

9:06 a.m.

Tuesday, November 17, 1998

[Mr. Friedel in the chair]

THE CHAIRMAN: We'll call the meeting to order. Before we get into the agenda, I see a number of faces that weren't here before. I know some of you, but the rest of the committee doesn't, so maybe we'll go around the table and have everyone introduce themselves. We'll start with Gary Dickson; then we'll go around and come back to the empty seats here, those that are filling their coffee up.

MR. DICKSON: Good morning. Gary Dickson, MLA for Calgary-Buffalo.

MS HERON: Morning. Tracy Heron, PricewaterhouseCoopers.

MS MATTHEW: Good morning. I'm Jill Matthew, and I'm with PricewaterhouseCoopers.

MS BROOKS: Good morning. Barb Brooks from Municipal Affairs, Alberta Registries.

MS GENEUREUX: Good morning. Diane Genereux, Municipal Affairs, Alberta Registries.

MS WILDE: Good morning. Lisa Wilde, legal counsel, office of the Information and Privacy Commissioner.

MR. ENNIS: Good morning. I'm John Ennis, a portfolio officer with the office of the Information and Privacy Commissioner.

MR. GILLIS: Good morning. Peter Gillis, consultant with the Department of Labour.

MS KESSLER: Sue Kessler, director, information management and privacy, Alberta Labour.

MS SALONEN: Diana Salonen, information management and privacy, Alberta Labour.

MS MOLZAN: Donna Molzan, legal counsel with Alberta Justice.

MRS. TARCHUK: Good morning. I'm Janis Tarchuck, MLA for Banff-Cochrane.

MR. DUCHARME: Good morning. Denis Ducharme, MLA for Bonnyville-Cold Lake.

MR. STEVENS: Ron Stevens, MLA for Calgary-Glenmore.

MR. WORK: Frank Work, director of the Information and Privacy Commissioner's office.

THE CHAIRMAN: I'm Gary Friedel, MLA for Peace River.

MRS. SHUMYLA: Diane Shumyla, committee assistant.

MR. CARDINAL: Mike Cardinal, MLA for Athabasca-Wabasca.

MS PAUL: Pamela Paul, MLA for Edmonton-Castle Downs. Good morning.

THE CHAIRMAN: Okay. Now, there are a couple of you at the

far end of the table who don't have a mike in front of you. This is going to be a little bit of a problem, if you're doing any speaking, in being able to pick this up for *Hansard*, so either you'll have to move in when you're speaking or move a mike toward yourself. We do have, I'm sure, one extra spot here. Pam Barrett will be here shortly, but there's still one extra chair, so however we want to do this. Probably the simplest, because of the number of people here, is that if anyone is going to be doing some speaking, just grab a mike and pull it towards yourself.

First item on the agenda is the approval of the agenda itself.

MR. DICKSON: One item I wanted to add. We haven't spent very much time talking about the drafting of the final report, but as we start getting to the back end of the process, I wanted to see us spend a few minutes talking about who is going to do it, what our expectations are in terms of the format, and some of those kinds of things. So unless that's going to be tucked in with one or the other agenda items, Mr. Chairman, I'd like to see it added as part of item 6 perhaps.

THE CHAIRMAN: It's not tucked in under one of the items, but at an earlier meeting we'd suggested that the technical people, more likely the department staff, would be coming up with draft recommendations based on the answers to the questions that we've got, and then they would be brought here in the same way as we're dealing with the questions for editing and approval or modification or whatever the circumstances would be. As soon as we've gone through all the questions, the next part of the process would be looking at these recommendations and turning them into a package.

MR. DICKSON: Well, I didn't necessarily want to join the debate right now. I was just saying that I've got some thoughts around that, and I'm hopeful we'd be able to slot it into the agenda at some point.

THE CHAIRMAN: You mean today?

MR. DICKSON: Yes.

THE CHAIRMAN: We'll see how the time goes. We've got the presentation from Registries this morning, and we've only got two hours slotted. Maybe remind me as we get near the end, maybe the last 10 minutes if we can defer to that.

MR. DICKSON: Very well. I'd move the adoption of the agenda then.

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

The minutes of November 9 need to be approved. Could we have a mover?

MR. DUCHARME: I so move.

THE CHAIRMAN: Moved by Denis. Any errors or omissions for discussion? If not, all in favour? That's carried.

This morning we have two ladies from Alberta Registries, or the Department of Municipal Affairs I guess. I'm not sure that they're with Alberta Registries. They are going to bring us up to date along with the people from - what is it now? Coopers Lybrand?

MS HERON: PricewaterhouseCoopers.

THE CHAIRMAN: PricewaterhouseCoopers. I knew there was some connection there.

If you would maybe lead us through fairly quickly where this is at. We have discussed and there are a couple of questions relating to whether this committee should or will get involved in any recommendations to the minister. I realize that the report has not been presented yet, so the amount of information that you're able to give us will be fairly generic. We'll respect that if there's anything you feel is sensitive, in the fact that it hasn't been presented to the minister or dealt with in a formal process, we wouldn't expect you to talk about that.

We have a fairly limited time available, and if we could maybe do this in about 15 minutes, it would be great.

MS BROOKS: Mr. Chairman, committee members, as you're aware, we have representatives here from PricewaterhouseCoopers. They have about a 20-minute presentation, but if they speak fast, we can probably meet that objective. They're here today to talk about what we have found to date in our consultation process that we talked about with you on October 5. So I'll turn it over to them.

MS MATTHEW: Thank you. Tracy and I will be presenting to you the findings from the work that we've completed.

