Title: **Monday, November 9, 1998** Freedom of Information Review committee

Date: 98/11/09

9:08
[Mr. Friedel in the chair]

THE CHAIRMAN: Okay. I think we have enough members here now, so we can start the meeting. I understand that Pamela Paul is ill today and won't be here. I'm not sure about Pam Barrett, but the rest are here, so we might as well start.

The first item on the agenda is Approval of Agenda. You've got the copies of this. Have we got a mover?

MR. DUCHARME: I so move.

THE CHAIRMAN: Moved by Denis. Any concerns about it? If not, all in favour? The motion is carried.

Approval of the minutes of the November 2 committee meeting. Do we have a mover for that? Moved by Ron. Any errors or omissions or comments? If not, all in favour? The motion is carried.

This morning, as we warned you a little bit earlier, the format of the agenda is going to be receiving the government submission to this committee. Peter Kruselnicki, the Deputy Minister of Labour, is here with all kinds of helpers, I guess. Most of your key people in this area, Peter, are on our technical committee anyway. Following that, we're going to have Bob Clark, our commissioner, comment on the government submission, and following that, depending on the amount of time that's available, we will proceed with dealing with these. In some cases they're going to be relatively straightforward. We might be able to deal with them today. Then there may be some issues that are either controversial or need a little bit more technical background, and we would defer those to a subsequent meeting.

You'll notice with the agenda, as we did the last couple of times, that those issues that were dealt with don't appear on the detailed question document that you've received. The Summary of Issues is what we called it. What did happen: the government submission issues do appear in that document now as questions. This promotes a sort of orderly discussion of an issue, either leading to a consensus resolution or defeating it in one way or another. In doing this, the numbering sequence has changed, and the reason for this is to keep the items in a sort of issue order rather than simply numerical order, as they have been in the past. Some of these issues dovetail into matters that have been previously discussed here. Others, because they tie into a common theme, should be discussed together rather than bouncing back and forth. So it's going to be a little more difficult to follow. I apologize for that, but I think it's important that some of the remaining issues, because of their similarity, be dealt with together.

With that, Peter, welcome again this morning. I'll get you to introduce those people who are new to this committee before you start. But before I do that, I see Gary has a question.

MR. DICKSON: I'm embarrassed to ask if anybody has a spare copy of the act.

MRS. SHUMYLA: I probably do.

MR. DICKSON: I neglected to bring mine. Thanks very much.

THE CHAIRMAN: I'm actually quite surprised you haven't got it memorized, Gary.

MR. CARDINAL: Gary and I always share our information.

THE CHAIRMAN: I hope in fact that this is on the record, that the bantering back and forth here is taken in good humour, not to suggest that there's anything more to it.

MR. DICKSON: Or that any member isn't respected, Mr. Chairman.

THE CHAIRMAN: Right. If we didn't respect you, we wouldn't do it in this humourous, open fashion.

With that, Peter, go ahead.

MR. KRUSELNICKI: Thank you very much, Mr. Chairman. It's great for me to be here to discuss the government submission that I forwarded to you on November 2. To my immediate right is Dr. Sandra Thomson, who's the director of the Provincial Archives of Alberta, and to her right is Irene Jendzjowsky, who is the FOIP co-ordinator for Community Development.

As you're aware, our submission contains 30 of the recommendations made to Alberta Labour from the provincial ministries. Generally we feel that the act is working well, and many of our recommendations are just fine-tuning or addressing some of the anomalies and unanticipated consequences that we or departments have seen over the last three years. Some suggestions are being made to make the administration of the act more cost effective. In several instances I understand the committee has already discussed issues that are contained in our submission that were raised by others.

Throughout my discussion I'm going to focus our comments on major recommendations unique to our submission, and Sandra Thomson will address two of the issues, recommendations 23 and 24, which are significant to the Provincial Archives and archival institutions.

Our second recommendation deals with the interpretation of law enforcement and its use as an exception to disclosure in section 19. The concern raised by several departments as well as other public bodies is that it may be too narrowly interpreted. We believe it may not adequately protect administrative investigations such as those relating to internal theft or sexual harassment or investigations of inmates and staff at correctional facilities prior to either disciplinary action or criminal police investigation. It may not adequately protect security force records, such as campus police who enforce bylaws, or investigations undertaken by one body and enforced by another. I think the example we used in our submission was the investigation of health facilities by the Alberta Health Facilities Review Committee.

Our fourth recommendation proposes an amendment to the extension of time limits in the act to better enable departments dealing with high volumes of requests to comply with the act, and departments that have a high volume of access requests have raised concerns about the cumulative effect of both similar and different concurrent requests by the same applicant. Concerns have also been raised about the concurrent requests by two or more applicants who work in the same organization or an open association. An amendment to enable time extensions in these circumstances would better enable public bodies to better schedule workloads both in the FOIP office as well as in program areas that hold the records. We feel that this is a responsible way to more cost effectively administer the act.

Our fifth recommendation demonstrates our continued commitment to the protection of privacy, and we're suggesting a new offence for gaining or attempting to gain unauthorized access

to personal information because of the increasing technological access to such information. I'd just like to note that such a provision would be unique to Alberta.

Our seventh recommendation suggests an amendment to section 16(4)(g) whereby the disclosure of personal information contained on licences and permits is not considered an unreasonable invasion of privacy. We believe this section is too broad and does not sufficiently protect privacy. While we agree with the Information and Privacy Commissioner that there is a problem with this section, we recommend that it be amended, not appealed. The public may have the right to know who obtained commercial licences or permits; for example, day care licences or commercial fishing licences. They should not have the right to know details of other licences, such as hunting, fishing, and Christmas trees. In addition, the personal information being released about individuals applying for commercial licences should be restricted to the name and purpose of the licence but not other details that contain personal information. The proposed amendment is intended to provide direction to public bodies as to what is unreasonable and what is not.

Our ninth recommendation recommends an amendment to recognize the aboriginal organizations exercising governmental functions in section 20, the provision that excepts from disclosure information that might harm intergovernmental relations. For example, Family and Social Services has expressed concerns that negotiation with bands over delegation of child welfare services may not be adequately protected. An amendment comparable to the Northwest Territories model is recommended. We can discuss that one in more detail at a later time.

Recommendation 10 requests an amendment to protect from disclosure incomplete research, audit reports, and other major reports, such as consulting studies, until they are completed. This prevents premature release before a thorough review is completed and departments have verified the accuracy of the work. A time frame of three to five years has been suggested as the limit to the exception if no further work or progress has been made to the report. We feel this time frame provides sufficient time for public bodies to determine if the project will be completed or abandoned.

Our twelfth recommendation recommends that section 32(a) be amended to change the phrase "by or under an Act" with the phrase "an enactment." I understand there was considerable discussion at the last meeting on this particular issue. Our legal counsel has indicated that "by or under an Act" means both acts and regulations, and clearly we believe that the collection of personal information should be authorized in both legislative forms. The student records regulation authorizes the collection of student information. The day care regulation also authorizes the collection of personal information, as do many others. Public bodies must have this level of flexibility to operate, and it's our preference they formally create authority to collect personal information through both acts and regulations that rely on 32(c), default of an operating program.

9:18

The last recommendation that I'm going to discuss in our submission, recommendation 18, suggests an amendment to section 38(1)(g) to enable disclosure of personal information to staff of other public bodies dealing with the same program on a need-to-know basis. We feel this is necessary because of the multidisciplinary nature of the service delivery by many departments and organizations. Family and Social Services has established children's services models which require the department to interact with officials from their community boards, mental health, and others in assisting Albertans. Schools also interact with health care officials, the police, and others in assisting students. The amendment recognizes a new co-operative or partnership model in doing business and will benefit the clients being served.

With those comments about the recommendations we feel are key issues within the government's submission, I'm going to ask Sandra Thomson to talk about recommendations 22 and 23, the archival issues and what we're trying to address.

DR. THOMSON: Thank you, Peter. Mr. Chairman, Mr. Commissioner, and committee members, thank you for the opportunity to speak to you this morning. The Provincial Archives of Alberta upholds the principles of the Freedom of Information and Protection of Privacy Act. With regard to any recommendations we are proposing, we want to underline that our intent is to continue in our policies and procedures to protect personal information from unauthorized disclosure. But having said that, we would also like to make the process of accessing information as transparent as possible and as simple to use as possible for our researcher clients. The Provincial Archives believes that the process of accessing government information should be easy to understand and easy to follow. Alberta has shown the way through section 3 of our current act in that records that were open and restricted in archives before the act was proclaimed remained so after proclamation, unlike other jurisdictions in Canada.

Our recommendations for revisions to the act are in response to academic researchers, professors and graduate students, freelance historians, genealogists, and other historical researchers who have not made public submissions directly to this committee, I believe, but have raised their concerns with the staff of the Provincial Archives.

We ourselves have noticed a decrease in the number of academic researchers using the Provincial Archives after the proclamation of the FOIP Act. For example, the number of researcher clients identifying themselves as academic researchers dropped from approximately 200 in 1994 to 164 in 1995, and the numbers have not recovered in the past three years. A decrease in the number of researchers using archival records is of course of concern to us. We feel very strongly that the Provincial Archives has an obligation to encourage and make possible research, particularly historical research, in the province. Consequently, we would like to make the process of accessing information as simple as possible while still complying with the principles of the act. In my discussions this morning I will of course be talking only about government records and the FOIP Act as it applies to the holdings of the archives and only about archive researchers.

Records that are transferred to the custody and control of the Provincial Archives are considered inactive in government ministries, but they have enduring value. They have historical, probational, and evidential value because these records document the decision-making process of the government of Alberta, reflect societal trends and values, and of course provide a chronology of events. These archival records are unique and one of a kind and should be considered the memory and the foundation of our society.

Allow me to speak to the particular recommendations that are being made. With regard to recommendation 22, we need to understand and to some degree sympathize with the researchers who normally research personal information but not in isolation from the general societal, political, and cultural information that pertains to a particular person, event, or time period. The researchers have indicated they need to review records and context to be able to interpret the information. What frustrates and to

some degree infuriates these researchers at times is that any records or information that they request under the FOIP Act must be reviewed. Researchers would prefer to request all the records that might pertain to the research they're doing so that they make the selection themselves on what is pertinent. They tend to resent this selection made by staff, who under the act must choose and review the materials requested to determine if any of the exceptions of the act apply, and this must be done before the records are made available to the researchers. The researchers wish to read the documents themselves instead of having someone else -- and that's us -- review them and to, quote, possibly censor them.

We need to remember that what determines a good researcher is the ability to identify what previously might have been considered irrelevant, out of context, or unconnected. Although sections 40, 41 have set out a process for accessing information for research, these two sections as they currently exist pertain only to personal information and set out very strict procedures that entail the destruction of that personal information, which limits what a historian can do with her or her published findings.

If the proposed recommendation 22 is accepted, then the records 30 years and older and in the custody and control of Provincial Archives could be open and accessible to researchers. We believe that researchers would find a 30-year rule acceptable, easy to understand, and it would provide them in many cases with entire documents rather than portions of records, as they sometimes now receive. The 30-year rule would remove many of the barriers to research in an archives while still protecting personal privacy because of the exceptions that are listed.

This observation leads me to recommendation 23. Under recommendation 23 the Provincial Archives would continue to protect personal privacy and to uphold the principles captured in the privacy criteria in section 16 of the current act. If this recommendation is accepted, we would create a privacy test to mirror section 16 fairly closely. We would also set the test up in such a way that it would be a clear, transparent, easily understood set of questions that could be explained to the researchers who come to the archives. We would also include clear definitions of what is considered a reasonable disclosure of personal information for historical and genealogical research purposes. If the recommendation is accepted, we would propose to develop the privacy test in close consultation with the staff of the Information Commissioner's office and to focus-test it with a select number of representative academics.

In summation, currently if a researcher wants to access personal as well as general information in the Archives' holding, he or she for personal information completes a general FOIP application form and receives, in all probability, little personal information. So when the researcher comes to the point of publishing his or her findings, all of what he or she received can be published since very little personal information or personal identifiers were released to the researcher in the first place. For the final act of publishing, the results are the same as if the researcher used the current FOIP personal research agreement set out in section 40, though our experience has shown us that historians and archive researchers generally have not chosen to use section 40.

Currently for general information the researcher makes a general FOIP application, receives records only after a thorough FOIP review, and then is free to use and/or publish whatever information he or she culls from the reviewed records. Under the proposed recommendations if a researcher wants to access personal as well as general information in the Archives, he or she in the case of personal information would complete a general FOIP application form and the personal privacy test in section 41 would be applied. The privacy test would recognize the needs of the researcher, and in all probability the researcher would receive more personal information under the current act and might be able to publish more personal information than under the current act. The development of the privacy test is critical to ensure that this both protects personal information and facilitates research.

For general information under the proposed recommendations the researcher would make a general FOIP application. If the records were 30 years or older and were not personal information, legal privilege, or law enforcement, the researcher would receive unculled, unreviewed, complete records. If the records were less than 30 years old, then the regular FOIP procedures for review and release would be followed.

We do realize that we're acting as champions for our researching clientele, and on their behalf we appreciate the committee's willingness to consider these two recommendations.

MR. KRUSELNICKI: Thank you very much, Sandra.

Gary, I think that basically concludes what we were going to bring to the committee's attention.

THE CHAIRMAN: Okay. That actually moved a lot quicker than I expected it would. But what I'm going to suggest, unless someone has some clarification that is urgent at this time, is that I wouldn't mind going through Bob's comments and then, in the context of both submissions, get into the detailed questions. So if you have some very specific questions that you need for clarification, I'll take them now, but let's stay out of the debate of yes or no or anything like that.

9:28

MR. CARDINAL: That only applies to Gary. I have a real important one.

THE CHAIRMAN: Okay.

MR. CARDINAL: Actually, it's in relation to -- because you were quite fast -- Family and Social Services and the delegated authority to First Nations in relation to child welfare. What was the plan on that? What's happening out there is that there are about 25 Indian bands right now that have delegated authority for child welfare. Their plan is to have their own legislation and federal funding in the near future, and that's going to happen probably within the next three years. As we move forward here, we have to make sure accommodation is provided for that process to take place, because I assume that when that happens, then they'll fall under the federal freedom of information legislation. I just thought I'd bring that up for records, to make sure that it's dealt with and the provisions are made in there to ensure that transition can take place without any obstacles.

MS SALONEN: That particular instance is dealt with in two areas in the submission. One is an amendment to section 38 which would allow the disclosure from Family and Social Services to the new director for child welfare in the bands. The other one is an amendment to a section that deals with confidential negotiations between government bodies that would recognize Indian bands as being one of those, so that as they're negotiating the particular details of those agreements, those things can be confidential.

MR. CARDINAL: You see, once federal legislation is in place, we will no longer have the authority to delegate, and that's what I'm getting at. We want to make sure that happens quickly, that we're not in the way.

Okay. Thanks.

MR. DICKSON: Just a process observation, Mr. Chairman. As I understand it, Mr. Clark has responded to the 30 written recommendations in the submission we received from the Department of Labour. I have trouble keeping too many things in my head at the same time. It seems to me it might be a little easier for me and maybe for others to follow if we started going through the submission sequentially, item by item, then allow the IPC office to join in and offer their perspective on a particular issue, and we move on to the next one. Otherwise, we've got sort of 30 issues in the air and potentially another 10 or 12 responses, and then we have to go back and break it down. I don't know how other committee members feel, but it just seems to me to be more ordered and maybe a lot more focused if we were just to work through the presentation we've heard. Perhaps we could first in each case give the commissioner the opportunity to introduce his reflections and concerns on that particular issue and then move on to the next one.

THE CHAIRMAN: Well, if we had started out to deal with each one item by item and had Peter make a submission and then asked Bob to respond to it, if we had done that before we got into a full presentation, I would accept that. I think since we've now started with a presentation dealing with the entire submission, I'd like to continue with that format and ask the commissioner to make his representation. I would also be concerned that if we didn't allow that kind of presentation, it would almost be like a debate or, you know, bantering back and forth. We can get into that when we get into our discussion, and if we need clarification on each of these items, I'm going to ask, as we have in the past, any of the technical people that are here. As well, the special guests, if we want to call them that, we have here this morning are always free to join in the debate. We need that kind of input. But I think it would be unfair not to have made one presentation and then go back on an item by item and get into a debate.

MR. DICKSON: But with respect, Mr. Chairman, we're doing it twice then.

THE CHAIRMAN: We probably will, but if the presentation is an overview presentation, as Peter made, it shouldn't be a problem.

Go ahead, Bob.

MR. CLARK: Thank you, Mr. Chairman. What I'd like to do, after saying thanks for the opportunity to make a brief presentation to you -- you've met Lisa, you know Frank, and you know John very well, so they'll chime in on some of the more specific issues.

I'd like to approach it with the committee this way. If you look at the submission Mr. Kruselnicki and his staff have made, I'd like to make some comments on six areas, just really saying that yeah, we do, or that no, we don't, or that we think you should look at this.

If you look at recommendation 3, it's our submission that this is not needed, to be quite to the point. We think the existing legislation, as we've mentioned in the second paragraph on page 1 of our submission, points out why that amendment isn't needed.

If we move over, then, to section 7 in the government presentation, I should say here at the outset that section 16 I suspect is going to cause the committee as many headaches as it causes the commissioner's office, as it causes public bodies. I should say -- and Frank and Lisa can bail me out here if need be -- that not long ago the Department of Labour officials and my staff met to try and sort their way through, from an administrative point of view, how section 16 might work more succinctly. I think it's fair to say that my staff were of the view -- and I support that -- that section 16 may be cumbersome, and we asked for some changes in section 16 in my initial presentation. We've rethought that now, and perhaps the devil we know is better than the devil we might know in trying to do a lot of tinkering with section 16. Lisa and Frank will speak to that as it goes along, but it's my sense, to the committee, that section 16 is likely going to be one of the thorniest and most difficult areas. That's just the experience that as commissioner I've had and certainly that our office has had, and that impinges on recommendation 7.

Well, I'll go all the way through, and you can jump later or land later.

Recommendation 8 fits into a similar situation, and our staff have once again, as I've said, met with Labour. I'd like to withdraw the recommendation that we made previously dealing with section 16 and instead recommend that the general structure of section 16 not be changed despite the challenge it causes. I'll be frank with the committee; you can say that that's stepping back, but that's the best recommendation I can give you from our standpoint.

The next recommendation, dealing with recommendation 12, is in my view one of the most important . . .

THE CHAIRMAN: Excuse me, Bob. Did you say 12?

MR. CLARK: Recommendation 12; yes, Gary. That deals with the approval for collection of personal information. The suggestion is that that should be expressly authorized by an act or a regulation. As commissioner I very much -- there's no other way of putting it -- oppose that. If we say that we're going to add to it by regulation, I know it's administratively more convenient. Years ago when I was a member of the Legislature and I was a minister, I am sure if you go back and check some horrible things I said at that time, I likely would have been in favour of that kind of an approach. But frankly as commissioner I think it flies in the face of what the act does, and I don't think there's a need for that kind of basic change that allows by regulation as opposed to after full and complete discussion in the Legislative Assembly.

