.

MR. DICKSON: . . . to the $750,000 request from the University of Alberta for onetime funding.

THE CHAIRMAN: Question 96.

> Should the FOIP Act Review Committee make any recommendations related to incorporating records management practices into the FOIP Act?

My personal opinion on this is that the act tells people what they must do but not necessarily how, that there's some flexibility there and we shouldn't touch that one, but I'll listen to other views.

Gary.

MR. DICKSON: Thanks, Mr. Chairman, but I'm not persuaded.

THE CHAIRMAN: I'll make a longer argument the next time.

MR. DICKSON: What archivists always tell us is that when a file is created, what makes sense is that you plan for its destruction and everything that happens in between. By having our document destruction practices wholly independent of FOIP, there are some problems that flow from that. In some provinces they have all-party involvement in the committee that approves destruction schedules. In Alberta the destruction schedules are seen as a secret, in-house thing. I don't even know if we still have the provincial archivist as part of that committee.

MS KESSLER: We do.

MR. DICKSON: It seems to me that we shouldn't have to rely on the provincial archivist to represent the broader public interest. It would make sense to me to say that the fashion in which documents are destroyed and document destruction schedules ought to be co-ordinated with FOIP. The best way of doing that is by making sure that the authority for it is brought into FOIP instead of being in an independent statute and that there is some provision for all-party oversight in terms of the work of -- I don't remember the name of the committee. It's for document disposal.

MS KESSLER: The Alberta Records Management Committee.

MR. DICKSON: Thanks very much, Sue. The Records Management Committee. It may have legal authority, but I submit that the public interest isn't adequately addressed in the way it operates now. It's an integral part in terms of what FOIP is all about. You can't hive off document destruction as if it's a wholly unrelated issue to creation of files, management of files.

MR. WORK: Mr. Chairman, I have to say that I agree. Records management is extremely important to the FOIP Act if for no other reason than if you destroy your records in accordance with your approved schedule, you can do no wrong under FOIP. So it's major. I mean, if you had an approved records management schedule that let you destroy everything yesterday, you'd have a pretty easy time under FOIP.

Now, having said that, the Information and Privacy Commissioner gets copied on all the minutes of the Records Management Committee, and having read a fair number of those minutes, it is a place for experts. I mean, records management has become a real science, and you need to have experts there. You need to be dealing with policies, not individual documents. You'd go nuts if you had to try to manage each individual record. But it is so important under the FOIP Act, being the thing that gets you out of the FOIP Act, that I can see a lot of merit to the suggestion that what the committee does is important enough that it could be a little more high profile. I don't know whether that means gazetting the records or, as Mr. Dickson suggested, getting some other representation on the committee. It's really a matter of expertise. I mean, you need the experts on the committee. They've got a good committee right now in terms of expertise, but it's so important that somehow what they're doing should be known, should be higher profile.

THE CHAIRMAN: Is the IPC office represented on the committee?

MR. WORK: No, but we are copied on all their minutes religiously. I can say that. We've got the book. Most of these destruction records are made, I believe, under authority of the Government Organization Act.

MS KESSLER: Yes, the statutory authority is the Government Organization Act, and there is also a subsidiary regulation, a records management regulation. The Alberta Records Management Committee, which approves all the records retention schedules, is chaired by an assistant deputy minister from Public Works, Supply and Services and has representation from the Provincial Archives. The provincial archivist is on the committee and is required to do an archival appraisal before any approval of such schedules is made.

Clark Dalton is the legal representative. Clark has both a legal background and a fairly good understanding of information management practices and law. I'm also on the committee. Having come formerly from a records management background, I guess I have some expertise in that, but I represent the FOIP interest, so clearly I'm Labour's representative interfaced to the FOIP program. We have other representatives, from Alberta Treasury, representing the financial interests of the province, and we have a couple of other representatives that represent the records management community. So it's a fairly broad-based committee and really, I believe, has the expertise to do the job.

MR. STEVENS: Sue, perhaps you could just tell us how often you meet and what it is that you produce that allows us to develop some kind of rule-based process for record destruction.

MS KESSLER: We meet once a month. The majority of the meeting is spent reviewing draft records retention schedules that have been prepared by the government departments. So they review their programs, identify the records, and draft what they believe the retention schedule should be. We then meet as a group and review those schedules from a variety of perspectives, including financial, legal, and archival, and then generally either send the schedules back to the drawing board with some questions or approve them.