Alberta Registries engaged PricewaterhouseCoopers to undertake a consultation process with registry agents and with organizations that regularly access and use information from the motor vehicle registry. Our terms of reference were: to clearly understand the policies governing Alberta Registries and third-party service providers; to review relevant background, in particular the audit report prepared by the Privacy Commissioner and the Auditor General; to conduct a series of workshops with key stakeholders to assess the implications fully; to assess the financial impact associated with the implementation of the recommendations on the registry agents; to conduct focus group sessions to understand public concerns pertaining to the use and disclosure of motor vehicle information; and to develop recommendations pertaining to the use and disclosure of motor vehicle information.

Our scope for this assignment was limited to recommendations 1, 7, 8, and 9 for the public consultation process. Basically, our process was threefold. We had three key phases for our project. The first phase is what we refer to as the stakeholder consultations, and that's where we met with users of the motor vehicle registries. The second phase is what we refer to as the financial impact analysis, and the third phase is what we would call our public research work.

In the stakeholder consultation process the steps that we undertook were first of all to identify who the key stakeholders were. They included parking companies, university and hospital parking authorities, private investigators, lawyers, corporate security personnel, insurance companies and brokers, adoption search agencies, financial institutions, and the registry agents in the province.

Our main steps that we undertook for the stakeholder consultation process were to prepare a workbook and questionnaire, which were provided to the users in advance of the workshops. We then facilitated a series of workshops in the month of June with the users of the motor vehicle registries information. The purpose of the workshops was really to identify how information is used and how these users might be impacted. We also welcomed written submissions from the various users, which was part of the questionnaire that was provided in advance of the workshop.

The second set of work that we completed was what we refer to as the financial impact analysis. Once again we prepared a workbook and a questionnaire in advance for the registry agents. It was distributed to the registry agents in August. We received

completed questionnaires from 148 registry agents, and in total there are 228 registry agents, so we had a 65 percent response rate. The questions that were included in the financial impact assessment were along the lines of identifying what financial impact in terms of total revenue there might be and what additional costs may be incurred if the recommendations were fully adopted.

9:16

Then the third phase of work that we completed is what we refer to as public research. We conducted a series of focus sessions with the general public. They were randomly selected to participate in the focus sessions. Those workshops were conducted in the month of September, and then there was a telephone survey that was conducted in the month of October. Angus Reid was responsible for that work, and 800 Albertans were surveyed to identify where information is appropriate to be disclosed and when Albertans feel it's appropriate to use certain information.

That's an overview of the process that we undertook. Now I'm going to ask Tracy to go through some of the findings that came out of the work.

MS HERON: Thanks, Jill.

As Jill mentioned, when we had our user consultations in June, the objectives really were to identify concerns that the users had with the recommendations and to discuss the impact of the recommendations on their respective businesses. When we looked at the resulting input from the workshops, all of the user groups indicated that the public would be adversely affected if the recommendations were adopted. They gave reasons such as the increased time required to provide consumers with service, whether applying for insurance or increased processing time on loans. They told us that fewer services would be available to the public for a reasonable cost. An example there would be fewer privately owned parking lots and a subsequent increase in parking charges and, as well, an increased incidence of uncollectible debt. Stakeholders told us that it would be harder, if not impossible, to find debtors without being able to use the motor vehicle data base.

All of the user groups also indicated that they themselves would be adversely affected by the recommendations due to, first, the removal of the tools required to perform their services. For example, the private investigators use the data base in many of their cases to solve files with insurance fraud or to locate missing persons. They felt that there'd be increases in administrative processes which would result in additional operating costs, which again would be passed to the consumer, and overall a loss of customers and a decrease in revenues. All of the groups felt that they would suffer financially. One parking company indicated to us that they would suffer a \$2 million to \$3 million loss due to the recommendations.

Some of the users foresee that the recommendations discriminate against private business; for example, private parking lots as opposed to city owned parking lots.

Users commented that many police functions are actually provided by a variety of their organizations. For example, civil enforcement, private investigators, and corporate security are providing services once historically provided by the police. Some users also indicated that the justice system would be completely overloaded with requests for court orders to access the motor vehicle registry.

We then went on and spoke with the registry agents, as providers of this information to the users. Again, the objectives of these meetings were to discuss the implications of the recommendations on their business and to identify their issues and concerns with the recommendations. The registry agents indicated that the costs and

resources required to implement the recommendations would be prohibitive and would have a negative impact on their business. They talked to us about the resulting decrease in customer service, which would result from longer lines and wait times while clerks determined if certain searches could be done by the people requesting the searches, as well as an increase in training costs. They would have to train their clerks as to who has access to the information, who does not have access to the information.

As Jill mentioned, again a financial impact assessment was done with the registry agents with the objective to assess the financial impact associated with the implementation of the recommendations on the agents and, as well, to provide a forum for them to document their concerns. Overall, the results indicate that the majority of the registry agents will not be greatly impacted. However, a few will recognize a more significant impact on their business.

As for the last stream, the public consultation stream, the objectives really were to go out to the public and to identify situations where the public thought disclosure of personal information was acceptable and to identify situations where they felt disclosure was not acceptable. The majority of the focus group participants indicated that in some cases access to the information in motor vehicles registry is acceptable.

Disclosure of information in the motor vehicles database was stated to be more acceptable when a legal right has been violated; for example, if somebody has trespassed on somebody else's property, if you're looking for debt collection in terms of insurance fraud. Group participants felt that individuals should not have access to personal information on other individuals without just cause, so I can't just go and look in the database because I feel like finding out where somebody lives. Participants indicated that access to information is unacceptable when it has to do with financial or health information, but name and address information was not as sensitive to these participants.