I'd like to move over, then, to recommendations 22 and 23, and I appreciate the submission made by the folks from the Archives. So you won't think too unkindly of me, might I say that I agree with your first recommendation. On the second recommendation, I guess I'm not so sure we need another harm's test. We strongly support your first recommendation, and we certainly want to be involved in some discussions as far as the second recommendation. I wouldn't agree with that recommendation.

9:38

Dealing with recommendation 30, you may recall that in our initial presentation we said there should be a review every five years. I would like to say that I think that should be an ongoing thing; it simply shouldn't be done every five years. But if you're so inclined to put that in the legislation so that every five years there's a legislative review -- once again, reflecting back, I recall that that was done with the WCB legislation years and years ago, an automatic kind of five-year thing. It tended to keep both the WCB, which would be likened to the commissioner's office, and the people who worked the thing more inclined to kind of focus on things and say: look, in two to three years we're going to deal with this. It didn't stop if an emergency developed that you couldn't deal with with the House sitting twice a year. I think that would work well.

The last comment I would like to make doesn't deal with any

part of the government's recommendations at all; it deals with the need for a possible change to the conflicts of interest legislation. You'll recall that now deputy ministers and senior officials -- there are about 60 of them -- do their personal disclosure documents to the commissioner, as do Members of the Legislative Assembly. My erstwhile legal counsel to my right -- that isn't saying that counsel to my left isn't excellent also -- has come up with what he sees as a potential problem here, and I'd like Frank to deal with it.

MR. WORK: Okay. Thank you, Mr. Commissioner. This is kind of nitpicking, but it's important, so we're going to burden your committee with it, Mr. Chairman.

Section 4 says what doesn't come under the act. You don't have to look at it. I'll tell you that section 4 talks about generally two things. It talks about records, and it talks about information. For example, it says that information in court files and so on is not subject to the act, and then it says that a record made from information that the registrar of motor vehicles has is not subject to the act.

In trying to apply the act, we tried to make sense of: why is information sometimes excluded, and why are records sometimes excluded? It must mean something or the legislators would use the same term. What we came up with -- and we originally came up with it with respect to the registrar of motor vehicles when the commissioner did the audit of that database -- was to say that where it uses the word "record," where a record is excluded from the act, it must mean that use and disclosure don't come under the act, but it also must mean that collection does come under the act, because you don't have a record until you've collected; right? You have to gather some stuff verbally or on paper or take an application on something before a public body has a record.

When we came upon this distinction, we were about to do the audit of the motor vehicles registry. I don't want to put words in their mouth, but I think Municipal Affairs was at least prepared to accept the possibility of that distinction. I don't know if they were wildly enthusiastic about it, but they seemed to accept it. That went fine. The audit was done, and some very good results have come from that.

Well, looking at the same issue, it occurred to us very recently, just in the past week or so, that the same issue actually arises with respect to information and records held by the Ethics Commissioner. What section 4 says is that those records are not subject to the act. Okay; so disclosure of the record and use of the record are not subject to the act. The Ethics Commissioner is okay there. By the same logic, the collection of the information from the MLAs and from senior officials, the gathering of that information, is still subject to the act. We're quite convinced that what was intended was to take all of that out of the act so that when the Ethics Commissioner is interviewing senior officials and gathering their information, that was not intended to be subject to the act either.

If it is subject to the act, there's a problem, because that process by which senior officials come and sit down with the Ethics Commissioner and hand over their personal information I believe is authorized by regulations made under the Public Service Act. Now, that won't be good enough under this act, because as both parties have said, to collect information presently in Alberta you need an enactment, and we've taken the position that an enactment is an act, not a regulation. I probably just mixed that up. Let me go back half a step. You need an act, not a regulation, to collect information. We suspect that the upshot of that is that the Ethics Commissioner is going to have problems legitimately collecting personal information from senior officials. MLAs aren't a problem -- right? -- because MLAs have to fork over their information under the Conflicts of Interest Act. That's an act, and that's okay because that authorizes the giving of the information. It's just a problem for senior officials because their collection is sanctioned under a regulation.

So in order to keep the system of disclosure for senior officials moving under the Conflicts of Interest Act, we've suggested a minor amendment to section 4(1)(c.1). Mr. Chairman, the other day when we were in here, you mentioned that we don't want to be telling the drafters what to do, but we think, subject to what they might say, that if they replace the word "record" with the word "information," that might do the trick. Again, they're the experts, not us.

Did I thoroughly bewilder everyone with that rather technical point?

THE CHAIRMAN: I'm not sure how thoroughly, but I think there's a little bewilderment.

MR. STEVENS: I've been working with you long enough, Frank; I understood you.

MR. WORK: Thanks, I think.

THE CHAIRMAN: I have just a clarification. I'm assuming that part of the reason for this is that tying into the objection to the concept of using regulations as authorizing documents, this would be necessary.

MR. WORK: Uh-huh.

THE CHAIRMAN: If recommendation 12 of the government submission was accepted, this no longer would be a problem. I realize the anomaly of this, because your position is that you from the commissioner's office would prefer that we were talking legislation only, not regulations. Am I correct in assuming that if regulations were to be included as per recommendation 12, this would no longer be a problem?

MR. WORK: I think so. I think the answer to your question is yes. That would mean that the collection of personal information from senior officials would be authorized, would be okay because now regs count. The answer to your question, Mr. Chairman, is yes, but it would still be subject to the act. Let me put it this way. The collection will be authorized by the regs, so it will be okay to do that, but it nonetheless will be subject to the act, whereas the other stuff under section 4 is just right out of the act. Like, if you look at section 4(1)(a), judges' notes and stuff don't even come into the act, so it's not even an issue. That would be the difference in what you're saying. Yes, it would be okay now if you went with the government's recommendation on that section, but it would be okay under the act as opposed to being taken right out of the act.

9:48

MR. DICKSON: Can I ask what statute the regulations are under that require the senior bureaucrats to disclose to the commissioner? I'd asked before, and my recollection is that I was told that it's not pursuant to a regulation, that it's pursuant to some form of directive, policy, memorandum. So my understanding had been that there's no legislative authority for deputy ministers to provide the kind of information that they share with the Ethics Commissioner. That may have changed, but that had been my understanding, that it was done by some kind of ministerial directive but not pursuant to the Regulations Act, by something that has in fact no coercive legislative sanction.

MR. WORK: Mr. Chairman, Mr. Dickson is right. Initially it was purportedly done by a memorandum, not even a cabinet memorandum, a ministerial memorandum. Now I believe it's by regulations made under the Public Service Act. Do you recall?

MS WILDE: I don't recall.

MR. WORK: Okay. Regs made under the Public Service Act, and that change is recent. I should have brought them with me. I apologize.

MR. CLARK: I believe -- I stand to be corrected, Mr. Dickson -- that change may have taken place when the Public Service Commissioner redid the whole conflicts of interest code for the members of the public service. Mr. Dickson, if my memory is accurate, that was done within the last six to eight months. I'll get the exact information for you and get it to you. Your sense initially was right on: when we were involved with discussions with the Public Service Commissioner when they were developing the code of conduct for senior public officials.

THE CHAIRMAN: Since this is a new item, and I think you're right, Frank, that there is a little bit of confusion in what this all means, I'm going to suggest: would it be possible to put that together in, let's say, a one-pager that we could deal with at our meeting next week?

MR. WORK: I think the one page attached to the back of the commissioner's letter is pretty good. I can have another crack at it. I can give you the chapter and verse on the regulations of the Public Service Act, if you like, Mr. Chairman.

THE CHAIRMAN: Which letter are you referring to?

MR. CLARK: My letter to your committee.

MR. WORK: The commissioner's letter to you dated November 9.

MR. CLARK: On the bottom of page 6 and the top of 7. Did we not make copies for all the members? [interjection] I'm sorry, members of the committee. My apologies. I assumed that you all had copies of it.

MR. WORK: Mr. Chairman, if you only got them today, our timing is off on that. I apologize.

MR. CLARK: If the last half of page 6 and the top of page 7 isn't sufficient for your needs, Mr. Chairman, in addition to getting the verse and scripture on the regulation, then give us a call immediately and we'll get something . . .

THE CHAIRMAN: I hadn't seen this letter. That's why I wasn't aware of it. I expect that that will cover it quite adequately.

MR. CLARK: My apologies.

THE CHAIRMAN: Okay. Having gone through the brief overview, as I had suggested at the beginning, we'll go through these. I think that because the intent today was initially to deal with the government recommendations, we'll go through them from that document, because it has a lot of background information in it, for the purpose of order. As we go through them, I'm going to refer to the question in our summary of issues because in the summary there are related questions. For example, recommendation 1 deals with question 109. We would also go to that part of the document to ensure that there aren't related issues that should be dealt with at the same time. It's going to make for a little bit of confusion here, but I hate to defeat the purpose of having connected the related issues and then bypass it now. It works well if we can find it.

MR. KRUSELNICKI: Excuse me, Mr. Chairman. If I could maybe just make a suggestion. Since we have Sandra and she's available to answer any questions on the archival questions, recommendations 22 and 23, if we could deal with any questions related to the archival questions, then she and Irene could maybe be excused.

THE CHAIRMAN: That makes sense to me. Does anybody have any problems with that?

HON. MEMBERS: No.

THE CHAIRMAN: Okay. If we can then jump to recommendations 22 and 23, which deal with questions 106 and 107 respectively. They're on page 7 of the summary.

Okay. Any questions on recommendation 22? Perhaps for our record here I'm going to read these. We've gone through them quickly, and people will have read these to different degrees of attentiveness, but just to make sure everybody's coming from the same amount of at least verbal background at the meeting, I'll read them as we go through them.

Recommendation 22 says:

> Concerning records in the Provincial Archives of Alberta or a local public body archives, that a 30-year access rule be incorporated into the FOIP Act, except for records containing personal information about identifiable individuals, sensitive criminal or law enforcement matters the release of which might harm the justice system or records to which the government or public body wishes to still apply legal privilege that should remain closed to the public, or records restricted by other statutes that should remain closed to public access.

MR. DICKSON: Mr. Chairman, I've got a question, and it's this. Because what we're presented with here is really hearsay, we've got secondhand information. I'm wondering if there's some reason why we didn't get submissions from the archival community directly. Then I wonder if there were other concerns, suggestions, views. The archivists I know in Calgary have had quite a bit of experience with the act, so I'm wondering why in the 121-odd submissions we didn't hear from them. Then are there letters or that sort of thing that can be shared, or is this all just sort of verbal information that's been relayed to either Community Development or the Department of Labour?

DR. THOMSON: Mr. Chairman, Mr. Dickson, I can't speak on behalf of the archival community and can't tell you what other archivists are going through right now. For the most part, because we have government records, we're dealing with the FOIP Act. For the researchers who complained to us we have pointed out there was a three-year review. We have pointed out that this committee would hear submissions from them. I suppose they chose to instead focus on us because we're their first point of contact.

Irene, I don't know. Anything else you can add to that?

MRS. JENDZJOWSKY: Most of our contact has been verbal. We had meetings with some of the academics at the University of Alberta, where they explained to us their concerns and how they viewed the act and how they would have preferred to have things

work. There was, I believe, an initial letter wanting some kind of task force or something to discuss this. We did encourage them to send briefs to this committee. We don't know whether they did or not, but because of the conversations and the discussions that we have had with the academics and researchers coming into the archives, we thought it might be pertinent to the committee to include this.

MR. DICKSON: Mr. Chairman, I was just wondering: is this exhaustive of the representations and concerns that either Community Development or our Department of Labour have heard from the archival community? Is this their only concern with the act, the provision that's set out in section 14 in the submission we're looking at, and that's sort of resolved into recommendations 22 and 23?

9:58

MRS. JENDZJOWSKY: If I may, Mr. Chairman. I think the reason that this particular section was focused on was because it dealt particularly with the archives, and academics come to the archives to do their research. They may or may not -- again, I can't speak for them -- have problems with the rest of the act. But certainly what they've told us is section 41 should be a little bit more transparent.

DR. THOMSON: If I might add, Mr. Chairman. We're focusing here on representing our researching clients, not our colleagues in other archival institutions. It's the client's voice that we wanted to bring to this recommendation.

THE CHAIRMAN: I think that would be consistent with our earlier discussions when we were setting up the terms of reference. The purpose of this review is to find out where there are problems, and if you've identified these as problems in your dealings with these clients, this is the appropriate way of bringing it in. Whether or not individual archivists or clients chose to make a recommendation directly to the committee, I don't think you should be put in the position of defending why they did or didn't, unless someone actively suggested they should not. Each of them are grown-ups that could do as they wanted. I'm not sure that it's fair to pursue why other people or other groups didn't make submissions.

MR. DUCHARME: Mr. Chairman, with the background information that has been provided, it does indicate that the 30-year rule is basically standard in places like the British Public Record Office and the U.S. national archives. As was mentioned, basically we're here doing a review of the act, and it could be something that had been, you know, possibly not thought of at the time. So with the information that's been provided to us, I'd like to move that

> we recommend recommendation 22.

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

I just have one question. It's sort of a double-barreled question. It talks about "information about identifiable individuals." In the earlier discussion, Dr. Thomson, you had indicated that part of this process would be simplified because researchers -- and I'm assuming we're talking recognized or accredited researchers -- would like more general access without having this stuff searched for by staff. At that point how do you know if it's about identifiable individuals, or are you going by an entire file?

DR. THOMSON: One of the places where we would focus on identifiable individuals would be case files, Mr. Chairman. It's case files that concern us. There you have individuals; you have individual personal histories. Those are the ones we would look at first.

While we would release these records, we wouldn't take them, I would assume -- my colleague can argue with me, if you want -- straight off the shelf and give them to the researcher. We would have to look. We have inventories; we have descriptions of these records. We would do a cursory review to make sure they fall within the release that would be allowed as outlined in recommendation 22. We wouldn't do that thorough kind of review and severing that you would get under the act currently, but we would look at this material, especially at case files, and we would ensure that what we're letting go does not fall within the three exceptions that are under 22.

THE CHAIRMAN: So it's the broader definition rather than the fact that a name may appear in a document. I'm assuming that the justification for this is that the people and the credentials they would carry would have a certain amount of trust when they came in. Is that correct?

DR. THOMSON: Yes.

THE CHAIRMAN: The second part of the question. Documents that are in the archives -- I'm looking at the third last line, where it says that the "public body wishes to still apply legal privilege." We're talking about sensitive documents, if you go up a little bit further, "sensitive criminal or law enforcement matters." Are these the kinds of documents that would normally be in the archives, of if they're of that nature, would the department still keep them under their own control and jurisdiction?

DR. THOMSON: We do have some of those records, Mr. Chairman. Again, they're usually case files. They're usually for us identifiable because of the way we get them.

MRS. JENDZJOWSKY: And the description.

DR. THOMSON: That's right, the descriptions that we have in our inventories. Again, we would do a cursory review if there was any question, and we would stop first before we released them just to ensure that we're meeting the enabling legislation if recommendation 2 is approved.

THE CHAIRMAN: This means to me that there can be certain files transferred to the archives by the department simply for safekeeping and storage which have a different expectation attached to how they're handled. Is this correct?

MRS. JENDZJOWSKY: Mr. Chairman, I think the definition would be that they're transferred to the archives when they become inactive. There are certain files sometimes that reactivate through litigation or other things that are in the archives, but what normally happens with a file, whether it's case files or just general information files that are transferred to the archives, is they are basically inactive. The process or the program or that particular issue is not an issue in the department anymore, but the archives feels that it has some historical value, so they keep the information in the archives.

DR. THOMSON: Mr. Chairman, people should understand that in the process of transferring records to the archives, the archivists work closely with the departments. It's the departments that identify these records, and that comes through to the Alberta Records Management Committee. You'll see that the appraisal is done closely with staff in the department. So the department

believes that when they're transferring records to us these are inactive records. But as Irene has pointed out, sometimes these things are reactivated for any number of reasons.

THE CHAIRMAN: But do you feel comfortable with the arrangements as they are now, that you can handle these issues or files which are sensitive and not have to go through a lot of extra work to sort out which are or which are not likely reviewable or made available for research without causing a lot of extra work internally?

DR. THOMSON: We believe we can, Mr. Chairman. Recommendation 22 makes our work easier. It makes the access easier for the clients. It's a very straightforward approach. We don't believe it's going to cause us extra work.

THE CHAIRMAN: Further discussion? We do have Denis's motion which would approve this recommendation. All in favor? It's carried.

Then going on to recommendation 23, which relates to question 107:

> that section 41 of the Act be amended to remove reference to section 16 of the legislation and to replace this with an invasion of personal privacy test that more clearly recognizes the needs of academic historical researchers and genealogists as well as the nature of the records in the Archives. The application of the test would be reviewable by the Information and Privacy Commissioner.

MR. DICKSON: I take on this point the advice of the commissioner, that the last thing we need is to make what is a fairly complicated act more complicated. I think that you've often enjoined us, Mr. Chairman, in trying to have a reader friendly, a user friendly statute. It seems to me that if we were to adopt recommendation 23, we take a step in the other direction. I guess my thought would be that this is one of those things where the IPC, the office of the Commissioner, has shown itself, I think, sensitive to the pragmatic needs of people trying to access information, and my inclination would be to simply trust the good judgment of the commissioner's office. I don't think we need to make the act any more complicated than it is. I think that accepting recommendation 23 does create a whole lot more complication.

10:08

MS WILDE: I would also like to point out that many of the factors proposed in the new privacy test must already be considered under section 16(3). So the commissioner's office doesn't believe that there is a need for a new test.

THE CHAIRMAN: Can you be more specific in your reference to section 16(3)?

MS WILDE: All right. Section 16(3) of the act states that a "head of a public body must consider all . . . relevant circumstances." In our opinion the term "relevant circumstances" would include factors such as the age of the record, the expectations of individuals in providing personal information, the sensitivity of the information, and the probability of injury or harm. So in essence when section 16(3) refers to "relevant circumstances," it refers to those circumstances that are already listed in 16(3), but it can also refer and should refer to other circumstances. So the public body has to look at those circumstances listed but also at all other relevant circumstances. In our opinion those other circumstances would include the items that have been proposed in the new privacy test.

THE CHAIRMAN: Do you want to respond to that, Dr. Thomson?

DR. THOMSON: We do recognize, Mr. Chairman, the concern of the commissioner's office for the protection of personal privacy, and we want to assure him and his staff that we take that as seriously as he does. We realize we were suggesting a personal privacy test that would be a yes/no. We believe that would be a straightforward approach as opposed to going through the considerations of the act. But we do realize that we do have personal privacy, that has to be protected, and we note Mr. Clark's and his staff's observations.