MR. STEVENS: So how long has this been going on?

MS KESSLER: Since the early 1970s.

MR. STEVENS: Just so I'm clear, it's an ongoing process?

MS KESSLER: It's an ongoing process.

3:06

MR. DUCHARME: Mr. Chairman, following Sue's explanation, I believe that information management is well taken care of on behalf of the people of Alberta, and I don't see any benefit incorporating it into the FOIP Act.

THE CHAIRMAN: Particularly since it is a different act, I was going to refer the committee to page 13 of -- what did we call it? -- the detailed summary, which did explain that.

I still have one question. The IPC office is not on the committee. Would there be a conflict if that was to be expanded? Instead of finding out after the fact, for example, the chief legal adviser to the IPC commissioner could sit on the committee or something like that.

MR. STEVENS: No. It's an expert committee.

MR. DUCHARME: Got to find someone else.

MR. WORK: Yeah, preferably someone with an eye for detail, Mr. Chairman.

To answer your question, no, that would not be a conflict. We might be out of place, because as Mr. Stevens says, it requires an expertise. We don't really have anyone, other than the person that runs our office records management, and we used an outside consultant to develop our initial records management schedule.

One last sort of pitch. These records management schedules are of increasing interest to the public, because if someone comes and asks for something from, say, Justice and Justice says, "Well, we destroyed that three years ago in accordance with our approved schedule," that's okay. I mean, that's a legitimate excuse not to produce it. But it sometimes leads to some skepticism on the part of the public. I don't know if the Government Organization Act requires this or not. It might be worth considering having to make these things public -- I don't know -- tabling them in the Assembly or printing them somewhere just so that if someone wants to know why his file wasn't kept longer, you could point to: well, this is why; we only keep this stuff seven years. Right now it sometimes is a little hard for people to get them. I don't know if that helps.

MS KESSLER: I believe that Public Works was going to look at a process of making them routinely available in electronic form, but it's part of a total review of the system surrounding the scheduling and disposition process. So I believe that's being considered in the longer term.

MR. WORK: What if the minister, whenever the Records Management Committee approved his or her department's schedule, just tabled that in the Assembly? I mean, you can table anything in the Assembly.

MR. DICKSON: Yeah. A great idea.

THE CHAIRMAN: I think we're probably jumping into making recommendations beyond the FOIP Act. I think we've also -- at least I have -- made comments through our earlier meetings that some of what we're doing and some of what's happening with the act should hopefully improve records management practices across government. Even though our jurisdiction isn't to provide recommendations on other legislation, I think perhaps through either this commentary or officially, if he wants it, we could suggest that the minister look at the possibility of including someone from the IPC office on the committee, because if it's important enough to get the specific advice after the fact, we may want to look at having someone from the office involved. It couldn't hurt anything.

MR. DICKSON: Hear, hear. Good suggestion.
Do you agree, Mike?

MR. CARDINAL: Agreed.

THE CHAIRMAN: So I guess that in essence answers 96. That's as close to a recommendation as it'll get.

MR. DICKSON: For question 97, Mr. Chairman, my suggestion would be another review mandated three years down the road. I just say, in my respectful submission, that it's not going to be in time to impact the federal legislation, but three years seems to be what most local public bodies suggested in terms of being able to respond after they've had the benefit of some experience.

THE CHAIRMAN: I was going to suggest something almost identical to that but with the flag that the federal legislation could possibly have some impact on this act in less than three years and that the department govern itself accordingly, with a view to maybe doing it earlier than in three years. In essence we're saying three years, but if it looks like we're going to be roped into the federal legislation before that if we don't get on the ball, it could be less than that.

MR. DICKSON: Yeah. Consistent with what you're saying, I think there are really two different issues here. One is how do we respond to the experience of local public bodies wrestling with FOIP and trying to fine-tune the act to address their concerns? The second actually quite collateral, quite independent issue is what happens with the federal legislation, and how do we marshal our input as a province? I hate to see us be unfair to local public bodies with an earlier time that doesn't give them the benefit of, say, three years' experience just to be able to address the federal thing. So I think we may have to have two separate processes that may be in tandem or may overlap or may be at different time periods.