In terms of the Angus Reid study, which did reach out to 800 Albertans, the survey was designed to explore the themes which emerged from the public focus groups. The focus groups were held in Red Deer, Calgary, Lethbridge, Grande Prairie, and Edmonton, and then again telephone calls went throughout the province, rural and urban areas. The results are still being examined, but in general the majority of telephone respondents, 72 percent, indicated that it is in the public interest to release personal information that can potentially stop fraud; for instance, insurance fraud or to find debtors. Responses from the telephone interviews generally support findings from our focus group sessions.

So in summary – I think I've tried to keep it to the time line – three themes really emerged from all these consultations when we looked at it at a high level. Balance: there needs to be a balance between protection of privacy and access to information in order to verify a legal right or when a legal right has been violated. Standards: the theme that clear and practical standards must be achieved in terms of the recommendations. Costs: it became apparent that costs would be incurred from the consumers, users of the motor vehicle database, Alberta registries, and registry agents.

THE CHAIRMAN: Thank you.

Barb or Di, do you want to add anything?

MS BROOKS: Well, we're just certainly open to questions or discussions. We're having the final report tabled with the department by the end of the month.

THE CHAIRMAN: Okay.

MR. DICKSON: When we had a presentation back on October 5

around this – and that was at the front end of this consultation process – you had talked about meeting the Consumers' Association of Canada and getting some feedback in terms of, I guess, process. Can you relate whether the Consumers' Association had other suggestions in terms of consultation other than things that you did undertake?

MS BROOKS: Certainly the three of us met with them, and at that time we laid out our process, who we had talked to, et cetera, and at that time I felt that Wendy Armstrong and the president were quite content with the way we were approaching the consultation and had no specific suggestions for us of what else we could do.

THE CHAIRMAN: Other questions?

I'm just wondering. In the presentation you mentioned considerations that were dealt with through the whole process. You didn't mention the fact that when registries as a function of government began, part of its purpose was to make information available to others for the protection of the greater interest, I guess. Was that a factor that was taken into consideration? Could you tell us how you dealt with that?

MS MATTHEW: We're aware that that is the role of the registry agents. In terms of the impact on our work, it was important for us to understand where the registry agents may be impacted in relation to the responsibilities they have been given as registry agents. So some of our background work was to understand what the agreements were that are currently in place with the registry agents and basically to make sure that we fully understood their business.

THE CHAIRMAN: Well, I wasn't thinking so much of registry agents but of the system of registries. The agents just do the administrative function of what this is all about. The example I used at earlier meetings here was land titles. One of the functions there is that if you acquire land, you have a sort of historical right to know who owns property around you, particularly in light of what might develop there. Probably a real good example – although it might not be terribly appropriate in cities – would be if there was an intensive agricultural operation like a feedlot going to be developed alongside a property you were just buying. This was definitely the intent of the registry structure when it was first begun, and now that we have legislation like Freedom of Information and Protection of Privacy, it has to be taken into consideration that there was a historical purpose, not just a convenience. I guess that was the point of my question. Were those historical purposes given a good footing in the weighing of the pros and cons?

9:26

MS BROOKS: I could respond to that by saying, yes, I believe we did take into account the needs and why certain information was set up and made available, but of course, what we were also doing was consulting on the recommendations that were given us in terms of putting up fences or tightening up the access to information. So I guess we started from what the recommended approach was and have tried to work our way through to say: what are the necessities for this information to be available? I think that's where we're coming from today talking about this potential balanced approach.

THE CHAIRMAN: And taking into consideration that those were necessary for those functions but making sure it doesn't go beyond that.

MS BROOKS: That's right.

MR. DICKSON: I'm curious about something you said. As I heard you, you indicated there's a difference in response in terms of whether it's a corporation or an individual trying to access the information – did I understand that correctly? – and that there was a higher tolerance for sharing of information if it was to a corporation as opposed to an individual applicant.

MS HERON: Yes. I think I can respond to that. The focus group participants we met with indicated that they felt a greater degree of comfort if there was a legitimate entity requesting the information and that legitimate entity could in some cases be, for example, a private investigator working for an insurance firm investigating insurance fraud because there's this legitimate factor to that request. Where people felt very uncomfortable, as I mentioned, was if I spoke with you on the phone and decided that you had an interesting voice and I wanted to find out where you lived. People felt very uncomfortable with that. So there had to be some legitimate reason for accessing this information.

MR. DICKSON: If I can just follow up. So it's not so much whether the person seeking the information is a corporation or an individual; it's the purpose?

MS HERON: That's correct.

MR. DICKSON: Okay. It strikes me that if I'm resentful that a parking company is accessing my information, you know, whether it's an individual asking for it or a corporation – because I may not agree with the purpose they're trying to access it for. Yeah. Okay.

The other question I had. There was an indication that access to motor vehicle registration information was in most cases acceptable. There was a concern about information in terms of health and finances of an individual. Are there some suggestions in terms of where that fence is drawn in terms of discriminating between those kinds of information and other kinds of personal information?