MR. STEVENS: I notice that there are two recommendations with respect to amending section 16. They are recommendations 7 and 8, that are part of the government response. I'd just like to clarify that recommendation 23 would stand as is regardless of how we deal with recommendations 7 and 8.

MS WILDE: That's correct.

MR. STEVENS: Thank you.

THE CHAIRMAN: In the interpretation of section 16, Lisa, you referred to the fact that you would interpret that part of the act to address the concerns of recommendation 23. Would the people that would normally come to the archives and get this information be the kind of people that would be quite familiar with the act? When Gary Dickson made reference to the fact that I have often said that simplification is something we should be striving for, I have also made it fairly clear that in simplification I'm talking about the general ability of those people or groups that deal with a particular section of the act. How easy is it for them to understand it, or do only those people that administer the act understand the legal implications and the requirements? It's one thing for lawyers and people constantly working with a document to be very conversant with what it says, because often you're dealing with cross-references. If a certain part of an act or a section applies, then another one may or may not. That's not really user friendly, unless the individual or the groups would consistently be expected to understand those cross-references. This has turned into a very convoluted question I see, but getting the focus on it: would the people that come to the archives be expected to be reasonably familiar with the kinds of provisions that are in the act right now?

DR. THOMSON: Mr. Chairman, our clients don't fully understand the act. They understand generally the idea that the act protects personal privacy. They understand that there is an act and that there might be things they have to do -- they're not even sure what those things are -- in order to access information. Many of those clients spend a fair amount of time with Irene discussing, asking questions, having things explained to them. Does that answer your question? No, they don't understand the act.

THE CHAIRMAN: That was what I expected the answer to be, and that's what I would personally have had the opinion of.

MR. WORK: Mr. Chairman, it's important to remember that with section 40, which is the archival section, and section 41 in the act it's not as critical that the public using the act understand the section as it is for the head of the public body to understand section 16. What section 41 says is that the archives "may disclose . . . for research purposes," so the obligation isn't on the researcher to come and say: oh, give me this, this, and that, because I know I can have it. The researcher doesn't have a clue

even what's in the boxes at the Archives. If they come and say, "This is the area I would like," then the people at Archives have to go through the stuff and say, "I don't think we can give you that because of section 16 of the freedom of information act." The good part of that is that the Archives makes that decision, "No, you can't have it because of section 16," and then the person that's come to ask for it, the researcher, can go to the commissioner and say, "I don't think they applied the criteria properly; I don't see why I shouldn't be able to have that," and the commissioner can review that decision.

So what I'm saying is that it's not too bad. Although it looks rather ominous for the layperson trying to apply the act, it's not as bad as it might seem because they get a decision from the head of the public body as to yes or no, you can or you cannot have it, and then they get to take that decision to the commissioner for a review. So it's not like their fate rests on their own ability to understand the section. They're kind of protected from having to go through all that by that process.

THE CHAIRMAN: I see what you're getting at, Frank, but in the introduction there were some statistics that would indicate probably about 20 percent less use of the Archives' records since the act. Now, we couldn't scientifically say that that was in fact the fault of the act, but if it had some bearing, with people simply thinking, "Well, maybe this information isn't available anymore" and not bothering, that would cause me some concern.

The other thing is that if someone is going to challenge the ruling of the head of the public body, they would still have to understand the act somewhat to say: yeah, you're making a decision, but it's not in compliance with the act. So they should still have some reasonable understanding of what they're dealing with. Otherwise, you're simply allowing the bureaucrats to make the decisions with nobody being able to refute whether or not it's legitimate.

MR. CLARK: Mr. Chairman, might I say that once that happens, then the people in the Archives advise that individual that they have a right to appeal to the commissioner's office. Then a portfolio officer is assigned, and that portfolio officer has up to 90 days to help that person and the public body come to some resolution of it. It would be during that 90 days, it seems to me almost regardless of what the legislation is, that that person is going to become much more familiar with what's going on because of the negotiations which will go back and forth.

MR. WORK: The other thing, Mr. Chairman, is that basically if you go with recommendation 23, you're replacing one test with another test. So, as the commissioner said initially, I don't know if you're much further ahead. I mean, you're just replacing the section 16 test with a new and independent test that's contained in section 41. I don't have any reason to assume that the new test is going to be any easier to apply than the existing test, so why not stay with one test instead of two?

10:18

THE CHAIRMAN: Okay. Is everybody reasonably confused?

MR. STEVENS: I'd like to suggest that this question be put over until we discuss the considerations regarding section 16. Speaking personally, that'll give me the benefit of understanding section 16 better.

THE CHAIRMAN: I was just going to suggest the same thing. Do we agree to defer this?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay.

As Peter mentioned, Dr. Thomson and Irene as well, you're free to leave if you wish. Actually there was nothing that kept you here in any event. We're not that kind of coercive group. When Peter suggested that you weren't interested in any of the rest of the act, to clear the record I saw you say, yes, you definitely are interested. But we appreciate that you came down here. It certainly helped us, I think, understand a little bit more of the problems. You're certainly welcome to stay, however, if you've changed your mind about having other commitments.

DR. THOMSON: Thank you very much for the opportunity to be here this morning. We will take the opportunity to go on and meet other commitments, if you don't mind.

THE CHAIRMAN: With that, we can move back to recommendation 1, referring to question 109. The question is on page 8. The recommendation reads:

> that the provision be amended to permit the Minister responsible for an affiliated agency, board or other public body designated in the FOIP Regulation to name the head of such a public body for the purposes of the FOIP Act. If the Minister does not appoint the head, the head would be the "chief officer" charged with the administration or operation of the public body.

No argument? Consensus? It's agreed.

Recommendation 2, relating to question 40. If someone can find the page of the question quicker than I can, could you shout it out? It's on page 5? It reads:

> that the definition of law enforcement in section 1(1)(h) be amended:
>
> - to ensure that it covers the appropriate range of police, security and administrative investigations,
> - that the ability be given for one public body to carry out the investigation and another to invoke penalties or sanctions, and
> - that the exception be amended to cover complaint or request for investigation documents.

MR. DICKSON: I have a problem with the recommendation. You'll recall, Mr. Chairman, that when we heard submissions in 1993 on the Premier's all-party panel, there was a lot of concern about too expansive a definition of law enforcement. I think we were alive then as a committee to the potential abuse, and I remember it being very spirited. In fact, the current Minister of Justice championed ensuring that it was a relatively narrow view, that it had to relate to an investigation that could relate to the meting out of a penalty or whatever. The example here gives me a lot of concern. The Health Facilities Review Committee has no disciplinary power. It's supposed to assure Albertans that there's some body, if not arm's length at least somewhat independent of Alberta Health, doing investigations. It's chaired by a government MLA. This isn't in the same category as the Ombudsman, and it's not in the same category as an independent legislative officer. I don't see why we would treat that as a law enforcement matter and, furthermore, stretch law enforcement to cover people who do administrative investigations and so on.

There's a public interest in those things. There may be appropriate cases subject to all the other exceptions, like section 16 and so on. The public should be able to see that information. I don't know why we would want to expand it. And this notion of the Alberta Health Facilities Review Committee -- I don't know why we shouldn't be able to access, to at least make the request, and if it's not exempt under one of the specific exemptions, I think it should be accessible. So I think this is problematic.

THE CHAIRMAN: Okay. Frank has indicated he wants to speak to this. I also want to mention that when I first saw this on Thursday afternoon before it was put together on the agenda, I looked at that example of the Alberta Health Facilities Review Committee and had some concerns whether that was the kind of committee that was intended. I spoke to Diana, and she said that there were better examples than that. Were you able to expand on that a bit?

MS SALONEN: Well, I think the point of the Health Facilities Review Committee is one that just shows how government is organized right now. Yes, there are sanctions for abuse or offences that that committee reviews. They happen to be in legislation that Alberta Health administers. So when another body does the investigation -- if Alberta Health had done the investigation, it would be covered. Because the Alberta Health Facilities Review Committee does it, then it seems to fall out of the exception.

Looking for other cases, there are a number of cases where there are formal investigations in statute, but the sanctions are often meted out in the courts. So there's an investigation that occurs and then information that's laid in court for the sanctions to be applied. Certainly you can see that picked up if there are investigations for sexual harassment, employment standards, investigations under the Employment Standards Code. The Protection for Persons in Care Act may not have clear sanctions built into it. So certainly each of these has provisions for investigations should they fall into the law enforcement exception.

THE CHAIRMAN: Before we expand on that -- now, I'm hoping I didn't steal your thunder, Frank.

MR. WORK: No.

THE CHAIRMAN: I had made myself a note to bring this up. You're on now.

MR. WORK: Actually, all I was going to say flows quite nicely from what Diana has just said. The commissioner didn't make a submission on this point, but you may be interested to know. I'll tell you a little bit more about the problem as we see it. It's a tough problem, and I think at the end of the day the commissioner's office believes it is a political kind of issue, so it's quite properly in your hands.

The issue. The commissioner with that law enforcement section initially took a very narrow view of it, and I think that's as it should be. The commissioner set up, you know, that: I'm not going to let you withhold a whole bunch of stuff under this section; I'm going to make it that you only withhold -- because remember, the purpose of section 19, the purpose of the law enforcement exception is to allow public bodies to say no to people who want information. So the commissioner said: I'm going to make this narrow so that you can't say no all the time. And that works fine; law enforcement works fine when you've got someone who can investigate and bring sanctions against a bad guy or a bad person and it's all done under the same act. As Diana said, it starts getting messy when in a large modern government you have what Gary Dickson called administrative investigations, because those sometimes follow a more circuitous course. It's not just like the police go out and investigate, and if they find something, they lay charges. It's more like you have another body that does some oversight or some investigation. They have a mandate to do that. They might see something wrong, and their next step is to go to the police or go to another authority to get the investigation finalized and the charges laid.

The police are already in there. If they're investigating and charging and stuff, they can withhold that information. The question for your committee, Mr. Chairman, I think is whether or not you want to extend that so that some of these other bodies, like the Health Facilities Review Committee, also get the advantage of that. The commissioner had a case where someone who had been investigated by the health facilities review board wanted to know who squealed, so they went to the review board and said: "Give me your investigation records. I want to know who's been talking to you about the condition of my health facility."

10:28

MR. CLARK: As a result of that, we ended up having three inquiries. At the end of the day we did not release the information, because it was personal information under section 16. But it did stem from the health facilities review -- I'm sorry, Frank.

MR. WORK: No. That's okay.

MR. CLARK: It did stem from the health facilities review, work that they had done, and also a licensing branch in one of the departments of the government where someone who is an employee of this facility had gone and complained because things weren't being done the way they were portrayed to be done. With those three cases, for the biggest we had to go through literally thousands of documents before coming to that conclusion, but at the end of the day there was nothing illegal about what had been done. At least in the view of the law enforcement people there were no grounds to lay charges. But you had this particular health group wanting to get personal information about their own staff as to who had squealed on them.

MR. WORK: That won't always be personal information, Mr. Chairman. In this case it was. In this case the commissioner said that the public body was correct to withhold it because it was personal information. That may not always be the case with an informant kind of situation or an investigation kind of situation. I mean, the reason the commissioner's office didn't submit on that point is that you may well say: "Hey, no. That's good. People should be able to have access to those kinds of administrative investigations in order to see transparency of government."

The other side of the coin is: do you want to protect -- I shouldn't say protect. Do you want to withhold from disclosure the material that arises in those kinds of investigations in the same way that you would for the police?

THE CHAIRMAN: I have Ron and then Gary.

MR. STEVENS: Thanks. In my view the bullet points clarify the general wording in this particular section. So I would like to move an amendment to section 1 as more particularly outlined in question 40 in our material.

THE CHAIRMAN: Okay. You're speaking to the preamble in question 40?

MR. STEVENS: Well, as I understand it, recommendation 2 in the one document is the same as question 40 in the Summary of Issues document that we have. At least that's what I understand, and to the extent it is, my motion is that

> the definition of "law enforcement" be amended as more particularly outlined in question 40.

THE CHAIRMAN: I may be sounding a little bit dense, but is the

difference in the preamble and in question 40? It just talks about "broader protection." The bullets are identical I think. Or are you just concurring with the recommendation?

MR. STEVENS: I'm concurring with the recommendation.

THE CHAIRMAN: Okay. That's the part that I was missing. I was looking for a change there.

Okay. The motion is then on the table.

MR. DICKSON: I'm speaking against the motion. I mean, we may as well gut a big part of section 2(a). Where do you draw the line? If you say that any administrative investigation may lead to somebody turning a file over to the city police or a law enforcement authority, which is going to result in an offence, what happens is you can effectively throw this umbrella over virtually every kind of investigation that's undertaken in any one of the 17 government departments, any RHA. You know, Albertans have got a right to know, and if there's got to be an exception that withholds information from them, it's got to be narrowly defined.

This recommendation 2 is enormously broad, Mr. Chairman. I think if we're going to accept this, we might as well go back and dilute section 2(a), because that's the effect of this. This is way too broad. It's far broader than Ontario, where we had taken our original recommendation from the all-party panel. We looked at what happened in Ontario, and there had been a lot of work done around this. We very consciously tried to keep it narrow. I'm prepared to accept that there may be specific exceptions where the thing can be expanded, but this recommendation 2 is just way too broad. The net effect is that Albertans are going to be shut out from accessing a whole lot of what I submit is wholly relevant and essential information on the way their government's working or not working. Way too broad.

MS MOLZAN: Mr. Chairman, if I might offer just one comment. Generally, amending the definition of law enforcement will not take out the requirement in section 19 to show harm. Just because it might fit into the definition does not mean that harm is assumed. The commissioner would still have to review such a matter and determine whether there is harm, or the head of the public body would still have to find that there was harm in giving it out. If an investigation is all completed and a matter has been resolved, it may be that there is no harm in giving out the entire file, subject to the other exceptions. So the harm test would not be overridden.

MR. WORK: That's an excellent point, Mr. Chairman.

MS BARRETT: Well, it seems to me that the concern Gary has raised is really with the third item here, "that the exception be amended to cover complaint or request for investigation documents." Am I correct, Gary?

MR. DICKSON: It's also tied into the first bullet. I don't know what "the appropriate range" of administrative investigation is. I mean, that could be any sort of administrative investigation.

MS BARRETT: Right. I suppose we could have a look at that once it comes back in legislative form.

I think it's item 3 that is the biggest problem here in this recommendation. Maybe we could get that one dropped and then see what the legislative writers come up with in terms of the appropriate range. I mean, if it just means spelling it out, that's fine. I certainly have no objection with "one public body to carry out the investigation" and another having the ability to "invoke penalties or sanctions." I certainly agree that because of section 19, harm of protection -- and in the examples that the commissioner and Frank Work have already given us, they were able to undertake some pretty difficult tasks and do the job in a way possible that meant that, yes, the right of access was not generally impeded for the public at large, but at the same time in the request for investigative documents they realized that the purpose of the request was actually venomous and refused to participate. I think, you know, one can judge the ability of the office based upon the examples that were given, and I think they did a responsible job in the examples they cited.

So I will move an amendment to the motion that

> the third bullet be removed from the motion.

THE CHAIRMAN: I'm just thinking whether that changes the intent of the motion, but we can deal with that by voting on it.

In the discussion I'm seeing two things, and they're probably the same thing related to the two bullets. In bullet one it talks about the "appropriate range", and while in terms of a recommendation from this committee that can be a fairly fuzzy statement, you commented, Pam, that we have to wait and see what the legislation actually says. I'm assuming in going along with this that there would be a measure of appropriateness. In other words, we're not suggesting here that the thing just be opened wide up and that anything and everything in terms of a review all of a sudden be called an investigation. I think there has to be some legitimacy, and hopefully the amended legislation would cover that so that it doesn't just open it up and the comments that Donna and Frank made would still keep a lid on it. My reading of the third bullet is that there is some parallel here to the issue of criminal investigation that is elsewhere in the report.. There has to be a certain amount of inclusion at that stage of preliminary information; otherwise, you've defeated the intent of the entire recommendation.

Now, is there someone here that could maybe speak to that, because that's specific to Pam's amendment. What is the essence of the third bullet, I guess?

10:38

MR. WORK: Mr. Chairman, I can speak to that. Actually, Lisa just reminded me that the commissioner made order 96-019, and this is directly on Pam Barrett's point. Informant privilege, the commissioner said, comes under section 26 of the act. So that's covered now. There's a limited public interest privilege in informers being protected under the right circumstances. So with complaints and requests, I'm not sure what "request for investigation documents" means, but complaints are probably covered now to the extent they need be by 26. They're covered under the umbrella of privileged information now, we believe.

MS WILDE: I guess the question really becomes whether you want to continue to have that complainant information covered under section 26 or whether you want to state that clearly under the definition of law enforcement. Under section 26 what we do is apply a common law test, and there are basically four requirements that have to be fulfilled. That's a little bit more complex than maybe just specifying that out in the legislation, but that's a decision that the committee has to make.

MS MOLZAN: Sir, I might add as well that under 26 there is no harm requirement; 26 is just pure discretion. The common law says that either it is or it isn't, and then the discretion may be exercised. If law enforcement were amended under 19, you would have to show harm, so that would be the difference. For someone that is making a complaint, then, you'd have to somehow show

that if you released it, there would be some harm involved. So that makes it a little bit more difficult. The common law test, as I said, simply fits or doesn't. There is no need to show harm.

MR. DICKSON: I was just going to say that one of the recommendations -- we've received public submissions on this -- is that all of the exceptions should import a fault-based test. So you're accurately describing the section that exists, but, I mean, one of the choices and options we have is whether we're comfortable with having exceptions that don't import that higher threshold.

THE CHAIRMAN: Can anybody tell me under which circumstances it would be easier for the average person to understand?

MS SALONEN: I guess speaking from having listened to a group of FOIP co-ordinators who we talk to regularly, until that particular order came out, I'd say that most had never heard of informant privilege, unless you were really a part of the Justice lawyer group, and we then found out that there are many, many kinds of privileges that we had never heard about. From somebody who's tried to administer an act in a public body, clearly what is the beginning and end of a law enforcement matter is a whole lot clearer.

MR. ENNIS: Mr. Chairman, not in defence of the FOIP co-ordinators but speaking as one of them -- we do have one in our office, and that's me -- the informant privilege is something that is only being really recently talked about, even by the courts. It seems to be an evolving or an emerging kind of privilege necessitated by these kinds of situations. One thing that's important to keep in mind is that in the act there are many instances when informants report to government departments, and their reports to government departments are excepted from access by virtue of those sections of those acts being paramount to the FOIP Act.

I'll give you an example. In the Child Welfare Act -- and I know some of you on the committee will be very familiar with this -- a reporter who reports child abuse enjoys an immunity, I suppose, from having that report being made accessible to other parties. The Child Welfare Act is paramount to the FOIP Act on that issue. In that case a person could ask for the information but would not get what the nature was of the report being made. For example, if someone complained about me, I would be able to ask but not get that information on a report that had been made about me. So the relationship to paramount legislation is an important consideration here as well.