THE CHAIRMAN: It's possible, but I think if we make the recommendation in such a way that it's flexible, recognizes two concerns which may or may not be concurrent, and pass that on as part of our recommendation -- the acceptance, in any event, is up to the government. I think it's our job to flag the pros and cons of doing it.

You raised a second issue as to Alberta's involvement in the development of the present federal legislation. There are several documents that we'd handed out to the committee as the federal act came into being, including a potential challenge. I don't know if that's progressed. Is it Saskatchewan that is challenging the validity of the federal act?

MR. DICKSON: It's still a bill, Mr. Chairman. It's still a bill.

THE CHAIRMAN: A bill. Okay.

It looks like the provincial and territorial ministers in their meeting with the federal Minister of Justice are expressing some concerns, so there's an assortment of mechanisms where the provincial views are being presented to the federal government about the development of that bill. Earlier we had also requested -- and I'm going from memory here -- that George Samoil and whatever his group is officially called plus the Department of Labour make themselves aware of what's happened and do whatever they can to protect Alberta's interests that might be compromised in that bill. So we've sent the message, as we were directed two meetings ago, to deal with this on an ongoing basis because we can't wait for another review. That has to happen as things unfold.

MR. DICKSON: Do you need a motion, then, on 97, or is there agreement on three years?

THE CHAIRMAN: Do we agree on three years?

HON. MEMBERS: Yes.

THE CHAIRMAN: Well, congratulations. We made it through the first round.

It's quarter after 3. We could continue on to several of these items that have been deferred. There are a number, you can tell from the comments, that still have to be deferred because we haven't got all the information we want.

Clark was going to present some additional advice on the three issues under question 3. We have been advised that it's not likely that we can accommodate 3(a) because that would come under the federal freedom on information act but that it's possible that some of these things could be dealt with under contracts.

Donna, do you have any information that would help us with (b) and (c)?

3:16

MS MOLZAN: Yes, Mr. Chairman. Basically the issue here I think is one that likely will not be completely resolved until we get a court to look at this and adjudicate on it. There is one case before the Alberta courts right now where the judge as an aside referred to freedom of information, although the case was not specifically in relation to it, involving an RCMP detachment acting as an investigator for the medical examiner under the Fatal Accidents Act. In that case the RCMP have refused, basically, to release certain records that the medical examiner had agreed could be released. The court basically held that as investigators under the provincial legislation it was the medical examiner that in essence got to decide, if I can sort of paraphrase it. So the medical examiner then was able to give out access to these things even though he didn't have the documents in his office; they were actually in the RCMP's office. At this point the lawyer for federal Justice who is responsible for this case is on holidays, and I haven't been able to determine from her yet whether they intend to appeal that decision or not. That is one that could have some

repercussions on this issue. Unfortunately, I don't think, because of the specifics of the case, that it's going to cover the broad FOIP issue involving the RCMP, and we're going to have ongoing problems with it.

Certainly I think the information you were given previously was correct, that it may be difficult, if not impossible, to bring a federal entity under provincial legislation. However, the contract concept is one where when the contract is opened with the RCMP, there may be room to include provisions in there. The contract, in my understanding, under which the RCMP currently provide services to the province is a long-standing document. It has existed for a number of years. Of course, when it was entered into, there was no knowledge or thought at that time of freedom of information legislation and its potential to affect this relationship. It may be an avenue that this committee could consider, that when those contracts are opened, such provisions for records like who's going to have custody control and which FOIP act would apply should be addressed within them, the only difficulty being that the contract does in fact apply to all cases in the province where the RCMP act as the police. It's not something that's opened yearly or something like that. I mean, it's a long-standing document, so I really can't even speculate as to when that contract would be negotiated or what the position would be of the RCMP towards opening that contract for negotiations. As I say, I have no information on that at this point. But that certainly would seem to be the only legal recourse we would have.

Other than that, the RCMP certainly acknowledge at this point that an individual can apply under their own access and privacy legislation for the records they have in their office. The files that Alberta Justice, for example, receives that relate to such things as prosecutions certainly are subject to the act once they are in the custody and control of Justice. From personal experience I know we have provided access to various records that were originated by the RCMP acting as provincial police through the Department of Justice. It does not necessarily mean that people are foreclosed from obtaining documents from the RCMP if they relate to a prosecution or a matter that the province has gotten the information on. So it may not be closed doors completely for people to obtain access.