MS BROOKS: One of the comments I might make on that is that we attempted to be very clear in the focus groups and with the Angus Reid survey that we delineated what information we were speaking about, because there has been some confusion out there about the definition of personal information and what information registries has, et cetera. I guess, in answer to your question, we didn't get into a lot of detailed discussion about that. We focused on trying to clarify what information indeed we were talking about, but they basically fed us information about: well, that sounds okay; but boy, I sure don't want my medical information or my driver record information. Financial is another example that's given. So we just didn't pursue that line of discussion, because I guess it wasn't our issue. Our issue was: what are we going to do about standards for the release of motor vehicle information as defined under personal information that we hold?

THE CHAIRMAN: I think that also comes under some of the discussion we had earlier. The purpose of registries, as we just talked about, would be to get information that would be for law enforcement or quasi law enforcement. If someone who was 65 or 70 years old had to get a medical exam to get a drivers licence, that should not be the kind of information that would be given out. The fact that he or she was qualified to get a licence is all that was necessary. There needs to be fences put around that kind of information. I hear that as being the tone of that part of the review.

MS BROOKS: Yes. I would confirm that.

MR. DICKSON: Was there any resistance in the focus groups or

in the telephone survey that was undertaken to what we might call general identifying information such as name and address? I take it that you didn't discover significant reservation or opposition to that kind of disclosure.

MS HERON: No, there wasn't significant reservation. Again, people felt that in many instances names and addresses were in fact public information. A comment that we did hear is that if somebody wanted to find me, they would, and that it's only somebody that has something to hide who would be concerned about this. That was a theme that came out of our workshops.

MR. DICKSON: I don't know whether specific questions were put to them. I don't know exactly what questions were put in either the focus groups or in the telephone survey, but were questions asked to elicit whether there's support for current information-sharing practices through registry offices?

MS MATTHEW: To respond to your question, after we completed the workshops in June where we heard the users and some of their concerns in terms of how they would be impacted and their perception of whether the public would support the use and disclosure of information in certain situations, we took many of those scenarios and developed a range of scenarios which we mutually, exclusively discussed with each of the participants in the focus groups. So we walked through a set of scenarios where we were asking the folks that were attending the focus sessions, as well as in the telephone survey, whether in this situation they felt it was appropriate to disclose the information or not.

MR. DICKSON: How congruent were the public responses to the expectations from the stakeholders?

MS MATTHEW: In some situations the users of the motor vehicle registry information did have a good view of what the public would say. In other situations they didn't.

MR. DICKSON: Can you give me some examples where there was a deviance or a departure between what the stakeholders thought would be acceptable and what the general public told you they found acceptable?

MS MATTHEW: I think the best example was the insurance industry. What we heard from the stakeholders for the insurance group was that the public would not be comfortable with informed consent, which means having each individual sign to indicate that they're giving informed consent to have their driver abstract released. When we consulted the focus group participants, as well as in the telephone survey, the public was not as concerned about providing informed consent. That was one of the exceptions that was noted.

MR. DICKSON: Were there other exceptions that you could identify?

MS MATTHEW: No. On the whole there weren't a lot of exceptions, and I'm trying to think if there were any really big surprises. In many instances there actually was support for information according to what the users had identified in the workshops in June.

THE CHAIRMAN: I'm going to cut the discussion off here unless there's some more very general information required as to process. I think we're getting into stuff now, Gary, that once this report is

released there is going to be a specific discussion on. Also, we're getting kind of an advanced snapshot of what might be coming in the report, and I don't want to put these ladies in the position of finding themselves reporting to us before they report to the minister, who is the purchaser of the report. That's why I made the opening remarks about maybe respecting some of the sensitivities at this point. I can see where you're coming from in terms of where the views on it were, but that would be leading to the specific recommendation. I think we can see from the discussion that took place the tone of what was heard, and we can maybe read in between the lines some of this, but let's not get too specific.

9:36

MR. DICKSON: Mr. Chairman, with respect, you may be better at reading between the lines than I am. I still had a couple of questions to ask about the process, and if at any time the authors of the report feel that they're preempting their report, they're free to say that, but I'd like to pursue a couple of additional questions.

THE CHAIRMAN: Okay. If you could, but keep them a little more general, then, Gary, because, as I say, I don't want to put them in the spot of having to be chastised later on for giving information that shouldn't be out. I'm also a little concerned about our time. Go ahead though.

MR. DICKSON: Okay. As I understand it, there was a general level of acceptance or tolerance that personal information could be released if it had to deal with fraud. I should say that I'm talking in terms of the public input not the stakeholder input. So if it had to deal with fraud, if it had to deal with what we might call legal process, for legal reasons, there is acceptance around that, and if information tended to be sort of nonprejudicial, personal information: name, address, some basic identifying information. Would it be fair to say that those were sort of the major areas where there was public tolerance or comfort with information sharing?

MS BROOKS: I think it's fair to say that that's what we heard.

MR. DICKSON: And are there areas that I've left out where you found substantial tolerance for information sharing?

MS HERON: I think the key is if there's a legal right, and you mentioned with legal process. I think that was the overlying theme, if you wanted an umbrella theme.

MR. DICKSON: In terms of people having concerns about sharing financial information, it seems to me that most legal processes have to have a financial consequence, when a lawyer is trying to track somebody down to be able to serve them with a statement of claim or a private bailiff is trying to find out where somebody lives to access their assets. How broad did that concern on financial information go? I don't know whether I'm being clear. I'm assuming that most lawyers and bailiffs and investigators are often seeking personal information in a way that's going to be financially prejudicial to the person who's the subject.

MS HERON: I think I know where you're going with that. As Barb mentioned before, when participants indicated that they were leery of financial information being released, it seemed to be more in the context of: what am I taking home, my take-home pay, what are my total assets including all my bank accounts and whatnot? When it came again to talking about somebody owing a business, wanting to collect on a small debt, for example, which has to do with financial information, again I think there was more of a

tolerance there to allow information on the debtor for the small business to collect.