THE CHAIRMAN: Okay.

Frank, you were going to say something?

MR. WORK: Yeah. You know, it's such a tough question. With the example John just gave you, you can see the public interest in keeping that kind of thing from access. On the other hand, as Mr. Dickson said, sometimes people should have the right to know what the complaint against them is. Certainly the British Columbia commissioner has tended to let that kind of information out more frequently than the Alberta commissioner. I can't say that one is right and the other is wrong. But you have a better chance of finding out who informed on you in British Columbia than you do in Alberta; I can tell you that. It's a tough question.

The one thing I did want to speak to was that Donna Molzan quite correctly pointed out again that section 19 is a harms-based section. It's not like the public body can just throw a big blanket over all this stuff. They can draw it into the section, but then they've got to show harm in order to withhold it from access. To me that's a very compelling point, that the onus is always on the public body to show where the harm is in withholding this.

In defence of the courts and the varieties of privileges that the courts have come up with, all I can say is that if you try to codify everything the courts have ever said in this piece of legislation, it would be the size of the *Encyclopedia Brittanica*. So the FOIP co-ordinators are just going to have to live with some uncertainty and some discretion, as is the rest of the government.

MR. STEVENS: On this particular point it seems to me that the question is whether or not we want to offer this kind of coverage to complainants. My answer is yes; if we do include it here, it's going to be more transparent. People are going to obviously be able to read and see that that, in fact, is included in the definition. As Donna has said, there's a harms test that's associated with the process. So from my point of view this particular bullet is properly included as part of the recommendation.

THE CHAIRMAN: Any other comments? Okay. The amendment by Pam Barrett is that bullet 3 be removed from the recommendation. She had to leave because she's speaking at that function that's going on downstairs. I'm assuming that her vote would be in support of that. We'll call the vote on that amendment. All in favour of the amendment? Opposed? Okay. The amendment motion is defeated.

Going back to the motion that Ron made on recommendation 2 in its entirety. All in favour? Opposed? That motion is carried.

10:48

Recommendation 3, relating to question 98. The question is on page 3 of the attached document. The recommendation reads:

> that section 4(1)(b) be amended to include notes, communications and draft decisions, directly related to a judicial or quasi-judicial matter, that are composed by those that support judicial and quasi-judicial officers in their work.

Any comments on that?

MR. DICKSON: This is one where the recommendation from the Department of Labour makes sense to me, and frankly I have some difficulty with the commissioner's recommendation. Why wouldn't you explicitly say that notes made by the young lawyer working as a clerk to a judge have the same protection as sort of the distillate of the process? Having to rely on a specific exception is a whole lot less satisfactory to me. The intention of section 4 was to take some things and just say that this is completely outside the scope of the act without any ambiguity or ambivalence. I see the argument that it's sort of subsumed already in 4(1)(b), but I'm not uncomfortable with going with the recommendation that Peter addressed earlier. It makes sense to me.

THE CHAIRMAN: Okay. Moved by Janis.

I hate to stir up something that looks like it's going to move this quickly, but I think we have to be careful here with the phrase "those that support." It's similar to a question that came up in the last recommendation. It's a matter of degree. I think the message at least should be passed on: to what level? It shouldn't assume that anybody that works in the office that makes a few notes would be covered by that privilege. I think we're talking here about those that directly support the activity of the officers. Without suggesting any changes, maybe that message will get through.

I'm assuming from the other comments that we need not prolong the discussion. All in favour of the motion? None opposed. Then

it's carried.

Recommendation 4, referring to question 99, also on page 3:

that section 13 of the Act be amended to consider:

- the cumulative effect of similar concurrent requests by the same applicant;
- different concurrent requests by the same applicant; and
- similar or different concurrent requests by two or more applicants who work for the same organization or who work in open association

as grounds for extending the time required to respond to a FOIP request.

This one should raise some interest.

MR. DICKSON: Not to disappoint you, Mr. Chairman. You know, the reaction I had when I was reading this is that it covers a lot of ground, and then they're not all reflected in the recommendations. I'm less alarmed with the recommendations than I am with the analysis that led to that.

I'd like some information in terms of just why the solution to this wouldn't be better co-ordination between public bodies. Instead of fiddling around with extending the time period and making a more protracted response time, surely there's a much simpler solution and one that's still true to the principles of the act, and that is to ensure a better level of co-ordination among the public bodies that receive these concurrent requests; for example, Executive Council and the Premier's office. I have, understandably, some sympathy with people who are not sure where you're going to find a record there. Those are two different public bodies, and my experience has been -- I don't know whether it's still the case -- that they have a single FOIP co-ordinator. I don't know whether that's changed and they have different FOIP co-ordinators now, but these are public bodies that are so closely aligned that people in the public would understandably be confused in terms of where records like that would be anyway.

The fact that you may have parallel requests going in, I don't see anything harmful about that, and if there was better co-ordination -- as I say, my understanding had been that between those two offices, which I suspect probably get the majority of these split requests, they have FOIP co-ordinators. So that was good judgment on the part of Peter's group in terms of recognizing that and co-ordinating it in that fashion. I think the answer has got to be an administrative remedy rather than the kind of further time delay that's stressed. I just don't think the case has been made on pages 4 and 5.

Now, if there are more, if we can have some particulars as to how many of these split requests have come in, how many public bodies have got these other than the Executive Council and the Premier's office, then maybe we'd have something to work with, but in my respectful view, a persuasive, cogent argument hasn't been made for the kind of fairly significant change that recommendation 4 would take us to.

MS KESSLER: A point of clarification, Mr. Chairman. These are not FOIP requests that go to multiple public bodies; these are concurrent requests with the same public body. So it's departments that field a lot of FOIP requests at the same time and where there isn't an adequate ability to consider those concurrent requests as a rationale for time extensions. Basically it's departments such as Environmental Protection and Treasury that are getting a lot of them simultaneously.

MS SALONEN: To add to what Sue said. When the document talks about split requests, it's split a single request into multiple requests to get under the $150 ceiling, so it could have been one request going to one public body and it became many in order to work the fees. That's what the split means, not split between more than one public body.

MR. KRUSELNICKI: Mr. Chairman, I'd maybe just comment on Mr. Dickson's suggestion that things aren't being very well co-ordinated. I think that for the most part things are being very well co-ordinated within the departments. I believe -- Sue, correct me if I'm wrong -- that the vast majority of the requests that are received are handled within the 30- or 60-day time limits. Very few requests go to the commissioner for review. We think that the co-ordination aspects are very, very well received, and I concur with Sue's comments that she's provided on that.

MR. DICKSON: Well, I appreciate the clarification, but that makes it even more puzzling for me. If you've got multiple requests, presumably you only have to make the search once to find out where the box is and where the file is to be able to respond. In terms of people trying to layer it to get around the $150 fee, well it's up to the public body if you're going to give one person 12 documents and then you're going to give the next person the next 13 through to 24. It seems to me that there must be other ways of addressing that. Really what this takes us to is more time. I mean, this isn't about more fees; it's not an additional fee component. The request at the end of the day is for additional time to deal with it. I'm sorry; I'm not quite sure: whether you get four different applications that are identical or one, what difference does it make in terms of the time required for that public body to respond to this request?

THE CHAIRMAN: Bob, you wanted to comment?

MR. CLARK: I just wanted to make two quick comments, Mr. Chairman. We have a very definite view on this. If it wasn't that the public body has to come back to the commissioner for an extension, we'd be definitely taking a different position rather than sitting back and simply saying: I don't have a strong view on this. I would just simply say that I do look at the third bullet in the recommendation. It'll be interesting to see how that's put in legislative drafting. I may be back to you. Good luck.

10:58

THE CHAIRMAN: I'm assuming that that is the intent, that this doesn't give an automatic extension to the head of a public body. This simply is the grounds, as it says on the last line, for the commissioner to consider a request for an extension and that he would have to look at both circumstances -- first of all, whether or not the requests were such that complying simply was impossible and, secondly, on the converse side, that the department of which the head is requesting this extension wasn't simply procrastinating or dithering on the process -- and weigh the two in balance.

MR. DICKSON: Mr. Chairman, I'm still hoping somebody from Labour can explain to me what the connection is between extension of time and the number of identical
requests you get in. I'm not seeing the nexus of the connection there. They seem to me to be two fairly different issues.

MS KESSLER: They're not necessarily identical requests. It can be sort of the cumulative effect of a number of requests with one department at the same time, and that would be one of the rationales for going to the commissioner to look at an extension.

THE CHAIRMAN: I'm also assuming that, Gary's point, if similar concurrent requests could all be answered by the same response, the commissioner isn't going to extend the time request. If there was enough dissimilarity that it would require extra action, this is the basis of it. To me, the essence of it is simply that it's grounds to apply. There's no expectation of automatic extension, none to be given other than through and at the discretion of the commissioner.

MR. CLARK: I think that by and large we've been very slow to grant extensions, and unless there's explicit direction from the Legislature, I would not plan to change that at any time. It's very important that that extension is seen as being a rare thing that happens only for very, very compelling reasons. When we get into the situation like they are in Ottawa, where they're one and two years behind, that just destroys the whole function of what we're trying to do.

MR. KRUSELNICKI: Gary, I guess I'd like to add that there's an incentive for us to handle requests as quickly as we can because it's cost-effective to handle them quickly and try to provide the information in as open a manner as possible. So we're not trying to extend a lot of requests just for the sake of extending requests. In the Department of Labour, for example, we try to handle a request in as timely a fashion as we possibly can. You know, we're trying to minimize our cost. The more you have to handle things, the more it's going to cost you. The more we have to deal with Bob's office, the more time it takes, the more it's going to cost us. So we're not trying to extend for the sake of extension, but periodically there are extensions required.

MR. DICKSON: I'm fascinated to know, Peter, how you propose to identify the third bullet. What kind of information are you going to require on an application form to determine that? My neighbour and I both happen to be interested in an open mining operation in Kananaskis and we both happen to make requests. How do you decide? "Well, you're side by side; obviously you're in cahoots. You're just trying to do this to gum up the works." How are you going to be able to action the third bullet?

MR. KRUSELNICKI: I guess that'll be the test for the legislative draftspeople, Gary. I'm not sure I can answer that today.

MR. CARDINAL: Just on that point. Even as an MLA there are times you'll get 300 requests on the same issue at the constituency level, so you have to have a process in place that could screen that process. Otherwise, you just bog down everything. That's the issue you're talking about. And that's at the constituency level; never mind what a department may be faced with on a reasonably hot issue, for example. There's no way you can do it unless you have a provision to manage it and control it so that you can at least effectively answer the few that you can.

MR. DICKSON: I just want to ask: how many times have you been in a situation where you received so many concurrent requests that a public body was having a real problem managing it? I mean, has that happened yet in our four years' experience with the act? I haven't seen it in any of the reports that have been tabled in the House.

MS SALONEN: No, it's not widespread. We don't hear from co-ordinators every week, "I'm totally bogged down; I can't manage." I'd say it's a couple of times that we heard about it. It would not be a regular occurrence, unless our activity changes a lot, that not only a public body but maybe a particular program area of a public body has been inundated or is having difficulty meeting the time lines.

THE CHAIRMAN: I think the question here is not whether it's used often but, again, in line with the reason for this review: are there problems or potential problems in the act? This has been identified as one, and for a solution, which I guess we're going to decide as to whether it's reasonable to recommend, it is then for government ultimately to find the wording. But this does fit into that category of a potential glitch in the existing act.

MR. ENNIS: Mr. Chairman, just speaking specifically to the third bullet and looking at this from the view of someone who might have to pick up a case that's come from a public body where they've requested an extension and an applicant is complaining about that being undue delay. One of the difficulties that I can foresee here is that often the identity of the applicant isn't truly known to the parties that are involved, including the public body, especially if legal counsel is representing an applicant and legal counsel refuses to disclose who their client is. So it's very difficult to pick up on what the identity of an applicant is in a given case and to be sure of that as you proceed through it.

On the issue of association, we do have cases in which, for example, two journalists from the same newspaper chain are chasing the same story. Often it's news to each of them that the other fellow is looking for the same information. I've heard of cases and I've seen cases in public bodies where the FOIP co-ordinator has been able to tell both of them that they should make up their mind as to who is pursuing the story, who gets the lead on it, and save their editor a little bit of money in fees. Those things do tend to get sorted out by the FOIP co-ordinators. But I just did want to point out the difficulty of identifying applicants. It isn't quite as clear cut as it might seem.

MR. STEVENS: Well, I guess the discussion has for the most part dealt with the issue of how you would prove the point, and it seems to me that there's been a recommendation from government that this opportunity be allowed. If the facts never present themselves, it'll never be used. If they do, then the commissioner will have an opportunity to rule on it. So I'd like to move that

> section 13 be amended to consider the three bullets that are more specifically set out in recommendation 4.

THE CHAIRMAN: Okay. The motion is accepted.

Any further discussion? All in favour? Opposed? The motion is carried.

MR. WORK: Mr. Chairman, having done that, just as a footnote I would say that the commissioner still gets to review, as Mr. Stevens just said. I think the commissioner's office, certainly the commissioner's lawyer would ask the commissioner to get very involved if the regulations were somehow changed so that people making FOIP requests had to disclose more information about their own circumstance or who they were working for. I would hope there would be frantic opposition to that. You know what I mean? In the furtherance of this amendment, if the thought were given to amending the process of making application so that you had to tell who you were working for or you had to tell who you were associated with, that would just be an atrocity. So I hope there's no thought of doing that.

MS KESSLER: That was not the intention.

THE CHAIRMAN: I don't see that in the discussion. It's well that

you emphasize this, because I think the intent here, even though the motion is already approved, is that this does provide an avenue for an overpowering amount of work that simply couldn't be handled as opposed to creating another escape hatch.

MR. CLARK: At the discretion of the commissioner's office.

11:08

THE CHAIRMAN: Recommendation 5, relating to question 108.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Everybody's agreed. I'm not even going to ask for a motion. We'll consider that a consensus. Maybe we can get on a roll here.

Recommendation 6 relates to question 94.

MR. DICKSON: Agreed.

MR. CLARK: Mr. Chairman, I don't want to stop the enthusiasm for agreeing, because we support this, but I would just ask you to look at our comments that we've made there with regard to clarifying how that can be done at the local municipal level.

MS WILDE: I believe that last day when we met, there was a recommendation made that section 80 and section 89 be rolled into one section. Is that correct?

MS SALONEN: Yes.

MS WILDE: So that may in fact clarify these two sections. Our concern was that section 80 refers to a public body, but also that includes a local public body. It states that they may delegate in writing the "duty, power or function," while section 89 gives a local public body the power to delegate "any duty or exercise any function" by bylaw or other legal instrument. The problem we saw is that it was unclear whether a local public body could delegate in writing or whether they also had to have a bylaw or legal instrument, but I believe that will be clarified if the two sections are in fact rolled together into one.

MS MOLZAN: Mr. Chairman, if I might. We did discuss that at the last meeting, and the intent was to roll together 80 and 89(b), which is the delegation section for the local public bodies, and therefore to eliminate any of these wording problems. That would be part of the amended section that would cover both situations, public bodies generally and local public bodies specifically.

THE CHAIRMAN: I was flipping through looking for question 94 and realized that we in fact did that. At the last meeting we combined the two and have already approved it.

Recommendation 7, cross-referenced to question 35:

> that section 16(4)(g) be amended to limit disclosure of personal information related to the receipt of a licence, permit, or discretionary benefit. In determining the appropriate approach to this amendment, consideration should be given to disclosing only the name and the nature of the privileges or benefits that have been received. There should also be a clarification in drafting to distinguish licences and permits from discretionary benefits, since not all licences and permits are purely discretionary in nature. There should also be differentiation between those types of licences or permits that should be disclosed, (e.g. Commercial) and those that are private in nature (e.g. Personal recreation).

MR. DICKSON: I'm wondering whether we want to roll this into our consideration of registry offices. This goes further, but in part of this you could fold in registry offices. It might be useful that we at least come up with sort of consistent recommendations, you know, with both parts.

THE CHAIRMAN: Well, when we started out, we specifically excluded registries from our review because there was a parallel review ongoing. I would have no objections to anyone making cross-referenced comments, but I think we have to stick to our terms of reference that at this point we are not dealing with registry offices other than that there is a point here, one of the questions, as to whether we're going to make a recommendation to the minister. In that respect, we can tie the two together.

Frank, you had a comment?

MR. WORK: Okay. I don't know if I'll make it better or worse.

Page 2 of the commissioner's letter to you I think pretty well summarizes what the problem with this section is for us. In Ontario, for example, you can go and find out anything you want about my driver's licence. I think that's right; I'm pretty sure that's right. You can go and find out under what conditions I can operate a car. You can find out whether or not I'm supposed to wear corrective lenses. You know, that kind of registry is wide, wide open. I suspect that in Ontario you can probably find out who's got a hunting licence, who's got a licence to hunt grizzly bears because there's only a limited number of those issued. Diana or someone from Labour might correct me if I'm wrong on that. I'm sure about the driver's licence part though. I guess the question is: should that be available?

The commissioner has had a case respecting grazing licences, for example. These are large pieces of public land that are leased out to individual ranchers. So you ask the question: well, should the public get to know who's getting these pieces of land and what rent they're paying and the conditions under which they're allowed to use it? There's probably a pretty good argument in favour of that being known; right? I mean, it's a public asset that's being handed out. On the other hand, if you talk about drivers' licences and you ask the same question, if there is a public interest in someone being able to find out details from my driver's licence, I don't know. Maybe there's not such a good argument anymore.

The point of it is that the commissioner's office feels that subsection is broad enough to cover that whole spectrum, and the question for the committee, I guess, is: do you want it narrowed? If you look at some of the commissioner's orders, I think the commissioner thinks that information about things like grazing licences, those kinds of licences and benefits government gives out, probably should be given out. On the other hand, from a privacy point of view, do you want to protect information about people with fishing licences or hunting licences or that kind of thing? It's a thorny issue. It's kind of where privacy and access and accountability run smack into each other.

MR. DICKSON: You know, this is one of those things where when we were wrestling on the Premier's all-party panel, what we were focused on, what I remember I was focused on as a member, was timber harvesting licences, mining permits, or grazing leases: things that involved public lands, public resources. I don't remember anybody being focused on drivers' licences or hunting permits. I think in fact that if anything, with hindsight you can go back and say that really this is one of the things that potentially brings the act into disrepute when in fact I took the motivation to deal with significant public assets. My ability to hunt or fish isn't one of those things I saw was of any moment or any particular significance in the bigger scheme of things. So I'm all for trying to find a way to put our focus where I think Albertans would like to see the focus, which is on those things I mentioned. I may have been asleep at the switch -- I won't speak for the other members of that committee -- and we weren't consulted before Bill 18 was

first drafted. But I've gone on long enough, Mr. Chairman.

MR. STEVENS: Well, I didn't have the benefit of reviewing the Information and Privacy Commissioner's letter of today's date before the meeting. From my perspective it would be helpful if we put this matter over to our next meeting so that I can review the material on this point.