THE CHAIRMAN: Gary, you had a comment?

MR. DICKSON: Yeah. Donna, you anticipated part of my question. I was asking about the maturity date of the existing contract. It seems to me that we wouldn't be locked into a long-term contract because of costs and variable factors. It seems to me that it used to be a three-year cycle. I thought we'd renegotiated the agreement just two years ago. Something sticks in my head that it was like a three-year cycle, which would make sense in terms of determining what compensation should flow from one government to the other. But I take your point. We don't know right now when that contract expires.

MS MOLZAN: Yes, and I'm not sure if the entire contract is always on the table, you know, if the entire contract is reviewed whenever it's opened or if they just sort of left clauses in it that only allow the money issues to be reopened or to be discussed. Sometimes with scheduling we'll review the costs, but the rest of the contract is going to stand. As I said, I can't really give an indication now as to when that contract would be open.

MR. DICKSON: I'm not counting on our government having driven a harder bargain than that and not being locked into an agreement that could only see a cost adjustment.

THE CHAIRMAN: What I'm hearing is that at this point the best advice we have is that it may be possible to build this into contracts, but that's likely the strongest point we would have. So the best this committee could do is to recommend to the Department of Justice to look at the implications of FOIP in its ongoing negotiations with the federal government or the RCMP.

MS MOLZAN: Yes, Mr. Chairman.

MR. STEVENS: I don't see any reason why this matter couldn't be raised with the appropriate federal people independently of termination or renegotiation of the contract. I think what we're talking about is recognition that this is information that we would like to see dovetailed with our legislation here in Alberta -- that issue, I think, could be addressed appropriately in letter form -- and request that it be added to the existing contract, regardless of when it's renegotiated. I think that's something that we could recommend to the minister, and it may be that it will receive a favourable response. In any event, if it doesn't, then certainly it could be the subject of negotiation when the contract in the fullness of time is due for that.

THE CHAIRMAN: So as far as a recommendation, can we incorporate those two ideas into one and then build it into a recommendation?

MS MOLZAN: I should perhaps mention, Mr. Chairman, that I may not have been clear that there have been ongoing discussions currently as to, you know, whether access can be given under the act, which is in part what led to the court case before our courts where the RCMP said: no; we have the record, and we'll only give it out under our act, and under our act we can refuse it. We've had discussions with the RCMP, and they are aware, I believe, of our position, that we would desire to be able to provide access to these things as public bodies where they're dealing with provincial matters. So perhaps that part of it is ongoing. The request has been made to deal with this, and so far the response that seems to be coming from the RCMP is that they feel that their act is the only one that they are happy to go under at this point.

MR. STEVENS: The fact is, though, that if you have it in that context, it's a jurisdictional one: their act, our act. The point we're making here is that we'd like to see that information available to Albertans in the same fashion as it would be under our legislation. That point can be made quite independent of the jurisdictions of the acts by simply saying that we would like to amend the contract to provide for that. I think that the context in which you've talked about it, Donna, makes it very much seem to be a jurisdictional matter between legislation, federal and provincial, and it need not be that way if somebody was responsive to the idea of recognizing what we would want through a contractual amendment.

3:26

THE CHAIRMAN: Does everybody agree with that?

MR. CARDINAL: I'd just have one addition to that. There are also the other agreements with the Indian bands, in which the federal government is involved and also the province, in relation to aboriginal policing. There are a number of different agreements, different structures in the agreements, that particular process. We would probably need some clarification on that, just what impact this has.

MS MOLZAN: Yeah. I'm not sure what the process is for that.

I'm very much aware that there are different agreements with different bands for policing. I'm not sure what sorts of records . . .

MR. CARDINAL: It's a tripartite agreement between the bands and the feds and the province.

MS MOLZAN: Right. I'm not sure what requirements have been put in there for access to records.

MR. CARDINAL: I don't know. Anyway, it's just a thought.

THE CHAIRMAN: We are waiting for more information on 6 and 7, I believe, so we'll leave that and 14 as well.