MS GENEUX: I'd like to add, too, that we don't have that kind of financial information in the motor vehicle registries, and that's something important, too, I think we have to look at. I mean, we have a name and address, which is what most of the stakeholders and public need to have, but that kind of financial information is not held in registries whether it's our three public or our two private registries.

MR. DICKSON: My last question, Mr. Chairman, was going to be: when do you expect your report's going to go to the Minister of Municipal Affairs?

THE CHAIRMAN: I think they mentioned at the beginning that the anticipated date was at the end of this month.

MR. DICKSON: Thank you.

THE CHAIRMAN: Okay. Any other questions?

We certainly appreciate that you came out. The committee's mandate wasn't to specifically deal with the issue of registries, but as in everything else, anything that's in the act kind of lent itself to some kind of question as to: should there be an involvement and should there be any recommendations? We did in the duration of our work so far come up with the question: should we be making a recommendation to the minister relative to registries?

There have been some opinions expressed. I think you got a little bit of the flavour for the earlier tone of the conversation. This will enable us sometime in the next short while, probably at or about the same time your report is presented, to determine if we're going to make any parallel comments, but it gives us certainly a good insight into what you've done so far, and I appreciate you taking the time and coming out here. You're welcome to stay. This is an open meeting.

MS BROOKS: Well, you need the mikes.

THE CHAIRMAN: There's something about these meetings that just doesn't attract audiences.

If you don't mind, we'll just continue with the meeting here, mainly because we've got a pretty abbreviated time schedule during session. If we can move right on to the Summary of Issues document that was updated and came out with your agenda, the first page has questions 6 and 7 on it. I believe they're related enough that they almost have to be dealt with together. I'll accept comments and debate on either one if you prefer. The question that's asked in 6: "Should the . . . criteria for the inclusion of . . . boards, commissions, etc. under the Act remain as it is?" Question 7 goes on to ask some specific questions, the answers to which could really have an impact on 6. The two bullets under 7:

- (a) Should the criteria be expanded to include either or both:
  - Where the Lieutenant Governor in Council or a Minister appoints any member,

which would be contrary to the existing position, where the government appoints a majority of the members of the governing body of the organization. Those two, in fact, would almost have to be answered together.

The second bullet under 7(a): whether it would be expanded to include "privatized organizations" would mean such as privatized liquor stores, which were previously a government function, private campground operations, perhaps, which are doing administrative services for certain functions that the government had done directly

in the past. That would be a second question.

Question 7(b), "Should the criteria be expanded to include bodies whose primary purpose is to perform statutory functions or functions under an enactment?" It uses the example of delegated administrative organizations. It is similar, but it has a different direction from the three bullets in 6.

Question 7(c) talks about "contracts that govern bodies that perform some statutory functions or functions under an enactment." We've discussed that a bit. There is a new paper attached dealing with 7(b) and (c).

With that, having sort of tied them together, I'll maybe open this for questions or debate. I'm going to suggest that we deal with 7 first because it would maybe be backing into (b). If there are some changes in 7, it would definitely effect 6.

9:46

MR. DICKSON: Well, Mr. Chairman, let me ask the question: if the cabinet or a minister appoints a member to a body, why wouldn't we expect that there would be a level of corresponding public accountability that goes with that? Presumably people would be appointed in cases where there's some compelling public interest, some reason for government to be involved in appointing someone in the first place. If that test has been met, then why wouldn't we just say that there are some corresponding kinds of duties and accountability that is part of the package? Why would we say that this is important enough for government to appoint somebody to head up or to chair or to be a government representative and not insist that the rest of the package be included?

THE CHAIRMAN: You're looking at me. I'm presuming you're me asking the question. My personal opinion on this - and I emphasize that this is personal. Simply appointing one member or even a couple or three members which would be in the minority, as long as they didn't control the public body, I don't think essentially would create that entity as a public body with all the requirements of FOIP. You could be a minor shareholder and protecting your interests that way. If you look at 7(c), it talks about "contracts that govern bodies that perform some statutory functions." I think that could be used if the government has an interest in the minority.

Perhaps there should be contracts that deal with those, but simply setting up an arrangement where government involvement would automatically open the entire organization to the requirements of the act I think is going to make it very difficult for government to attract partners to perform certain functions that perhaps government shouldn't be in directly in administering. I'm not talking about organizations that make regulations or, you know, do activities where the primary purpose, I guess, is to perform legislative functions but just to hive off maybe incidental functions to an organization.

I apologize for rambling on this. I had to sort of collect my thoughts. I disagree with you that simply appointing one or even anything in the minority of members would automatically constitute that requirement.

MR. DICKSON: Don't apologize for rambling. I do it all the time, as you've noticed.

It seems to me that there are only two reasons, though, for government to appoint somebody to a board or an agency. The one would be because public dollars are important. On that score to me whether it's a minority interest, a majority interest doesn't matter. If there are public dollars involved, the threshold should be higher. I'd like to discourage people from coming and looking for public dollars. So if there are public dollars involved, as I say, whether it's a minority position or majority position, they should be caught.

The second reason is because there's some public interest in the work of the agency. Otherwise why would we be appointing an MLA, for Pete's sake. I'm not sure that you can sort of fraction the public interest. If there's sufficient public interest to warrant installing a person on this thing, then it seems to me the obligation should go along.