11:18

THE CHAIRMAN: I was going to recommend exactly that. As a matter of fact, as we were going through this, I haven't made little notes here for cross-reference. So if we're going through any of these other recommendations and there's something in your letter, Bob, that we should refer to, you could just remind us.

I think Ron is correct: there needs to be a little more discussion on this. I want to make two points that should be considered, however, as you're thinking about this. The reason that a licence and permits in many cases were granted was not necessarily to protect the interests of the individual who applied for them or even to supply information to the public body but also to protect those people who were affected outside. I think I've used the example of a development or a building permit. My understanding is that the reason for granting such a permit is every bit as much to protect the interests of those people who own property around. So we have to be careful in dealing with this that we don't fence this thing off from the original intent. That's something that should be considered.

The other thing. I'm just going to ask if someone before the next meeting could tell me what a discretionary benefit is. I know we issue licences, we issue permits, and I've never heard of anybody issuing a discretionary benefit. So maybe we could clarify that.

MR. WORK: Mr. Chairman, the commissioner asked for two legal opinions from two different firms on that exact question and at the cost of several thousand dollars. I don't know that we're that much further ahead in terms of exactly what a discretionary benefit is. We got two different answers from two very competent lawyers as well as our own view, so I'm not sure if it's possible to give you that in a nutshell, sir.

THE CHAIRMAN: This was almost a rhetorical question. I think what I was suggesting is that maybe that term should be left out of this entire debate because we're talking about documents that are actually issued by a public body, and unless we start inventing or designing another document, we should issue those finite things that someone sees. In other words, you go in and you apply for it, and you either get one or you don't. So maybe we could be a little clearer there. I know I read this thing many times until I in my own mind took that phrase out, and then some of this started to make a little bit of sense.

MR. STEVENS: I was just going to suggest that we shouldn't waste all of that fine legal scholarship, and if it's appropriate, perhaps the commissioner or the commissioner's office could share with us so that at least we have some sense of what somebody believes that term means.

MR. CLARK: I don't see any reason why we can't do that.

MR. WORK: They're your opinions.

MR. CLARK: They're my opinions, so you'll get them for a quarter of the bill.

THE CHAIRMAN: Send us a bill; sure.

MR. CLARK: It's in the mail.

THE CHAIRMAN: Recommendation 8:

> that a new paragraph be added to section 16(3) that directs the head of a public body to take into consideration when determining whether disclosure of personal information about a third party is an unreasonable invasion of privacy, whether the personal information about the individual had originally been provided by the applicant.

The comments from the commissioner's office, paraphrased into three words, were: don't change this. Discussion?

MS WILDE: Again I'd just like to make a comment regarding this. Section 16(3) currently requires the head of a public body to "consider all the relevant circumstances." As I stated before, the term "relevant circumstances" includes those things actually listed, but it also includes other circumstances. It's our opinion that the origin of the personal information, whether or not it was actually submitted by the applicant in the first place, would be one such circumstance that would be included in the term "relevant circumstances" in section 16(3). So in our opinion this amendment isn't necessary.

MR. DICKSON: Mr. Chairman, I said "Agreed" a moment ago. I was reading ahead. I thought it was item 8 rather than recommendation 8. On this one in fact, Mr. Chairman, I'm persuaded by the argument Lisa has made and the IPC in their written submission.

THE CHAIRMAN: Other comments? I have a question. When I first read this, I assumed it to mean that, say, a student or someone who was underage had a file and that at the time when they were a dependent minor, a parent or a guardian provided information, and in the subsequent time that individual reached the age of majority and the parent or guardian wanted to check the file or have some recourse to it. This is the kind of situation we were talking about, which to me made some sense. Am I missing the point on any of this? Is there a reason why we wouldn't clarify that that should be legitimate?

MS SALONEN: That's exactly the point. Lisa is absolutely correct. Section 16(3) has a number of circumstances, lists some examples. It's not exhaustive and not totally complete, but public bodies would be grateful for as much direction as they can get. Yes, they can think of more examples, but when they're spelled out for them, they will specifically include those in their considerations. So the more we can provide in the way of direction, the easier it is to apply.

THE CHAIRMAN: That's the way I read it. I did sort of cross-reference, and this added some clarity for me. What I would look for is the clarification. Does it have some negative effect on any part of the administration of the act, or would it be simply that you don't think more words are needed?

MS WILDE: Well, I think it's our opinion that more words are not needed, but again that's a decision the committee has to make: whether you want to spell it out clearly or whether you want to rely on section 16(3).

MR. CLARK: It's all part of that whole section 16 issue that you're going to have to grapple with.

THE CHAIRMAN: Like it's not confusing enough already.

MR. WORK: Mr. Chairman, if I may. If you go down that road on section 16, the thing to keep in mind and I think something that the public bodies have had difficulty with in the past -- and Sue Kessler and I have had a lot of discussions about this, a give-and-take on it. Section 16 says that you don't give stuff out if it's going to invade someone's personal privacy. All the other parts of section 16 are just meant to sort of tell you how to work that seemingly simple statement. The fundamental rule is: don't give it out if it's going to unreasonably invade someone's privacy.

So section 16(3) is just meant to kind of give some directions, as Lisa said, not all the directions but just a few directions, as to how to decide when it's an unreasonable invasion. It's helpful, but it's not conclusive and decisive. I guess that's what I'm saying. You have to keep your focus on the principle in section 16(1).

MR. ENNIS: Mr. Chairman, in the example that you recited a few moments ago, that's not how I was understanding this section. As I understood it, this section would be one in which, for example, if I place some information with a public body about you, if I should make an access request for that report, I as the applicant have some kind of a standing on it, even though it's your personal information that I'm going after. We do see many cases where this happens, where people report or give information to a public body about other people and are quite concerned about how that information was taken down or whether it was even taken down and used. I can see a situation here where someone would use the comfort of recommendation 8 to say that they have somehow a right to the information they have authored to a public body about somebody else.

11:28

I could also see a lot of malicious use of that too. We've had cases where people have reported people to public bodies and then attempted to make an access request to use the existence of an investigation as evidence in some other battle that's going on in some other place. They've been turned down. The way the act now works, they get turned down, even though they might have reported the information. The information is truly about somebody else, so the reporter, the person who laid the information, doesn't have any access to those documents the way things now stand. With this recommendation are we to see that that person would have some access to those documents?

MS SALONEN: We're seeing that that's a factor to consider. It's not a 16(4); it's a 16(3).

MR. ENNIS: So we would be sort of entering there the conflicts that people have around this information.

THE CHAIRMAN: Perhaps on this one maybe we should get a little bit more specific clarification on what's intended, because I can see the two sides here, where what I understood it to be might be one legitimate interpretation, but what you were just saying now, John, is that if it's too broadly interpreted, it could have some other problems. Could we maybe get a little bit of refinement as to how this thing might be worded so that it conforms with what I'm hoping the original intent was?

I personally believe -- and I've mentioned this to the committee several times -- that in this section there needs to be some examples. I'm referring, again, to that little thing that I had done up that very specifically states that here are some examples of things that are not considered personal information, the least of which would be harmful, and that to me is a clarification item, just because of the number of comments that we've heard over the last year or so. I'm talking about class lists, graduation lists, that little piece. I know the legal opinion says: it's in there; you can find it. But I think for the satisfaction of those people who aren't legally inclined or don't work with the act a lot, they could look at it and say: yeah, here they've made it very clear that we don't intend to protect that kind of stuff, that's readily available, public information about you. Now, we'll have to deal with that one separately, but as long as that's what this one is doing, I have no problems with it.

MR. KRUSELNICKI: We'll undertake to provide those examples for you, Gary.

THE CHAIRMAN: Okay.

Everybody agrees that we'll defer this then?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Recommendation 9, question 101:

> that the current list in section 20(1)(a) be extended by adding something similar to the provision in the Northwest Territories Access to Information and Protection of Privacy Act. This reads "an aboriginal organization exercising governmental functions, including but not limited to a band council and an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement or treaty with the Government of Canada."

In an earlier discussion -- and I just want to add this because it may add some clarification -- when I first read it, this could be interpreted to read: any group that purports itself to be established to negotiate or do whatever this thing says. I'm going to suggest that we would insert between the words "and an" and "organization" the words "recognized or official." So it would read: "but not limited to a band council and a recognized or official organization," to make it clear that there would be some status to that group, not simply that someone could create status by saying so.

MS SALONEN: I believe that's the intent.

MR. KRUSELNICKI: That's the intent, Gary.

MR. CARDINAL: You know, if we're putting in a process that's similar to that of the Northwest Territories, we're in a different situation here in Alberta. We have to keep that in mind. Now, I don't know if you want to use "First Nations" or "aboriginal" organization, but the First Nations in the Northwest Territories deal directly with the territory, without a province in between. In Alberta we have of course the federal government and also the province and then the First Nations. Now, I don't know why we'd keep it the same or similar to the Northwest Territories, because we're in a bit of a different situation here. We have the province to deal with.

MS SALONEN: This was an example. This is the only other one that has that kind of phrase, so we just picked up the intent. Certainly the legal drafters would make it work.

THE CHAIRMAN: Do you have a problem with the recommendation, Mike?

MR. CARDINAL: Not generally, no. Generally, First Nations want to deal government to government.

MR. DICKSON: I was just going to offer the observation, Mr. Chairman, that I appreciate the suggestion to make it clearer, but consistent with your admonition in the past, we're not writing

legislation here. To me, the thrust of this is pretty simple: you know, what's official, what isn't. It seems to me that we can leave that to the capable people, the parliamentary draftspeople, and they'll come up with something. We'll have a chance in the House or outside to tell them whether they've remained true to what we understood.

THE CHAIRMAN: With the wording of the second line, something similar, I don't think we're suggesting that the act would include these precise words, but I would like to make it clear that this isn't suggesting we open the door so that any couple of individuals who want to get instant recognition could use this kind of wording to get around any other intent.

MR. CARDINAL: Okay.

THE CHAIRMAN: So everybody is concurring?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Agreed. Okay.

MR. DICKSON: It doesn't carry over to the next one though, Mr. Chairman.

THE CHAIRMAN: It doesn't? You've given me some warning of something, I presume.

> Recommendation 10, cross-referenced to question 45:
>
> that section 23 be amended to include a provision for protecting incomplete research, audit and similar reports and to ensure that once the report is completed [or five years after] no work or progress has been made on the report . . . that this provision would cease to apply to it and any of its draft versions.

I'm going to do the same thing as I did before to maybe head off a little bit of unnecessary debate. Between the words "incomplete research" on the second line I'm going to suggest that we insert the word "formal" so that there can't be any misinterpretation that anybody that's just doing a little study gets some protection. I'd like to suggest that we eliminate the words "and similar reports." That goes back to my comments about discretionary benefits. It's pretty wide open. I'm also going to suggest that five years be reduced to three.

With that little bit of clarification I'll open it to debate on any version, whether you like mine or not.

MR. DICKSON: Mr. Chairman, you're just trying to keep us off balance by throwing these new wrinkles at us.

My observation with this is that I think back to last year -- I guess it was earlier in 1998. There was a report done on VLTs and the impact of VLTs. I remember that being done in the spring, and I remember the author of that report saying that he had finished the report, but I remember the public body taking the position: oh, this was an incomplete bit of research. The result was a delay in the release of a report that would have been hugely helpful in terms of informing a provincewide debate around VLTs, and I just use that as an example. My concern with this is that if you're going to allow public bodies to decide when a research report is complete -- and I don't mean to malign all public bodies and certainly not all FOIP co-ordinators -- it creates some real opportunities in the event that at some future time we should have a mean-spirited FOIP co-ordinator or a head of a public body who's less than forthcoming for abuse in terms of somebody saying: oh, this report isn't finished yet; we're going to. And you keep on adding on and adding on and changing the terms of reference so the report is never finished.

Albertans are paying for this kind of stuff. They're entitled to see it. The public body has 30 days. They have lots of time to be able to publish a list of the shortcomings in a research report that they figure isn't complete. They're always entitled to say that this is a work in progress, that there are other consultations that are going to buttress or supplement it. But I think to get into this business of protecting incomplete research, audits, similar reports -- a report's a report. It speaks for itself. If people want to layer on other things, the public body can do that, but that shouldn't deny me or any other Albertan the opportunity to make a request for it subject to the other exceptions.

11:38

THE CHAIRMAN: That's almost precisely why I'm suggesting that the words "and similar reports" be removed, so we would be talking about formal research and audit, which I think everybody understands the meaning of. There would be some formality to this. I personally, unless there was some stronger definition of "similar reports," would be nervous about leaving this thing wide open. So research would be, say, a university professor -- and I realize we've covered that to some extent -- you know, that kind of research. I don't think it reflects the example that you used of the VLT report. If it was simply a report, if the report wasn't completely written, by the change this would be excluded. The research attached to the report one would expect to have been finalized, and the individual that was doing the work and the one that commissioned it sort of become an entity together. But once that's done, there wouldn't likely be reason to sit on it for three or five years or whatever simply as a protection from not wanting to disclose some information.

MR. STEVENS: I wouldn't mind if somebody would clarify what is meant by "draft research audit."

THE CHAIRMAN: It actually means research or audit.

MR. STEVENS: Okay. I'm just reading the paragraph that uses the words "draft research audit." Do you want to put "or" in between?

MS KESSLER: There should have been a comma there.

THE CHAIRMAN: There's a comma in between, and if we took the words "and similar reports," probably the word "or" would have to be inserted.

MR. STEVENS: Regardless, I still would appreciate an explanation as to the kind of thing that you're talking about.

MS KESSLER: Well, it can cover a variety of things. One of the examples that was used was the Department of Education, that conducts audits of school board practices on their request or through a complaint process, and the intention would be to keep the work protected until the work is complete. That's one example.

MR. STEVENS: Okay. That helps.

MR. CLARK: Not wanting to get involved in the VLT argument, but my office did go partway down the road on this whole research question. Some members may recall the research work that was done jointly by the Canadian Cattlemen's Association and the Vegreville research centre on the effect of the oil and gas industry on livestock in the province. At the end of the day I ordered that that be released, not for reasons of completeness but for reasons

that it wasn't research. It was really a compilation of work which had been done in other parts of the world, and I know there were people all over in the cattle industry and in the oil and gas industry who were sure the sun was not going to come up the next day. At the end of the day I think it's been a very worthwhile contribution to the whole debate that's going on now in the resource industry and in the agricultural community.

MR. STEVENS: I'd like to move that

> section 23 be amended as written but as clarified by the chair.

On this particular point, from my perspective, it's important that the wording be narrow rather than expansive so that there is clarity as to what is included.

THE CHAIRMAN: Are you including my suggestion to reduce the number of years to three?

MR. STEVENS: Absolutely. All very good recommendations, Mr. Chairman.

MR. CARDINAL: Question.

MR CHAIRMAN: Peter looks like he wants to comment.

MR. KRUSELNICKI: We don't have a problem with those clarifications proposed, Mr. Chairman.

THE CHAIRMAN: You were just getting yourself more comfortable.

MR. KRUSELNICKI: That's right.

MR. CLARK: Could I be so presumptuous as to ask that we have a chance to have a look at that? Could we have a look at it and have more input? We'd like to have a look at the definition that you're going to come up with. If that's being presumptuous, I'm sure the chair will tell me now or later.

THE CHAIRMAN: I'm not sure I follow your request, Bob. Are you suggesting before we vote on it?

MR. CLARK: No. The draft that comes back from my good friends in Labour, if that's possible. If it isn't, then . . .

THE CHAIRMAN: Oh, before it goes to the Legislature.

MR. CLARK: At a later time, I mean, we can discuss it.

THE CHAIRMAN: I'm going to make a comment that I might not be able to live up to or even to have the authority to say, but I'm hoping that some of these things that could be contentious are shared to the greatest degree possible with your office anyway. I remind everybody that the reason we're doing this is to take an act that has now been in effect for about three years and make it work the best possible way. Your administration of it should certainly be considered in making it work in the best possible way.

MR. KRUSELNICKI: If there's no concerns on your part, we'd be pleased to do that, Mr. Chairman.

MR. DICKSON: In fact, that's such a good suggestion, it may apply to the entire committee. It may be really useful to be able to share that information not just with Mr. Clark, who is, I think, an important person to screen and vet those things, but maybe with the full committee's input.

THE CHAIRMAN: I have no real problem with that, but I'm assuming that when this report is handed down to the Legislature in its final state, this committee ceases to exist. Maybe someone can correct me on that. You're a former Legislative Counsel, Frank. What would be your interpretation?

MR. WORK: I believe you're right, Mr. Chairman, unless your mandate under the act is something different. Normally when a committee reports to the Assembly, it does cease to exist, as you say.

THE CHAIRMAN: But, again, in the spirit of openness, to whatever legal capacity we would exist, I think the point would be taken.

MR. WORK: I would say the answer is yes. When you report, you will cease to exist.

THE CHAIRMAN: Does everybody understand the motion that Ron made with the amendments? All in favour? Opposed? The motion is carried.

A knocking on the door. Did that sound like our lunch had arrived?

MRS. SHUMYLA: Not yet.

THE CHAIRMAN: Not yet. Oh, that was something different. Okay.

Just to remind everybody, we're going to do the same thing. We'll adjourn for about 20 minutes for lunch. Eat as quickly as you can, and we'll keep right on working. Our day is a little abbreviated. We're used to working until 4 o'clock, and everybody so diligently wants to do that, but because of the time commitment for this room, we're adjourning today at 2 o'clock. We did, by the way, find out that the room is available longer, but everybody else has now made more commitments.

Okay. Having made that great speech, lunch has arrived.

11:48

MR. DICKSON: Let's just knock off recommendation 11. I don't know if anybody would disagree with that; it's pretty reasonable.

THE CHAIRMAN: Number 11 is done already. We did that earlier.

There are several, actually a cluster of them, that come up that the committee has actually dealt with, and when we get to those, I'll remind you that they're just a repeat of something we've already dealt with.

With that, the lunch has arrived. We'll adjourn for approximately 20 minutes.

[The committee adjourned from 11:49 a.m. to 12:18 p.m.]

THE CHAIRMAN: Okay. We are on recommendation 12, a cross-reference to question 54 on page 6. The recommendation is that

> section 32 be clarified by substituting the phrase "by or under an Act" with "an enactment."

We've actually discussed this several times. It's been deferred, and then it comes up here. I think the wording in some cases has been a little different. The essence of the discussion has been that we never at any point felt comfortable with going into policies and such, that simply using the legislation or the act may not be

flexible enough, and that there were reasons why regulations might be necessary, even though there is potential for using them beyond what the original intent was, but that there really wasn't a good common middle ground that could deal with that.

With that, I'll just open the discussion.

MR. DICKSON: The commissioner's got a recommendation.

THE CHAIRMAN: I think the verbal comments on that were translated, and he didn't care for the change.