On 15 we were going to do some homework. I have to apologize; the homework hasn't been completed. Gary and Ron were going to get some information to me. If there is some collective information, we can table it and see what happens, but we didn't bring the written responses we were supposed to.

MR. DICKSON: In fact, Mr. Chairman, that's my fault. I'd faxed to my friend from Calgary-Glenmore a draft, but it apparently didn't get to him before the weekend, so it's probably in your office today. I'm just looking, and I can't find my copy. It was a draft letter that we were enclosing, that might be an appendix to the report. So hopefully by next meeting we will have had a chance for Ron to review it. I should send a copy to you as well, Mr. Chairman. It's been done; it just hasn't been distributed.

THE CHAIRMAN: What we were doing was trying to find a way that we could deal with this under a fair information practices sort of way, because fair information practices now deal with protection of privacy but not access to information. So it would have to be modified practices, but we want to do it outside of the act. So we'll get that back to you hopefully for the next meeting.

Questions 16 and 20 are deferred.

Question 23. We have an information paper. I believe it's attached. The question is:

> Teaching materials or research materials of employees of a post-secondary educational body are excluded from the scope of the Act. Should this exclusion be extended to include teaching materials in schools?

We had agreed to the principle but decided that there was further research required.

MR. CARDINAL: On the last point only.

THE CHAIRMAN: Yes.

The response seems to indicate that there actually is a lot more difference between the materials in a postsecondary educational body than there are in a school and that maybe there isn't a need to extend the privilege or whatever we would call it.

MR. DICKSON: Except for private schools, in which case it's a special test.

MR. STEVENS: They've already got that built in. That was last time, Gary.

THE CHAIRMAN: So the recommendation is that the exclusion not be extended.

HON. MEMBERS: Agreed.

MR. DICKSON: I think that's what the Peace River school district had lobbied for.

THE CHAIRMAN: Paramountcy.

> 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?

John, you were going to . . .

MR. ENNIS: I did that, Mr. Chairman; I looked into this. I consulted with the Alberta School Boards Association, who were the proponents of at least this question, and they raised it to us as a question without speculating too heavily on where it might land. I did talk with them, and the concern here is a concern that I'll describe as a backdraft between 5(2) and 38. The concern the School Boards Association has is that there might be statutes out there in which there's a fairly strong safeguard against disclosing personal information, but those statutes, if they don't have coverage under the paramountcy section, would be subject to the paramountcy of FOIP.

The issue that ASBA has raised is: what would be the situation if one of the 28 permitted disclosure scenarios would come over that statute? I'll just pick any of the 28. A good example in section 38 might be disclosure "to the Auditor General" or "for the purpose of determining an individual's suitability or eligibility for a program or benefit." If the FOIP Act were to allow that basis of disclosure yet the legislation under which the information was collected did not provide for any kind of disclosure of that nature, the concern ASBA has is that the effective section, 5(2), would make the FOIP Act paramount and therefore require the public body to do a disclosure that isn't contemplated under its home legislation. At that point I talked with Sue.

MS KESSLER: And we were totally confused.

THE CHAIRMAN: Like the rest of us are I guess.

MR. ENNIS: No. I think we understand in concept that the paramountcy relationship might have this kind of backdraft effect, but we couldn't think of a case in point. We did think that if a case ever did arise, it would be an ideal candidate for paramountcy protection; that is, that the information would be shielded with an amendment to whatever paramountcy instrument is there. If it does arise, it's going to arise in a very particular case. It would be the kind of case where either the regulation within the FOIP Act for recognizing paramountcy or an amendment to an existing statute might be in order. I think our recommendation is that we wait and see if this actually does happen with the relationship of these two sections. We can't imagine a case where it will.

MS SALONEN: Well, it won't, because section 38 is discretionary, so there's nothing in 38 that obliges them to go against any security they have or any privacy they're concerned about. It's the judgment of the head.

THE CHAIRMAN: So both of you are saying that we really don't have to change anything. Okay. That sounds like good advice to me.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 26. We had sent this back for some clarification. There were five acts that are listed where we had recommended the sunset be moved back for at least a year, from October 1999 to 2000, subject to some feedback from the various ministries. The feedback that we obtained was: could it be extended to 2001? Do we have any information as to the extra

year? Or was it more related to: can it be physically done?