It's true, I think, that the most obvious example is where there have been MLAs, but I can think of lots of other cases where by government using that appointment process, you wield huge power and influence over what that agency does.

Also, I'd just say that we've got to be mindful that the United Kingdom, in terms of looking at legislation in this area, has had the benefit of looking at everything as recent as Hong Kong and as old as our federal legislation. They've surveyed all of that. They've sent people out doing studies all over the world. They came up with a report, and what did the report say? It ought to include 7(a) in terms of the scope of their act. You know, one might say: what do we know that these people, Tony Blair and other thoughtful people, are missing? My friend from Calgary-Glenmore has got a ready response to that. But I'm impressed that that was the product of a very thorough review that was done in preparation for that submission in the United Kingdom.

THE CHAIRMAN: Since you're, first of all, I guess refuting a couple of the comments I made, I'm going to defend what I said. You were making the inference that appointing a member automatically assumed that there were government dollars involved. I don't think that is necessarily a fair assumption. Whether or not you wield enormous control, I think are the words you used, simply by putting in one member or even a couple of members, I think I would disagree with you.

The logic of what I'm suggesting, Gary, is that if I, say, as an individual - I'm just using an example - not me as an MLA but me as an individual, purchased shares in a company that was worth \$50 million and I happened to be fortunate enough maybe to have enough money to buy a significant share but not nearly enough to even come close to controlling it, I think in participating in that group, I would operate under the rules of that organization, which has the majority. That would be the terms under which I'm buying in. The fact that I would maybe sit as a shareholder or on the board of directors or something would give me some influence, but I wouldn't expect that company to change its rules to what my rules are simply because I own a small fraction of it. I don't think it should apply any differently in a government contract.

MR. STEVENS: Well, we started this debate a number of meetings ago. What I would like to do is make a motion, because I don't think anything new is being said. My point of view some time ago was that the three bullets that are under number 6 generally cover the situation, and certainly I don't support the idea of expanding it relative to those situations where the Lieutenant Governor in Council or a minister appoints any member. So what I would like to do is move that

the criteria not be expanded to include "Where the Lieutenant Governor in Council or a Minister appoints any member."

MS BARRETT: I have a question first, but I think I'm in general agreement with that, and I'm glad, Ron, that you didn't put the "privatized organizations" in your motion. I'm glad that we're dealing with these separately. However, I have a question about where an MLA is appointed to a board, committee, et cetera, et cetera. Does the rule then change in that that committee, board, commission, or whatever is then subject to FOIP?

THE CHAIRMAN: Not presently, unless the number of MLAs appointed made up the majority.

MS BARRETT: Generally speaking, I'm in favour of the motion in front of us, but I wonder if people would be open to including: where the Lieutenant Governor or minister appoints any MLA. I think the MLA issue does make it different. I think Gary Dickson is right about that. Even though we all assume that we're just, you know, 83 regular people, the fact of the matter is that a lot of people think we carry a lot of influence, disproportionate to – I don't know – our assumption about ourselves.

9:56

MR. DICKSON: I was in fact going to move an amendment to Ron's motion, and that would be to change the second bullet so it would read: where the body is wholly or partly financed through the general revenue fund.

Ron has moved the adoption of the three criteria there.

MS BARRETT: No. He has moved 7(a) taking out the first bullet.

THE CHAIRMAN: Ron moved 6, didn't he?

MR. STEVENS: No. All I dealt with was 7(a). I commented on 6, but the point is, I think we're going to go back to 6 after we've done 7.

MR. CARDINAL: The first bullet of 7(a) is all he moved.

MR. STEVENS: Right.

THE CHAIRMAN: Both bullets in 7(a)?

MR. STEVENS: One bullet. We were debating one point, so I made my motion specific.

THE CHAIRMAN: Okay. So your motion was on 7(a), the first bullet.

MR. STEVENS: Correct. And specifically I said that "the criteria not be expanded to include 'Where the Lieutenant Governor in Council or a Minister appoints any member'."

THE CHAIRMAN: Okay. I'm sorry. I had understood you were dealing with 6. Okay.

Does everybody understand what we're doing?

MR. DICKSON: Right. I do now.

THE CHAIRMAN: Pam's suggestion was that if even a single MLA was appointed, it should make a difference.

MR. DICKSON: I agree with that, Mr. Chairman.

THE CHAIRMAN: Okay. I'm going to disagree, in that it doesn't really change the majority even though there is some accuracy, I think, in the assumption that having an MLA maybe carries a different weighting. But unless there was something in the setup, whether it's the establishment legislation or whatever process was set up that gave that MLA a controlling vote or – what is the word? – the right to veto, you really don't have control. You're really getting into a fine line here.

AN HON. MEMBER: Yeah. We're really splitting hairs.

MS BARRETT: I'm ready to vote.

THE CHAIRMAN: Further discussion?

Okay. We're voting on 7(a). The question is: "Should the criteria be expanded to include either or both?" – I guess we won't worry about the "both" – "Where the Lieutenant Governor in Council or a Minister appoints any member?" The motion would be to reject that. All in favour?

MR. CARDINAL: Just a second. There are two amendments on the floor that we should defeat first.

MR. DICKSON: My amendment was out of order because I thought we were dealing with item 6.

MS BARRETT: Oh, careful. Defeat first?

MR. CARDINAL: Well, if we were going to move on this. I mean, you have to do that.

MS BARRETT: I didn't make an amendment.

THE CHAIRMAN: Well, Gary's amendment was on the same misunderstanding that I had, that we were dealing with a different item.