MR. CLARK: I think, put bluntly, this is not a clarification. This is a broadening of what the Legislature set out. I'm not suggesting that anybody at this time has any intention to use it, Mr. Chairman, for any reason other than the intent that you suggested, but I do recall -- correct me if I'm wrong, staff -- two or three years ago that using the regulations section, the government took out the tire recycling board without any consultation, took it out from under the act under a regulation section that's included in the act already. I just think that's inconsistent with what this is all about. I want to be perfectly candid with the committee that I will continue to be outspoken on this.

MS WILDE: I would just like to make a few comments. It is clear that section 32 of the act does need some clarification. Currently it states that a public body may collect personal information if "the collection of that information is expressly authorized by or under an Act of Alberta or Canada." Now, the commissioner's office has taken the position that this includes express authorization by an act but does not include express authorization by a regulation. What we would propose is that the act be clarified but that it be clarified such that a public body may only collect personal information if it is expressly authorized by an act, not by a regulation. The reason is that the collection of information by a public body is a very sensitive function. Once a public body has that information, then they have the opportunity to use or disclose it. The collection of the information is the first step that happens, and I believe that's one of the reasons why the act was originally structured as it is currently. It states "by or under an Act." It doesn't specifically state by an enactment or by or under an act or regulation. It states "by or under an Act."

MR. DICKSON: I'd be quite comfortable with the government proposal in recommendation 12 if we had a different way of dealing with regulations in Alberta, if in fact we had all-party involvement on the scrutiny of the regulations and the Standing Committee on Law and Regulations was charged with the responsibility and in fact met to review regulations. Absent that occurring, I think the commissioner makes a perfectly valid and important point. We don't want to see derogation behind closed doors of the broader kinds of rights that are set out in section 2 of the act.

MS MOLZAN: As the comments are made, just to reiterate the comments from our last meeting. Allowing it to say "enactment" would ensure that bylaws would be captured, as opposed to now where they would not be or potentially might not be, well, definitely will not be because it would have to be under the Interpretation Act. An "enactment" would include a regulation, and a regulation under the Interpretation Act includes a bylaw. So that would allow for the local public bodies to collect information under their bylaws or resolutions or legal instruments that they function under. So that's one issue.

Generally the position that we have taken in Justice is that "by or under an Act" was also intended to include regulations, perhaps not to go further than that, but if it is just under an act, it could avoid "or under" and say: authorized by an act. It seems like there are additional words. If we compare it to some of the other sections, such as 38(1)(d), which talks about an "agreement made under an enactment," talking about going under the enactment, there is further agreement. So it's not just talking about the enactment itself but something that's made under it or through it. I believe that really it is a clarification issue.

The policy issue. If there is some concern that this is extending it, then certainly that is something for this committee to decide, or perhaps in any event it should be something that this committee decides. The intention in the original drafting was for it to apply to enactments and not simply to acts. It may be simply a matter of again -- and we've gone through this and, you know, mea culpa certainly from Justice -- that when you're doing a large act, sometimes you don't find inconsistencies until after something is passed, or you don't realize that the wording in one area is not consistent in another area. We've noticed that in other places and attempted when possible to suggest amendments that would cure those kinds of ills. Certainly this is seen as one of those. The intention was always an enactment.

THE CHAIRMAN: When I first read it, it was my personal interpretation that "by or under an Act" would have meant including something like a regulation. I do have concerns, as well, that if there were some changes or some broadening, it shouldn't go to, say, a bylaw, because I don't think there is any understanding at this point that bylaws should allow this kind of collection of information. This may be something that we want to look at before we get too far down the path of dealing with this regulation.

MS MOLZAN: If I may, just one more comment, Mr. Chairman. I think part of the concern here might relate to the fact that when something is in a written form, whether it be a regulation or a bylaw or perhaps an act, again the transparency, there's an ability for someone to at least locate a document that would tell them or give them some warning as to how things are going to be done. If the alternative is to always rely on (c), then it may be that an operating program or activity may be more difficult to narrow actually, and there may not be that same level of transparency. Certainly I'd leave it to the representatives from Labour to comment further on that.

MS KESSLER: Clearly this recommendation was meant to be an administrative amendment, not a change in policy. Our policy manual clearly states that we follow the Justice interpretation and have always recognized this to include both, acts and regulations. In the examples that Peter used this morning, the student records regulation and the day care regulation, they are the authorities to collect personal information in those specific programs. If we were to narrow the interpretation, then those programs would no longer have their own authority, or as Donna indicated, we would then be forced to use 32(c), which we see as a default. We see that as being the least likely place where one should go for an authority to collect. So our preference is to have it in a formal form.

12:28

THE CHAIRMAN: Ron?

MR. STEVENS: My question was answered.

MR. WORK: Mr. Chairman, I'm going to take issue with a couple of things. First of all, with respect to drafting. With all due respect, it is not a legitimate means of interpretation of a statute to

say, "Oops; that was a mistake." This is what the Legislature has given the people of Alberta to apply and interpret, and if it says "act" in one place and "enactment" in another, the presumption has to be that different words are used because they mean different things. Period.

In terms of transparency, if you're going to collect people's information related directly to an operating program, if you run a school and you're going to collect personal information about Albertans, at least you have the operating program to compare the information to. "What gives you the right to this information?" "Well, I need it so that I can run the school." "Is this relevant to running a school?" "Yes." "Okay; you can have the information." The problem with 32(a), as we see it, is that if you give authority to collect Albertans' personal information under regulations, the way regulations are made and approved in this province is so untransparent that people won't have a chance -- unless they diligently read *The Gazette*, which is hard to even find now unless they happen to have a computer and are on-line with the Queen's Printer, they will have no idea that someone somewhere has just passed a regulation saying that all this other information about them can be collected. Mr. Chairman, to us that's just unfair.

Actually, something Mr. Dickson just said was kind of appealing to me personally. I haven't talked to the commissioner about it. Perhaps if the system of making regulations in Alberta was more apparent, that might help in terms of letting people know when and under what circumstances information about them will be collected. As it stands now, whether this was done intentionally or by accident -- maybe the gods were acting -- we don't think it's a bad thing that they have to go to the Legislature and get permission to collect people's personal information.

MR. ENNIS: Well, I guess the issue that I want to come back to a bit, which came up in our last meeting, is that from a practice point of view it's very helpful to have the authorities couched within an act rather than anything short of an act, because in an act we'll find statements of purpose. The fair information practices, which all of this is built around -- and you remember Peter Gillis's description of that -- require that you really address purpose all the way through. Where we have that is at the point of collection. We get a chance to think about what purposes were really intended by this legislation and how this collection of information fits into that. In a regulation we don't often get purpose. We usually get some kind of a method but not really a purpose for which that method is being involved. From a practice point of view there's some elegance to having it in an act.

MR. DUCHARME: Mr. Chairman, at this point I'd like to move that

> we recommend recommendation 12.

MS MOLZAN: Just as a point of clarification I wanted to mention that if an average individual is looking to look at legislation from Alberta, they would go to a library or law library or whatever. The statutes are published there as well as the regulations. It indicates which regulations are under which act, and they would be able to see the regulations that are published at the same time as they would look at the statute itself. So unless they were going to a department -- even with this act the regulations are actually attached to the act as an appendix to make it easier for people to find it all in one document.

MR. WORK: That's after they're made, Mr. Chairman, not before they're made when you can debate them, with all due respect.

MR. DICKSON: The discussion around what the Legislature intended in 1994 is interesting, but it seems to me what we're about is really a normative assessment of what ought to be. Why I think it's attractive to require a statute is that it signals to Albertans the kind of importance that as a province we attach to their privacy. It's a measure of reflecting the importance of their sense of being left alone, and as an elected person I can tell you that that's something that resonates with Albertans and something we've been told I don't know how many times. Mr. Lund, the current Minister of Environmental Protection, who chaired the all-party panel, kept on saying that what he was hearing all the time around this issue was that people wanted their privacy respected by their own government.

It seems to me that the problem with regulations, in addition to the fact that they're not made in a transparent way, is that frankly I don't think as much attention is paid by people in departments drafting regulations to privacy concerns, and there are lots of examples. Their focus is their program, and I understand that kind of institutional bias, but we don't have to be captive to that. I think we have a chance here to reassert what the Premier boasted in 1994, both in the House and then in the first training video produced for Public Works, Supply and Services, and that was that this was to usher in a whole new culture respecting privacy. For all those reasons I think we should clarify the provision but clarify it in the sense of making it clear that it's to be done by way of statute, with a message to Executive Council that should they choose to open up the regulatory lawmaking process, I for one would be quick to say: let's provide that kind of flexibility.

THE CHAIRMAN: I know there's a motion on the books, but I'm wondering. One of the arguments was made with some examples of regulations that were now in place that kind of proved it was necessary to use regulations as one of the vehicles. Would it be possible, say for the next meeting if we deferred this, to get us all the examples that you know of and the logic of why that should happen as opposed to the problems that might be encountered if we used only an act? I think we've heard sort of the philosophical argument on both sides, but I'm not sure that we're not missing a little bit of the reasons why it was necessary to use regulations now.

MR. KRUSELNICKI: Mr. Chairman, I think that's a good idea. We'll go through with some of our departmental colleagues to give you the examples that you requested.

THE CHAIRMAN: Because to me if I saw the example in front of me, I think it would give me a little better feeling of comfort as to: was this just an easy way out, or was it necessary that there had to be some flexibility and that anything else would have been a real problem? I think without that it's pretty hard to form an opinion that I felt was well considered.

MR. DICKSON: Just further to that, Peter might be able to share with members of the committee too, when he does that, some of the information on the paramountcy project, where there had been a plan to do by way of amendment to the legislation in that spring session what ended up being done by regulation. I think that's important in terms of demonstrating that there are often legislative answers.

I guess the other observation I'd make, Mr. Chairman, is that when we're in a province where the Legislature sits the shortest number of days of any Legislature in Canada, there's a bigger policy question, and I'm not sure that that underlies this issue you've asked Peter to do some further research on.

12:38

THE CHAIRMAN: Okay. Well, my request was fairly specific, because I think the other issue was already dealt with.

Frank, then Mike.

MR. WORK: Go ahead, Mike.

MR. CARDINAL: Yeah. Just a further clarification of what you requested. I'd be curious as to what other jurisdictions do. Do they legislate everything and no regulations? What about the feds? Can you get that information?

MR. WORK: We'll provide that information.

MR. CARDINAL: I'd be curious to know if all the feds' operations are done through legislation and no regulations.

MR. DICKSON: They publish the regulations.

MR. WORK: Mr. Chairman, just a request, and I'm sorry we didn't think of it to put in the commissioner's submission. If the committee is of a mind to accept the recommendation, I'm wondering if there might be some provision made for making those regulatory proposals known to the commissioner before they're made public. I don't know legally or procedurally how this could be done, but I know that under section 51 the commissioner can "inform the public about this Act," and the commissioner can, you know, comment on the implications and whatnot for the act. So I'm wondering, if the decision is made to allow information to be collected under the authority of a regulation, if consideration could be given to putting in the act that the commissioner -- not that he gets to approve the regulation, because that's a function purely of the Lieutenant Governor in Council, and that ought not to be taken away from him in parliamentary government. But before the regulation is made, if there were some way of letting the commissioner know what proposal is going to be made under regulation to collect people's information, at least there might be a chance for some comment or some feedback. So that's kind of a fallback position if the committee decides to go with the recommendation.

MR. CLARK: Mr. Chairman, I'm not quite sure how one does this, but I want to impress upon the committee how sincere and genuine my concern is about this adding regulation to what's presently in there. I may be wrong here, but I don't recall public bodies coming to us in the last three years where the sky was going to fall in because you had to have a regulation today and that something couldn't have been dealt with within six months of the next session.

THE CHAIRMAN: That was sort of the essence of my question. Let's look at the examples and see if they were of a nature where time was extremely important either in the enactment or making it work.

MR. CLARK: Because if there's forward planning at all, then six months . . . Sorry; I won't say anything more.

MR. STEVENS: Well, what I've heard here, first of all, is that Alberta Justice disagrees with you, Mr. Commissioner, on the interpretation. Alberta Justice since day one has said that the wording here includes enactment, and enactment would include regulation. So that's number one, but what I think I've also heard here is that there are regulations which allow for information to be collected by or for a public body and that but for that regulation there wouldn't be an ability to collect it. What I'm also hearing is that you have to, according to your interpretation, have the current wording read "regulation" in order to be able to collect the information. You wouldn't be able to bring it under one of the other provisions.

MR. CLARK: And how would the collection go on here?

MR. STEVENS: Well, that's the point. The point, the way I hear it, is that we are collecting information today under regulation, so the interpretation that is given to it is that "by or under an Act" includes a regulation. Now, I appreciate, Mr. Commissioner, that your interpretation is different, but from my point of view, as a member of this committee, what I want to understand is: do we have an example of collection of information solely on the basis of regulation and the interpretation that regulation is included under by or under the act? That's what I'd like to know as part of your review, because if we have regulations that are there but the information relates directly to or is necessary for an operating program or activity, for example, and if you bring it under that, then you don't need the regulation.

MR. KRUSELNICKI: Sue, do you want to comment on that?

MS KESSLER: Subsection (c) is broad. It does include operating programs, and I believe it was originally put into the act to serve as a bridging gap between operating programs that may not have any legislative authority whatsoever although they were part of a budgeted process and part of a business plan but not specifically outlined in legislation. So that was part of the rationale for putting in (c), because it is quite broad.

Our public bodies have told us that they would rather have express authority for collection, and they do have express authority for collection in things like regulation, such as the student record regulation. That's the authority to collect, which they would prefer to use as opposed to operating program.

THE CHAIRMAN: Playing the devil's advocate, (c) could also be the bridge if time was required before a piece of legislation was introduced.

I think we're starting to go around in circles here. Would you have any objection, Denis, if we deferred the action on this motion?

MR. DUCHARME: If it's the chair's wish.

THE CHAIRMAN: I'm not a dictator. I may just look like one.

I'm also going to ask, because this is kind of contentious, that hopefully the department officials and the commissioner's office will see fit to exchange their information so that when we come back next week . . .

MR. CLARK: Certainly, yes. We may have different views, but that doesn't . . .

THE CHAIRMAN: I'm assuming that has been going on pretty regularly from the way the feedback has come, but this is not a matter of who can sneak one in behind the other guy.

MR. WORK: We agree, Mr. Chairman. We agree with them whenever they're right.

THE CHAIRMAN: That's so generous of you.

MR. STEVENS: Just so you understand the point that I was making, it seems to me that this issue would have made it to the commissioner somewhere along the line if people were relying upon regulations to collect information and couldn't bring it under one of the other provisions. Some smart fellow would have figured that out, but it sounds to me like that hasn't occurred.

MR. ENNIS: There are several cases that have come to the commissioner but haven't gone to inquiry on that issue, specifically around the day care program, where authority is quite unclear on the part of the people who explain authority to the clients. That would be one example. There have been instances where people have come saying, "Under what authority was this information collected?" and learn that the authority was actually a regulation that was used for another program that was sort of similar and they imported the rules over.

There was a lot of questionable practice going on there in terms of the kind of information the public body was collecting, because it itself did not have a good line on what statutory authority it was working from, whether it was the Social Development Act, for example, or the Government Organization Act or the Criminal Code for welfare fraud. All of these things got rolled into it, and it was quite unclear -- the public body never did give us an answer in that case as to what authority they were collecting the information under. Their fraud investigators took a different view than their legal counsel on that issue.

That's just one example of how these problems do come to the commissioner. I can't recall if there's one that has gone to an order at this point.

MR. CLARK: If there has been, I'm somewhat embarrassed by what I've said.

MR. WORK: No, there hasn't been.

MS MOLZAN: If I might offer one quick comment on that. Part of the reason, perhaps, that the commission hasn't seen a lot of them is because I think Justice's opinion has generally been that it includes regulations, so entities have collected under the regulations and no one has complained about it yet. It could be why his office hasn't seen them, because that's sort of been the consistent position of Justice, that they allow for regulations.

MR. ENNIS: Donna, there will be many times when the Justice opinion is in fact true, because within the statute you can read the statute as giving the authority that is then articulated in the regulation. But I think the commissioner's interpretation of "under a statute" means under a coherent reading of the statute, not under a coherent reading of a regulation pursuant to a statute.

12:48

THE CHAIRMAN: Okay. We'll hear more about that next week then.

Recommendations 13 and 14 both have been dealt with, so we can move on to 15, which cross-references question 102. It reads:

> that section 34(b) be amended to permit the destruction of personal information before the passage of a year where the individual, the public body and the body that has authority to approve the Records Retention and Disposition Schedule agree in writing to destroying the information.

HON. MEMBERS: Agreed.

THE CHAIRMAN: That was way too easy.

Recommendation 16, relating to question 103:

> that provision be made in section 35 for the transfer of Requests for Correction of Personal Information to the . . . body that originally created the record or collected the information about the individual.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Two in a row. That's to be considered a roll.

Recommendation 17 and question 104:

> that section 38(1)(a) be amended to provide for the disclosure of personal information in accordance with section 16 even when a FOIP request has not been made.

MS WILDE: I would like to make a few comments regarding that recommendation. The recommendation basically suggests that section 38 be amended to permit the public bodies to routinely disclose personal information without a formal access request. Now, the submission states that one method to accomplish this goal is to amend section 38 to allow for the disclosure of personal information if the disclosure would not be an unreasonable invasion of personal privacy under section 16.

Now, the commissioner strongly disagrees with that recommendation. One of the purposes behind part 2 of the act is to protect the privacy of Albertans by limiting the public body's collection, use, and disclosure. After the FOIP Act came into force, public bodies could no longer routinely disclose information. It is thought that by including such an amendment as suggested by the government submission, it would once again allow the public bodies to routinely disclose this type of information. We do not feel that's the intent of part 2 of the act; therefore we strongly disagree with this proposed amendment.

THE CHAIRMAN: Is there anything in your letter, Bob, that deals with this?

MR. CLARK: Yes, there is. At the bottom of page 6, Mr. Chairman. I'm sorry; page 4.

MR. WORK: I should clarify. The commissioner has a double-spaced version of the letter. That's why the page numbers differ.

THE CHAIRMAN: This is what happens with age. I can say that because I'm there too. This is not a discrimination based on age.

MR. WORK: I guess, Mr. Commissioner, the other point is that I don't know if this will even help the public bodies very much. The submission is correct that to an increasing degree departments and ministries run joint programs, and in order to administer joint programs, they're often using the same information base. I suppose an example might be Family and Social Services and Health running a joint program where health care and aids to living or something are both involved. They would both be concerned about the eligibility of any given recipient, and to that end personal information about the recipient would be sought by both departments.

If the only way Family and Social Services can share that information with Health is if it passes, if it's not an unreasonable invasion of personal privacy, I'm just wondering if that might actually be more cumbersome for the public bodies. It might actually trip them up more than it helps them if they have to go through that section 16 analysis every time they want to move information back and forth. I'm therefore wondering if there might not be a better way of authorizing that sharing.