MS KESSLER: It's really getting it onto the legislative agenda, so we felt comfortable with 2001.

3:36

MR. DICKSON: Well, I guess we debated this, really, last time. I think, to say it again, this is wholly inappropriate. There is no reason -- I mean, we have smart people in the government of the province of Alberta who are certainly able to draft the appropriate amendment, bring it into the Legislature in a public way, where it can be debated and passed or defeated. The notion of having to do this yet again -- we compound the original insult to the Information Commissioner, the insult in terms of saying that we don't trust the Information Commissioner to be able to make a reasonable judgment and we simply rely on the exceptions in the act. That's bad enough, but now to compound it by saying that we're going to have to do it by regulation because we can't get something prepared for the spring of 1999 to me is just -- well, I can't accept that. To me that's wholly unreasonable, and I'm strongly opposed to it.

MR. WORK: I have to add, Mr. Chairman, that the commissioner did express his deep regrets that the paramountcy process was done by regulation, and that still stands.

In terms of these five acts, I don't remember. The commissioner commented extensively on each paramountcy provision, and I don't, off the top of my head, remember where he came down on each one of these. But certainly for the most part our submission tended to take the form of: you probably have adequate protection under the freedom of information act for whatever it is you don't feel you should have to disclose. That's all I have to say.

MR. STEVENS: I'll move that
this paragraph be adopted.

MR. DICKSON: Ring the bells.

MR. STEVENS: Your point was well taken. We debated it last time.

THE CHAIRMAN: I'm going to add an editorial comment to this. I think we all agreed that if there were going to be these changes made, the departments should do them as quickly as they reasonably can, recognizing that there are some problems in getting them on the legislative agendas and such, but by the same token we could take a hard line in recommending it. Since these dates came back as a comfort level from the various ministries, there's not a lot of point in us making a recommendation that is going to be rejected anyway. If there was concern that the time lines might not be met, we can be fairly sure they would be rejected on the basis of sort of a safety cushion. I think, if nothing else, there's not much point in us debating if it should be 2000 or 2001, the pure politics of it. I'm willing to go along with Ron's suggestion.

Any other comments?

MR. DICKSON: My only other comment is that I've succeeded in driving away both the other opposition members. We could defer the vote. The plan was to wear down the government members on the committee, not the opposition, but we could always defer the vote to the next time so at least it's more respectable, Mr. Chairman.

THE CHAIRMAN: But you can see they're a hard-nosed bunch.

MR. DUCHARME: Do you want us to ring the bells?

MR. STEVENS: Well, Gary, you've already indicated you strongly disagree.

THE CHAIRMAN: All in favour? Okay.

I'm wondering if we could record that in some way. I think his hand went up too fast; didn't it?

MR. DUCHARME: Yeah.

THE CHAIRMAN: And we all saw it.

MR. DUCHARME: It was all in favour.

THE CHAIRMAN: We have question 31, but Peter Gillis was going to get us some information, and I understand Peter's in the hospital.

MS KESSLER: That's correct.

THE CHAIRMAN: Do we have anyone else who is able to speak to this, or should we leave it till he comes back?

MS KESSLER: I believe we should leave it. If Peter is unable to attend the next meeting, we'll certainly get the answer from him.

THE CHAIRMAN: Okay.

MR. WORK: The guy's in . . .

THE CHAIRMAN: I'm sorry?

MR. WORK: Oh, nothing, Mr. Chairman. I was just going to think out loud: if the guy's in the hospital, how do you propose to get the answer from him? Then I thought: maybe I don't want the answer to that question after all.

THE CHAIRMAN: Questions 33, 34, and 35 are still waiting for more information.

Question 36: Clark was bringing us more information. Were you aware of that, Donna? Are you prepared?

MS MOLZAN: I wasn't aware of that, no. I'm sorry.

MR. DICKSON: Let's defer it, Mr. Chairman.

THE CHAIRMAN: Okay. We'll defer it. Actually, that defers us right to the end of the list.

MR. DUCHARME: May I move for adjournment?

THE CHAIRMAN: No. I'm sorry. I had another item, but that was the additional meeting dates and we've covered that, so Denis' motion is acceptable. All in favour of adjourning?

HON. MEMBERS: Agreed.

[The committee adjourned at 3:42 p.m.]