MR. DICKSON: But I appreciate Mike Cardinal's help in any event.

MRS. PAUL: Maybe the mover could clarify for us which . . .

MS BARRETT: No, we're fine.

MR. TARCHUK: I think he was pretty clear.

MR. STEVENS: But I want to make sure I'm going to vote right here. The way I worded the motion was that the criteria should not be expanded. I put a negative in my motion.

THE CHAIRMAN: Because you're answering the question. Everybody understands what we're doing? Approving this motion would mean no change. It would remain with the government appointing the majority of the members.

Okay. All in favour? Opposed? That motion is carried.

To deal with the rest of that question, then, the second bullet asks if the criteria should be expanded to include privatized organizations. We have to be careful here that we're not dealing with delegated administrative organizations. These are organizations that are privatized and where the government has no financial interest, no appointed board members, or anything of that nature. There may be some incidental connection which we would want to deal with under section 7(c). This deals strictly with organizations such as liquor stores, which have been sold outright. The property is gone. There's no connection to the inventory or anything. They work under government rules, as do maybe other private companies. The other example that I can think of would be a private park operator. They simply have a contract for administering what the government did. It doesn't make the rules; it doesn't have any options over and above that. We're talking totally privatized.

MR. DICKSON: Mr. Chairman, I'm going to suggest, respectfully, that we're looking through the wrong end of the telescope. Given what's happening with the EU privacy directive, what's happening with the federal legislation, I think the movement is to expand

protection into the commercial, for-profit sector. Never mind organizations delivering a service that used to be government, or public, and is now private. I think there is an international trend to expand coverage to the for-profit sector. For that reason I'd move that

the act ought to include privatized organizations.

MR. STEVENS: We aren't there yet, but there is a question along those lines further on in the material that we will have to deal with. I will be speaking in favour of not expanding this act to private matters when we get there. In this particular case I'd like to move that . . .

THE CHAIRMAN: There's a motion already.

MRS. TARCHUK: Gary just made a motion.

MR. STEVENS: Oh, all right. I missed that part.

THE CHAIRMAN: Gary moved that we would expand it to the privatized organizations sector.

Okay. On the motion as made, all in favour? Opposed? That motion is defeated.

MRS. TARCHUK: So does the opposite stand, then, or do we need another motion? If we do, I'll move that

the criteria not be expanded to include privatized organizations.

THE CHAIRMAN: We probably don't need a motion, but to make it clear: moved by Janis that we not expand in the direction of privatized organizations. Discussion? Question? All in favour? Opposed? The motion is carried.

MR. DICKSON: We're back to item 6 then, Mr. Chairman?

THE CHAIRMAN: Let's deal with the rest of item 7 and then move back to 6. Item 7(b): "Should the criteria be expanded to include bodies whose primary purpose is to perform statutory functions or functions under an enactment?"

MS BARRETT: Absolutely.

MR. DICKSON: I so move.

THE CHAIRMAN: Okay. There is a motion on the books. I'm going to accept that motion. Based on what I just read, the example of delegated administrative organizations could be a problem in the sense that most if not all of the existing DAOs now would fall into the category that they're created for the purpose of performing a statutory function. But there is a possibility, from some discussions I've had with people involved in regulatory reform, that a DAO could be created by contracting out a piece of work to an existing organization where this work may be a small part of that organization's function. In other words, it isn't created for this purpose. We would have to be careful that simply by inference, the fact that the words DAO were on here, that would not be the intent and that simply by contracting out a piece of work, that wouldn't automatically bring the entire organization's operation under the act. If what you would be intending by the first part and what I was reading up to the first bracket would then be covered under (c). Gary, I would support your motion. If you intended an expansion that would automatically include DAOs because it was written there, I would oppose it.

10:06

MR. DICKSON: Well, for clarification, the example was less important to me than the text that preceded the example. So my motion hopefully will be acceptable to you, because I'm dealing with:

Should the criteria be expanded to include bodies whose primary purpose is to perform statutory functions or functions under an enactment?

Full stop. That's my motion.

MS BARRETT: And the implication is quite clear. It's not something that's just incidental; I mean, it is a primary purpose. The current status, being that the head of the department that delegated that authority is accountable, I think is insufficient now.

THE CHAIRMAN: Again, pardon me for rambling into that DAO. I just wanted to make sure, because it was written there as an example presented by department staff, that it wouldn't be read into the motion. I think there needs to be the ability to contract out smaller jobs without tying the hands of the organization to the extent that they may not take on those kinds of contracts.

Any other discussion? Okay. The motion is dealing with 7(b) up to the word "enactment" but deleting any reference to DAOs. All in favour? The motion is carried.

Item (c):

Should contracts that govern bodies that perform some statutory functions or functions under an enactment include requirements related to the FOIP Act concerning the statutory functions performed?

This now deals with contracts and probably could be the specific that would be required to deal with incidental functions. In other words, a contract would require some reporting that would enable the statutory function to be reported. I'm going to suggest that between the words "include" and "requirements" on the third line we insert the words "reporting and privacy protection" to make it fairly clear.

MR. DICKSON: I'm really confused about this. Can somebody give me an example of somebody who would be caught by this who isn't already caught? I mean, if you're an agency working with the disabled and you have a contract with Family and Social Services, your whole operation isn't caught, but when you're discharging that contract, you have to comply, and there's a contractor's guide produced. I'm confused in terms of: what's not covered that this would capture? How could a body perform a statutory function without it having been delegated by one of the existing public bodies?