MS BARRETT: Well, I agree with the analysis of the

commissioner's office and would add only one thing, and that is that presumably government departments like to co-operate. Presumably they do keep at the top of their agenda the fact that they're in the public service, for the public good, and if that means you've got to make a FOIP request, chances are pretty good that the request would be upheld. An important thing here I think is the paper trail, and with FOIP requests you have a paper trail. Without a FOIP request you don't, and it's not that difficult. I can only assume that the commissioner's office could handle most of those kinds of requests quite handily.

MR. STEVENS: I'd appreciate it if somebody could take me through this. How does it work today, how will it work tomorrow if you get the recommendation, and is there really a difference?

MS SALONEN: The source of this particular provision was not the case that Frank was talking about, sharing between public bodies. That's a different one. This is one that is really dealing with a public applicant who comes along and asks for some information. They first of all don't submit a FOIP request. They just say: can I have this information? A public body looks through all the provisions of section 38 and says: "No. It's not there. It's not in 38. I can't give it to you." Then they would look into 16 and say: "Yeah, but if I did the test under 16, it's not an unreasonable invasion. So, Joe Q. Public, I can give it to you, but you've got to give me a FOIP request first." So the public applicant says: "What kind of . . . This is bureaucracy at its worst." That's the design behind this, to try and be more friendly to the public.

MR. STEVENS: Could you give me a specific kind of example?

MS SALONEN: Well, then we get into the discussion of 16. If I can recall -- and I can be corrected -- I don't think we talk about the age of the record in 38, for example. So in 16 we would say that if a record is older than 25 years, you can get it. In 38 we don't talk about that. So that's the example.

THE CHAIRMAN: Well, I'm wondering here. When I first read this, this is what I thought we were talking about: simply somebody coming in and some information that in better years gone by was fairly readily available. It still turns out to be, not in contravention of the act but simply for the sake of following this document, that they say: "Well, we can give it to you, but you've got to fill out the forms. Maybe you have to pay some money, but we would give it to you anyway." My feeling when we did the original review -- there was a sense that things were logical, should be done by any reasonable person, that we're not going to create a maze of bureaucracy that's going to hold this back. Now, when I first read it, I thought that's what this meant. I'm hearing in the discussion that there might be complications if in fact we try to be practical.

Now, Frank, I think you said -- or it might have been John; I'm not sure -- that there might be a better way of accomplishing this. Personally I would like to see this accomplished, but I wouldn't, you know, if there were going to be some negative connotations. It would be interesting to see, but to me this sounds like making it easy for someone to walk in and get some information that under any other circumstances would be available.

12:58

MR. WORK: It does, Mr. Chairman, so I'm a little puzzled. I may have missed the boat entirely, as Diana suggested, and it wouldn't be the first time.

My concern now, though, is that from what I'm hearing -- and I don't know if I have this right. I come to Family and Social Services and I ask for some information that was typically in the past maybe available about clients or cases or something. Do I understand correctly that the idea would now be for Family and Social Services to say: "Oh, well. Okay. Here; you can have it. I the Minister of Family and Social Services don't think this is an unreasonable invasion of anybody's privacy under section 16. Here; you can have it, and don't worry about a FOIP request." That's scary, because now the head of the public body is making this decision about someone's personal information, and the person whose information it is doesn't get notice of it, doesn't get to go to the commissioner and ask for a review and say: "Wait a minute. The minister is about to let my file out, and he's saying that it's not an unreasonable invasion, but I happen to think it is, and I want the commissioner to look at it." Do I understand that that process now goes by the wayside if this is done?

THE CHAIRMAN: Well, if you read it, it says, "In accordance with section 16." So in other words, it basically still has to meet all the tests of section 16. It's just that you don't have to do the paperwork.

MR. WORK: Except, if I understand correctly, they're going to let this out without a FOIP request even though you tell the head of the public body: follow section 16 when you do it. If it's going to be released outside of a FOIP request, how is the commissioner or the person that the information is about ever to know that it's being released? It seems to me that the decision is being left entirely up to the head of the public body now, and there's neither notice nor review of that decision because, again, it's being done outside of an access request. So no one will ever know.

THE CHAIRMAN: Does the commissioner get a copy of every FOIP request?

MR. WORK: No. Only if they're appealed.

THE CHAIRMAN: How would you otherwise know anyway? Let's say that the individual came in. You said: well, you've got to fill out this silly form, and we'll give it to you. So the guy stands there, fills out the form, and you give him the information. You still wouldn't know that the request has been made. To me this says that everybody is agreeing. I mean, we're not breaking any of the rules; we're just simplifying the request process.

MR. WORK: But what if they say don't bother? Your example, Mr. Chairman: the guy comes in and says, "I want this," and the head of the public body says: "It is personal information, but it's not going to do any harm. Don't bother filling out the form. Here; you can have it." Whoever knows that that happened? I mean, the person the information is about doesn't know. His information has just been slid across the counter without so much as a form being filled out. The commissioner doesn't know; no one knows.

THE CHAIRMAN: Nor would they otherwise.

MR. WORK: Yes, they would.

MS BARRETT: But if I find out that somebody has secured information about me -- and I find out just by accident -- I say: "Hey, just a minute. Somebody has a responsibility to contact me to see if I agree to that information being leaked." Chances are very slim that I'm going to find out, but that doesn't make the

process right. It makes the process wronger, in other words.

THE CHAIRMAN: We're assuming here that this information is about someone else.

MS BARRETT: But if there's a paper trail and I hear about it, then I can phone the minister's office and say: hey, I hear you've got a paper trail on me; just what information were you looking at handing out, or what information did you hand out? Then if I don't like what I hear, I can go to Bob Clark's office and say: that's a violation of the intention of the act, in my opinion. Right? Otherwise I have no recourse.

MR. CLARK: Mr. Chairman, I tend to oversimplify things perhaps, but it seems to me that if we're talking here about something that's nonpersonal information, then we should be encouraging active dissemination and getting all that information out without having to go through the whole FOIP process at all. I think we're all in favour of that. If it is personal information and let's say some official in the department does release it, which would be regrettable -- but if that did happen, then the only option open to that individual whom the information is about would be to ask for an inquiry or an investigation into the release of that personal information. It may be that we're talking here about nonpersonal information. That's the kind of thing that we should be actively saying to people, "Let's not go through the FOIP process," unless there are some other reasons, advice from officials and so on.

THE CHAIRMAN: That's what I was reading.

Ron, I'm sorry; I think you were on the list, and I bypassed you.

MR. STEVENS: That's all right. I still am.

MS BARRETT: I'm sorry too, because I jumped in as well.

MR. STEVENS: There have been a number of concerns expressed, and speaking for myself, it seems to me that it would be helpful if you could revisit this in light of the concerns that have been expressed. Quite frankly, if you could come up with a couple of examples of the kind of situation that departments currently find themselves faced with that this proposal is put forward to correct, then we would be able to measure what it is that you're trying to accomplish and whether or not we can do that and still meet the concerns that have been expressed regarding disclosure of privacy without notice being given to individuals that people are finding something out about. So is that possible?

MR. KRUSELNICKI: Yeah, we can do that, and we can also follow up this discussion with Frank Work and Lisa and the Information and Privacy Commissioner's office to get some clarification on that.

MR. STEVENS: I would suggest, then, that that be done and that we defer the matter.

MS BARRETT: Agreed.

THE CHAIRMAN: Okay. I'm already writing in the margins here.

MS BARRETT: We're likely to be meeting in the year 2000 at this rate.

THE CHAIRMAN: We're going to have a meeting where Gary isn't at, and then we'll get the rest of them finished.

MR. DICKSON: Mr. Chairman, that in fact is exactly what's going to happen.

MR. ENNIS: Mr. Chairman, just to return to something that happened in the last meeting when I think I left a couple of the members hanging on the issue of section 31 disclosures. Since we're talking about disclosures of personal information outside of an access request, there is of course section 31 that does that, and I brought a file in here last week to indicate the volume that we've had, but I didn't give any numbers. That was unfair to the members. There was curiosity from a couple of members of the committee on this, so I went back and checked. There have been 29 cases since the act came into place, 29 cases where law enforcement authorities have disclosed compilations of personal information either to parts of the public or to the entire public through the media. I had that question the other day: what was the volume? In about half of those cases the disclosure has been through the media to the full public, that way, usually including a photograph and some indication of where a person resides or where they're headed. In the other half of the cases it's been to victims and/or relatives, and sometimes relatives are victims. It's been to a much smaller, much more limited public. So that's just to close the book on that question that was raised the other day.

Thank you.

THE CHAIRMAN: Okay. We'll move on to recommendation 18, cross-referencing to question 65, which I'm trying to find -- oh, it's on page 6:

> that section 38(1)(g) be amended to change the term "the public body" to "a public body". The intent of the provision is not changed because any disclosure must derive from the need of a person to know the personal information in order to be able to perform his or her duties.

MR. DICKSON: I have a problem with recommendation 18. What it speaks to is that this information is owned by the government. If you take the perspective that the personal information is either owned by the individual whom it's about or that at least that person should have some control over the way that information is used, this goes way too far. If I give information to the department of advanced education because I'm trying to get a student loan or whatever, does it necessarily follow that I should feel comforted or comfortable that that information is shared with a totally unrelated department, who may be able to use that for some other wholly unrelated, statistics- gathering purpose? The provision in here, if you look at the recommendation, I think is way too broad. I understand the proposal. I see Sue is shaking her head vigorously.

1:08

MS KESSLER: That's not the intent.

MR. DICKSON: She's going to tell me I've missed the point yet again.

It seems to me that there are departments that are trying to run programs co-operatively, but there may be another way of addressing that without opening it up so that you can move it around among all 17 government departments. I just think that it's way too broad. The recommendation has no limits, that I think Albertans would want to see to protect their privacy.

THE CHAIRMAN: What concerns me, Gary, is what you said,

that this information would be passed back and forth between totally unrelated departments. That's not what I'm reading in either the preamble or the clarification built right into the recommendation, because the preamble talks about two or more public bodies that are involved in delivering services, joint delivery of services, and the recommendation itself makes the point that the disclosure "must derive from the need of a person to know the personal information in order to . . . perform his or her duties."

MR. DICKSON: Mr. Chairman, the changes to section 38(1)(g): I understand that that's the issue that they're trying to resolve. In fact, if you look at recommendation 18, the changes to 38(1)(g), there's nothing in there that limits it. I understand the example put forward, but I'm saying that the recommendation is far broader, that it isn't limited in the way that it's suggested.

MS KESSLER: The limitation is the end phrase of (g), which says: "if the information is necessary for the performance of the duties of the officer, employee or member." So there's a necessary test in there, and necessary would mean for servicing that client or for the delivery of that program. Certainly, if Frank and I are dealing with issues and we have no program in common, then we wouldn't be sharing information.

MR. WORK: Mr. Chairman, I agree with what Ms Kessler just said, although I understand Mr. Dickson's concern. The reason that the commissioner's office didn't speak on this issue is that we felt that the commissioner had some power over them by exactly what Sue just said. If the allegation was made that they're, you know, flinging people's personal information all over the place, the commissioner can say: "Well, hold on. Satisfy me that this disclosure is necessary for the performance of your duties. If you can't satisfy me of that, then you're going to be in breach of the act, and I can order you to stop." So the concern that Gary raises is clearly there, but we thought the commissioner would have a handle on that, because as Sue said, you can always look for the necessity. "Why did you give this out?" "Well, because it's necessary for what we do."

MR. DICKSON: But the purposes can be totally different. Department A can decide, "I want this information about Gary Dickson for such and such a reason," and department B can say, "Oh, we need that information for . . ." and it may be wholly unrelated to the means it was gathered for. So if I give information to department A for a purpose and I understand what they're about and what their mandate is, that's entirely different than finding my information has been moved across government to another department because they've decided that they want a database of 50-year-old males in downtown Calgary or whatever. In each department they can say what's necessary: we need this information for our programs. But it offends fair information practices. They can be totally inconsistent purposes and totally unrelated. There's no connection, is what I'm saying, in section 38(1)(g) with the two purposes. They don't have to be related at all.

MR. CLARK: I recall a situation we were involved in, and if my memory is correct -- and Sue and Peter and staff, correct me -- they had the Department of Education, Advanced Education, and federal Manpower wanting to do a joint agreement, and it's now operating, one of the few places in Canada, on the south side of the city of Edmonton here. As I recall that occasion, Gary, two departments had to get permission from the commissioner to enter into the sharing of information between the two departments if the use of the information was for a purpose that wasn't consistent with the purpose for which it was gathered.

Now, I'll get my staff to follow up on that. That might speak to your point. I know it's a situation that we've had at least on one occasion, maybe more than once. John, you may recall the details.

MR. ENNIS: Yeah. Just to clarify, that was Advanced Education and Family and Social Services and Human Resources Canada. What was required there was that an information-sharing agreement be entered into with the federal government, but before that the two provincial departments had to knock out an agreement that talked about the joint purpose that they had. This allowed the departments to work together in these Canada/Alberta service centres and deliver services to clients on basically a one-stop basis as clients come in. They might end up talking to a Social Services employee for an Advanced Education program. So that was done by formal agreement and then formal agreement again with the federal government on what information would be exchanged.

MR. DICKSON: Well, Mr. Chairman, isn't that the model that could be followed to resolve this? I mean, that allows for a vetting. It allows some independent oversight to ensure that the purposes are legitimate, that they're compatible. I'm happy. If that was the model that was being followed, then I'd have no objection. My concern is that if we were to make this amendment, then what's the requirement to vet it with the commissioner? You'd move that information around and both departments are going down their separate route. If it were possible to have that sort of a vetting, then that's the end of my objections.

THE CHAIRMAN: Well, it strikes me, though, that we could be looking at a fairly clumsy way of getting government departments to co-operate on projects if you have to get approval to be able to do that. I think the way most of this act works is that there is permission in the act given to do certain things or a direct prohibition from doing that. I think we should keep along that line of thinking. If this is something that government or public bodies should be doing, working in partnership perhaps on certain things, there should be specific approval. You might want to put some fences around it. You may even say in the approval of something like this that it must be used for related purposes or whatever rather than the example that simply because it exists in another department, you can have it for a totally unrelated purpose.

Sometimes information may be forthcoming for a certain purpose, but the individual might be a little bit nervous about it being used for something else. I can see that kind of a concern being dealt with. But it could possibly be clarified even in -- I forget which subsection it was; I won't waste time looking for it. There is a subsection in there that indicates you have to have the need to use it. That may even be clarified to talk about a related purpose. I'm not sure if that would go outside the intent of this recommendation, but it may satisfy some concerns.

MS KESSLER: I believe we may be able to look at drafting this section to narrow it more than it currently is. By just changing "the" to "a," we may be able to add a clause at the end of it to make it more specific that it's a purpose consistent with the original intent.

THE CHAIRMAN: I apologize to Denis. He was way up in the line of this discussion, and he and Ron are going to go out and beat me up after this meeting because I've ignored them a couple of times. Go ahead, Denis.

MR. DUCHARME: Well, the point that I want to bring up is that I went over issue 65, and it basically says:

> "the public body" to "a public body" in order to disclose personal information between public bodies if it is necessary to deliver the same program the individual consented to.

If I look at the issue, I guess my answer is yes to that. I think it answers the concerns that have been brought up around the table.

THE CHAIRMAN: You were way ahead of my clarification. If I'd let you talk sooner, we'd have cleared this up.

1:18

MR. DUCHARME: At this time I would like to make a motion that

> we do approve recommendation 18.

MR. DICKSON: Well, I was much happier with Sue Kessler's I thought very constructive suggestion to address the privacy concern being expressed, and I think that, frankly, suggests a far better compromise.

Denis, these things say two very different things. Recommendation 18 is far more general than the specific one you've referred to on page 6. So as long as we're dealing with page 12, I'd vote against the motion simply because I think Sue Kessler has given us a far more satisfactory way to resolve this.

MR. KRUSELNICKI: Mr. Chairman, we can work on the wording, as Sue suggested, if that would alleviate any concerns amongst the parties and can try to come up with a recommendation that would resolve any of the concerns expressed here.

I just want to make one comment about the administrative agreements. Keep in mind that whenever you enter into a lot of administrative agreements, they are complex. I haven't read the ones that have been talked about here. They do cost money; they're time consuming. I think in the programs that are of the nature that were discussed, those are probably a very legitimate way of doing business, but I don't think we're trying to get into the complex arrangements that we're talking about here. If it will address the concerns that have been discussed, we'd be happy to work with that recommendation and try to modify the wording so it addresses those concerns.

MR. WORK: Mr. Chairman, what Mr. Ducharme just proposed is really good. The wording of question 65 as it is in the two- or three-column document to me is much narrower and much more palatable than the way recommendation 18 has been worded. So if, as Ms Kessler and Mr. Kruselnicki have suggested, a way can be found to capture what Denis pointed out in 65, that would be really good.

THE CHAIRMAN: Does that suit the recommendation, Peter or Sue?

MR. KRUSELNICKI: We can work on that, as Mr. Ducharme suggested.

THE CHAIRMAN: I think it captures the essence of the discussion for sure. So if we'd listened to Denis earlier, we would have saved a lot of discussion.

The motion is based on question 65, not the wording of recommendation 18. All in favour? Opposed? It's carried.

Recommendation 19. Oh, it's actually done.

Recommendation 20, cross-referencing to question 105. Is everybody agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. It's agreed. We keep on getting on these rolls, and then for some reason or other we sidetrack.

Number 24 is done.

MR. DICKSON: We're not dealing with 21, Mr. Chairman?

THE CHAIRMAN: Oh, this one? I'm sorry.

MR. DICKSON: We left off at 20. That had been agreed.

THE CHAIRMAN: Recommendation 21 is done; that was the old question 68. We did 22 and 23 this morning; we actually deferred one of those. Number 24, which is the old question 76, is done. Numbers 25 and 26 are also done.

We're up to recommendation 27, which is question 79:

> that section 53 of the Act be amended to expand the criteria under which the Information and Privacy Commissioner may undertake consideration of whether a public body might disregard requests to include those that are frivolous or vexatious. The provision should apply to both access requests made under the Act and to requests for correction of personal information.

Discussion?

MR. DICKSON: We've talked about this before. I think it's too broad. With respect, I disagree with our commissioner, and I also disagree with what's happening in the neighbouring province to the west. These things should be driven by problems experienced and difficult experiences. If it's not a problem, I'm loath to see us move into an area where there's the potential for denying, frustrating, impeding access requests. If there was evidence that our FOIP regime was bogged down with a huge volume of requests that are generally regarded as frivolous and vexatious, that's one thing, but there's no evidence we've heard. I've been at every one of the meetings of this committee, and I don't recall any information about this kind of abuse of the process. I think, unless and until, let's not create more reasons to deny Albertans access to information they've already paid for.

THE CHAIRMAN: You may be a bit of an island on this one.

MR. CLARK: I'd just make two comments. We've had one request in Alberta specifically. That was from Alberta Justice, and I denied the request. I think it's worked out reasonably well since then. At least if that individual or that problem is still festering, my hearing has gone bad and I haven't heard of it. I know, according to the commissioners in British Columbia and Ontario, it has become a problem that takes up an awful lot of the time of the commissioner in British Columbia. Oddly enough -- and correct me if I'm wrong here -- there it's dealing with requests about traveling by the commissioner's own office and various people on the commissioner's staff and all that goes with that. They've been bogged down. In Ontario it's been bogged down with people who have been residents of the province at a facility comparable to Kingston, and the kinds of requests are: how many doughnuts are people getting? Where are they getting them from? What kind of tendering is being done on it? Ontario has moved to put "frivolous and vexatious" in their legislation now, I believe, or at least there's a move to.

That's been the experience from talking to the commissioners across the country, that is has been a problem and still is a problem in British Columbia today. They're trying to get their committee to try and deal with that particular problem, as I understand it.

MR. STEVENS: Well, hopefully it is a rare type of situation, but as a lawyer I do know that these words mean something in the context of the Rules of Court. It's in that context not often used, but certainly there are cases when it's necessary. What I hear you saying, Mr. Commissioner, is that other jurisdictions are starting to experience this kind of situation. I think it's appropriate to have that kind of release valve available. Hopefully it doesn't become an issue in Alberta, but to the extent it does, you'll have an opportunity to consider it in the context of those words if in fact we approve it and ultimately it's accepted.

THE CHAIRMAN: Further discussion? Since this is not likely going to be unanimous, maybe we should have a motion.

MR. STEVENS: I'll move that
recommendation 27 be accepted.

THE CHAIRMAN: All in favour? Opposed? It's carried.
Recommendation 28, as question 77, is already done.
Number 29, cross-referencing to question 53.

1:28

MR. DICKSON: Excuse me, Mr. Chairman. Just before we leave recommendation 28. Maybe it's just my faulty memory, but clearly we talked about giving the commissioner the power to refuse a review. In my recollection the case that we'd talked about was cases where the commissioner had already made a similar ruling. I didn't remember that we'd imported these other two bullets in there. If I'm wrong, please correct me. I think in fact we were unanimous that if the commissioner had already made a ruling, he shouldn't have to then go through the process of holding inquiries on the same or substantially the same issue. But what's been brought into here, I'm sure innocently, on page 17 are two new items, so I challenge somebody to tell me we've already covered that.

MS BARRETT: Well, we did just pass the one on "frivolous or vexatious," so it seems to me that's a logical extension. I recall us having a discussion about repetitious or systematic requests being an unreasonable interference, but I'm not sure that it was dealt with in any other context.

MR. DICKSON: Well, we're talking about two different things here. What we talked about before were applications, requests for information that were seen as frivolous or vexatious. Now what we're talking about is the escape valve or the appeal mechanism to the commissioner.

MS BARRETT: I know.

MR. DICKSON: We hadn't talked about it before in that context.

THE CHAIRMAN: I'm going to suggest, unless there are some problems with this ruling, that when we dealt with question 77, it would deal with the wording as it was in the document that was before us then.

MR. DICKSON: Which page is it?

THE CHAIRMAN: Unfortunately you don't have it unless you brought your old book with you, because as we dealt with these we removed them from the numbering. You're correct, Gary, that there's a little bit more information in here as bullets, so the wording that we approved would be the old question 77. I'm going to read it just to make sure there's no misunderstanding here.

> Should the Act be amended to permit the Information and Privacy Commissioner to refuse to hold a review in specific circumstances, such as when the identical issue has already been resolved in a previous order?

Now, it's a little fuzzy because it says, "such as," but also I'm thinking that the second and third bullets here deal with the issue we've just disposed of. Once removed, when we're talking about frivolous or vexatious, it's a separate recommendation.

Now I'm going to ask Peter as the presenter of this document: does that question 77, which we've already approved, cover the essence of the recommendation sufficiently so that we don't have to go back and revisit it?

MR. KRUSELNICKI: I wasn't party to the discussion that took place on 77, so maybe I'll just ask Sue or Diana to provide their thoughts on that.

MS KESSLER: I believe we only really talked to the first bullet, which was whether the issue had already been dealt with in previous orders of the commissioner. I don't believe we got more specific than that.

THE CHAIRMAN: Would that still cover the essence of the submission?

MS SALONEN: No. I think it's part of what is now in the issue 79(b). Isn't that it? Or is it the same one? I'm sorry; I'm wrong.

THE CHAIRMAN: Now, I may be wrong, but I thought we had some form of a discussion. I apologize, because occasionally I'll discuss this with one or more committee members. My understanding, if you look at 79(a) and (b), was that we were not going to give the head of the public body the option of deciding what was frivolous or vexatious but that we would give it to the commissioner.

MS MOLZAN: Mr. Chairman, that just applies, though, to disregarding requests. It doesn't apply to actually the ability not to hold an inquiry or conduct an investigation. I think that may be the difference between those questions.

MR. CLARK: Mr. Chairman, if I could speak to that. Seldom do I agree so enthusiastically with Justice. I can give you a practical case we had. We went through a very sizable and very difficult inquiry dealing with the Workers' Compensation Board. It dealt with a whole range of issues, the way they keep records -- we made a number of recommendations, and to be perfectly candid, WCB has really worked very vigorously to implement those recommendations. We're now caught with a situation where other individuals are coming back with virtually the same requests to go over the same territory that we've been in, that was covered in that order. My legal beagles, the legal department here, tell me that there's no way that as commissioner I can say that that's been dealt with, that it's been covered, that it would not be reasonable to look at that again.

Frank, is that a fair assessment?

MR. WORK: That's correct. That's exactly right.

MR. CLARK: But was it exactly right legally?

MR. WORK: Well, I want to do the frivolous, vexatious thing, which is different. [interjection] Yeah, leave well enough alone.

The last amendment that the committee dealt with, where the head of the public body can say: "No, applicant. Go away. This

is frivolous and vexatious," they have to ask the commissioner to do that. That's slightly different than the commissioner saying: I'm not going to hear this matter because I've already dealt with this matter. Okay? The second and third bullet are not as important as the first bullet; that's what I'm trying to say, if you go back to the recommendation.

MR. CLARK: You can understand my problem.

THE CHAIRMAN: Do we have a first here, though, where one lawyer has two differing opinions?

MR. WORK: That was the same opinion.

MR. STEVENS: Two clients.

THE CHAIRMAN: Sorry, Frank. That was nothing against you, just lawyers in general.

MR. DICKSON: Well, I was just going to say, so we're clear, that I think everybody agrees that for the scenario Bob Clark just put a moment ago we're agreed that he should have the power to deal with that.

Just to remind you, Mr. Chairman, there's no power of appeal from the commissioner. The buck stops here. That's the last. If I'm Joe Citizen and I make a request and I can't get anywhere with the department -- I filed a request -- it's my appeal, if you will, to the IPC, and I get a note back saying, "This is frivolous and vexatious. Go away; we're closing our file," I'm not sure it's good enough. There's nowhere I can go with that. In the absence of some evidence that there have been frivolous and vexatious requests for review -- and I haven't heard that; right? In this whole discussion I haven't heard anybody say: that's been a significant problem.

The commissioner doesn't have to have a three-day inquiry, doesn't have to do a public inquiry and take a whole lot of evidence. This commissioner -- and I'm quite genuine when I say this -- has shown lots of flexibility in terms of trying to develop an inquiry to correspond with the seriousness of the issue. I think already there's the power to do, if you will, a summary disposition of a request that's seen not to have a lot of merit. I think that's far better than putting in this provision that just says that you can be dismissed, because it leaves that citizen really feeling like they just have no further recourse. I think you have to be sensitive to that.

THE CHAIRMAN: I recall arguments that the commissioner's authority had to have teeth and that there weren't to be a lot of avenues to overrule those rulings. I'm wondering now: would that be consistent then?

MR. DICKSON: It's absolutely consistent. There's no contradiction between giving the commissioner the power to avoid a whole lot of court applications like the U.S. model. I don't think we want that. I'm just saying that there's another way of achieving this without talking about the commissioner being able to refuse any, just to deal with the request for a review.

MR. KRUSELNICKI: Mr. Chairman, I don't want to get into the debate about frivolous and vexatious, but if it'll help with the discussion on the recommendation, we can delete that last bullet: "the applicant has abused his or her rights under the Act," et cetera.

1:38

THE CHAIRMAN: I see a lot of nodding of heads. Okay. Removing the third bullet from the recommendation and tying it into the motion of the last meeting where we approved question 77: does that send a sufficient message of what we're intending here?

MR. STEVENS: From my own personal view, the fact that the commissioner has an opportunity to deal with frivolous or vexatious requests to a public body and can decline to hear a matter where previous orders deal with it pretty much covers the circumstances that have been identified. So I'm happy leaving it at bullet 1.

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. We'll move on then.

Recommendation 29, cross-referenced to question 53. The recommendation is

> that section 87(4) of the Act be amended to require that an applicant requesting a fee waiver first approach the public body with the request. If the applicant is dissatisfied with the public body's decision, the decision would be reviewable by the Information and Privacy Commissioner who would be required to take into consideration all the factors considered by the public body, including the effect of the waiver on the public body's time and resources.

Question 53 is worded somewhat differently, and it seems to me that in an earlier discussion there was certainly some question as to the conditions that were put on the commissioner's ability to review this. If the two were to be consistent, and I think to maybe capture the essence of our earlier discussion, if recommendation 29 had a dead stop period after the words "Privacy Commissioner," it would make it more consistent with question 53 and certainly consistent with our discussion. In other words, I don't think anybody wants to hinder the commissioner's office's ability to rule on it. We were simply saying that the applicant, doing as present practice now permits, must go to the head of the public body first. The commissioner has his usual authority in how and where and when he wants to deal with it.

MR. DICKSON: Mr. Chairman, the issue last time that we stumbled on was whether the hearing of an appeal, if you will, from a fee waiver request, would be a de novo hearing, whether the commissioner would be unfettered in looking at the circumstances and deciding whether to grant it or not. It seemed to me that there was general agreement -- well, I'll speak for myself. I thought there was some interest in sharing that the commissioner in doing that review would have virtually the same sort of original jurisdiction and wouldn't be restricted to simply reviewing whether the head of the public body had exercised their discretion properly. If we can agree on that, then fine. I mean, I think that resolves it. If in fact, though, the commissioner is going to have a narrower scope to make that decision, then I think there's a problem. I think that's sort of where we were stuck last time. I thought there was some undertaking to do some further research. Donna has probably got a 20-page brief.

THE CHAIRMAN: It seems to me that that's where we did stop, and that's why I'm suggesting that we take off those last two and a half lines after the word "commissioner." If we were to take that off the recommendation, then the remaining content of that recommendation and question 53 would be more consistent, and it wouldn't add any further restrictions.

Now, I apologize. About four hands have gone up, and I'm not sure in which order. I saw Peter's and Ron's and Mike's. Peter,

go ahead.

MR. KRUSELNICKI: I was just going to say, Mr. Chairman, that we don't have any concerns if you make those amendments to that recommendation.

MR. STEVENS: Let's vote.

THE CHAIRMAN: All in favour? Okay. That's agreed on.

MR. DICKSON: Mr. Chairman, are we going to have the benefit of Donna's research? Were we going to give her a chance to share with us those words?

MS MOLZAN: Mr. Dickson, with respect, it's not the first time that someone has ignored my legal advice, sir.

I must say that I did respond to question 53 in a handout. I think that it was basically consistent, and it's consistent with all the other legislation in Canada, to follow the agreed-upon solution.

MR. STEVENS: Donna, for what it's worth, I was voting in favour because of your advice rather than Gary's argument.

THE CHAIRMAN: Since I've made fun of one lawyer, now I can suggest that after the vote that would be frivolous legal advice.

MR. WORK: No such thing, Mr. Chairman.

THE CHAIRMAN: Recommendation 30 actually was done, except that we used the term "three years." Does that cause you any heartburn, Peter? It causes you more work, but in terms of the reason why we did it, it was more centred around the fact that the MASH sector was coming under the act and we were going afford them the same kind of review after about three years of experience that we gave ourselves in 1994. Also, tying into this nervousness about the federal act that is now under discussion dealing with the private sector, if it materializes as it's proposed, within three years provinces would have to have their own parallel legislation; otherwise, we might be coming under their act. So there was a double-barreled reason for suggesting three years.

MR. KRUSELNICKI: Well, we considered that, Mr. Chairman. We suggested five years, and we specifically said "within five years," giving ourselves the flexibility to initiate a review almost at any time. My understanding of the privacy legislation is that it's been delayed about a year. So it's going to be about a four-year window for the privacy in the private sector legislation. Our preference: we'd recommend it stay within that five-year window, but that's something we'll refer to your committee.

THE CHAIRMAN: We've already approved three. I'm hoping that common sense will prevail at the time, that if it turns out that there is so little need to open the act, the smart people who will be in control at that time will act appropriately. I think Bob also made the comment that this is the kind of act, at least for some years down the road as we learn to live with this kind of legislation, that we should be receptive to change if change is necessary.

MR. DICKSON: I'm curious. The commissioner made a recommendation about periodic review, and he touched on that in his presentation at the beginning. I'm wondering whether he had in mind that every second or third year he'd do an expanded annual report and highlight in more detail the problem areas, the deficiencies in this legislation, or what other alternative vehicle he had in mind when he'd talked about it. I mean, we have no ongoing committee. The options would be to have a standing legislative committee charged with that responsibility or the Committee on Leg. Offices and/or some kind of an expanded report. But I don't know what suggestions he had to accomplish what he talked about on page 6 of his written presentation.

1:48

MR. CLARK: Mr. Chairman, I'll make three comments. I think your suggestion about this goes contrary to my five-year suggestion. The idea of having a committee in place to deal with what's going to come down the road as a result of Bill C-54 -- is that right? -- or whatever happens there I think is very appropriate, because unless there's that kind of focus, I think there's a real danger of Alberta and other provinces really being caught in a gap there and not being on top of the issue. You'll recall that when I first met with you, I asked you to consider what was happening federally, and I'm really pleased to see that you're making provision for that. That isn't in my presentation today because quite frankly I hadn't thought of it in that term. So the three-year thing I can certainly live with.

The other point I'd make, Mr. Chairman, is that I think perhaps after three years, we'll have had the municipalities really in for about two years, so it would take another year to kind of get the nitty-gritty things into the commissioner's office and some decisions. We'll at least have one year to reflect at that particular time.

The other point I wanted to make is that I think it's really helpful every five years or some reasonable length of time to have what you people are doing here. I have the benefit of the reflections of my colleagues in other jurisdictions. In Ontario they did not have a systematic review of the legislation for years and years. What happened was that they came in with dual legislation, and the commissioner, his office, or the privacy and access committee weren't involved at all. There wasn't the kind of opportunity to participate like there's been here. All we've got to do is look at the federal legislation. The access side, anyway, hasn't been reviewed at least for 20 years, and I just wouldn't want our legislation, which in my biased point of view is the best in Canada -- I think it's important that we keep it there as opposed to what's happened in the federal area in information and privacy, where they've fallen way, way behind.

So please disregard a portion of my recommendation there, because the three-year thing does make some sense, Mr. Chairman, given the federal idea. I really would plead with you to have some mechanism for an ongoing review, be it five years or whatever.

Any commissioner, including this commissioner, has a responsibility as the office grows older and more experienced to include more of the problems, more of the challenges, more of the difficulties in the annual report. My second annual report, I guess, or third one, is going to be out, and it will be available to members when the House starts next week. You'll see that it's, if I can use the expression, beefed up in some of the areas where we've had some more experience. I can see doing more of that, although the challenge, quite frankly, is to make an annual report so that people read it, and that's a delicate balance.

THE CHAIRMAN: We discussed, Bob, the terms of reference under which the commissioner prepares a report, and in the discussion Gary actually had recommended some changes which would require certain inclusions. I'm assuming that you either read the *Hansard* or get good reports from your staff who sit with

the committee. Do you feel that the terms of reference, which are now very broad and I think apply to all the legislative officers in terms of preparing their reports, give you pretty much all the ammunition you need to prepare a report in any fashion that you see fit?

MR. CLARK: I see nothing in the legislation that deals with preparing an annual report that would tie the hands of the commissioner at all in reporting what he wants to report about.

MS BARRETT: Well, even though we don't have a recommendation in writing, I wonder if we could deal with part 2 of the commissioner's response under the review, and that was the Conflicts of Interest Act and the need to replace one word with another. Basically he's got a restriction with the use of the word "record" because a record doesn't exist at a certain point. You've got to get the information first. What he's recommending is that we endorse a change of words in section 4(1)(a) to replace the word "record" with the word "information." I've read this last part of the letter pretty thoroughly, and I can't see why we wouldn't want to do this. It's a minor clarification, but he's right, you know.

THE CHAIRMAN: Well, I think that because this was newly dropped on us this morning, we were going to bring it back at the next meeting.

MS BARRETT: Oh, okay. Sure.

THE CHAIRMAN: It wasn't being ignored.

MS BARRETT: Oh, okay. I didn't know. Remember, I attended a meeting I thought started at 10. My book says it goes till 3.

THE CHAIRMAN: Probably to everyone's surprise, we have managed to get through this document. We have a number of unfinished items in the Summary of Issues, but I think it's close enough to 2 o'clock that we probably don't want to start into that.

Peter, you have comments?

MR. KRUSELNICKI: I just wanted to formally thank Donna, Diana, and Sue for all their hard work in putting this together. I'd like to thank Bob Clark and his staff for their comments in our regard and obviously the committee members for offering this opportunity to us to discuss. I think it was a very fruitful discussion, with some very good points raised today. So thank you very much.

THE CHAIRMAN: I want to thank you, Peter and Bob, for coming here. I have said it at least once before, but I think we want to acknowledge in front of their bosses the hard work that we've put
your staff through. I think the pace has been a little bit brutal, but we did set a bit of a target. We seem to be getting awfully close to meeting that. We'd like to recognize in front of you that some of this work I think is maybe even above and beyond the call of duty. When Christmastime comes along, throw something in a little bonus bag or give a day off or whatever.

MR. CLARK: Mr. Chairman, can I simply say thanks for the opportunity. I know we meet once a year, the commissioners across Canada, and there would be a number of commissioners across the country who'd give their eyeteeth to have this kind of opportunity to be involved in the adjusting and the changing as far as the legislation is concerned. So we're very grateful for that.

To Peter and his people, we may argue on issues from time to time, but, once again, there'd be a lot of provinces in Canada who would like to have the kind of relationship that we have with the people who bring forward FOIP legislation, so thank you very much. And to my staff, get at it, gang.

Thank you very much.

THE CHAIRMAN: With that, the meeting is adjourned.

[The committee adjourned at 1:56 p.m.]