THE CHAIRMAN: Well, it could perform the function, but there may not be a requirement in the contract that reporting and privacy protection would be a function of that contract.

MR. DICKSON: Well, I guess it would only be if there were no records under the control of the public body.

THE CHAIRMAN: It would depend on what the reporting requirements are.

Frank, do you want to take a stab at that?

MR. WORK: Actually, I think Ms Salonen might have a better handle on that than I do.

MS SALONEN: Mr. Dickson is correct: they ought to be caught now. The way it's working, depending on the nature of the function they're doing, the head of the public body would be considered to be in control of the records. So this is just emphasize-



ing what we've produced in the contracting guide: yes, make sure your contracts are in place so that you can meet your obligations under FOIP.

MR. DICKSON: So it just reflects the status quo?

MS SALONEN: Yes.

THE CHAIRMAN: Did I see a hand on this side?

MS BARRETT: So moved, including your "reporting and privacy protection."

THE CHAIRMAN: Any further discussion? All in favour? That's carried.

Okay. That brings us back to question 6, and in essence what we have done with (b) and (c) does expand 6 anyway. Any observations or feelings about whether we need to expand it further?

MR. DICKSON: Number 6, the second bullet. Why would we say that something has to be completely financed through the general revenue fund? The Premier has always taught me there's only one taxpayer in the province, and similarly if there are some tax dollars that go into an enterprise, a body, then that means that there are public expectations and accountability that go with it. You know, I'd expect that every member in the Assembly would feel strongly if there are any tax dollars, whether it's a 10 percent interest or a hundred percent interest. That means there are some standards and obligations and expectations, and to any entrepreneur that's uncomfortable with that higher level of accountability, the short answer is: don't take the public dollars.

MR. STEVENS: My perspective on this particular one is that if it's wholly financed through the general revenue fund, then there should be full accountability. For something less than that, the standards and accountability in reporting can reflect the amount that is put in. We've had this discussion before, and quite frankly I agree with you that if money is put into some body, then we should have some reporting. But my perspective differs when it comes to the extent. Ministers can through a judgment process reflect what is necessary in the way of reporting regarding the amount of money, rather than simply bringing some body that receives some level of funding completely under the act, which in my perspective is not necessary.

MR. DICKSON: Well, Mr. Chairman, I'd suggest, then, in terms of what we agree on, what's in common, that I think we want to send a message that there should be a measure of accountability and transparency if you're taking public dollars. What Ron Stevens and I disagree on is the extent of that transparency or accountability, what that standard is. It seems to me we're not writing the statute; we're trying to send a message. That's really all our recommendations can do. It seems to me that if we make no change to number 6, that message that Ron says he supports may not necessarily get through. So my suggestion is we can say that consideration should be given to FOIP compliance if there is financing through the general revenue fund in whole or in part, and that allows people to look at finding some sliding scale, if you will, to correspond with the degree of contribution. But it gets us past saying: if you're not funded a hundred percent, nothing changes; you carry on just like a private organization.

MR. STEVENS: I'm very content with the way the bullet is currently worded. I think that 7(c), for example, would address

many of the kinds of situations that would involve some level of funding, if you will; in other words, a payment of public dollars for the performance of a statutory function. The contract would, if in fact we're talking about a contract situation, reflect the level of reporting commensurate with the level of funding.

So that particular point, which we have all voted on and have approved, in my view would address it. I don't think that anything more is necessary, other than a general comment that if public dollars are paid out, consideration should be given to having appropriate accountability, and that is different than having this legislation apply to the body that receives it.

10:16

MR. DICKSON: But, with respect, 7(c) isn't exhaustive. I mean, the general revenue fund dollars can go into an organization independent of a contract.

MR. STEVENS: That's correct.

MR. DICKSON: We can talk about grants; we can talk about other kinds of vehicles. So that's where we'd have to differ. Number 7(c) answers it in part but not fully.

MR. STEVENS: But the thing we've gone through before is the fact that examples that have been brought up include private schools. Private schools receive funding, but the Minister of Education has said that there is a list of things you have to do by way of reporting in order to qualify for this: you have to do a three-year plan; you have to have audited financial statements; you have to answer a list of questions relative to the operation of your school as it relates to safety and so on and so forth. Those kinds of matters are to my knowledge not necessarily a matter of contract but a matter of policy. It seems to me that that works well at this particular point in time and that we don't need a recommendation to deal with that particular matter. It's a recognition of the way things are. It's important that that be done, but it's not important that we make a recommendation change.

MR. DICKSON: Well, Mr. Chairman, if my friend from Calgary-Glenmore is concerned with consistency of the private-school thing, I'd be happy to say that we treat the private-school fund - we've dealt with that. That's a collateral issue, and we could deal with this independently of the private-school thing and just talk about the more general principle. I think that leaving this as it is, frankly, is unfair to the taxpayers of the province because there's no accountability. We've seen evidence of money going from the Treasury, from the general revenue fund in the past where there hasn't been adequate accountability, and there's no better way of ensuring accountability than being subject to FOIP.

THE CHAIRMAN: I think what you're suggesting, Gary, is that there needs to be a mechanism for accountability for funds that are received from the general revenue fund. The question here is: does the fact that they receive some funding, even if it is the majority of the funding but not necessarily the entire funding, make it a public body in the context of this question? Should there be accountability? I don't think anybody disagrees whatsoever. I think that's the point of question (c), and you're correct that it's not exhaustive.

I'm thinking of a community organization that receives money under CFEP. Often it's 50 percent, but because the organization can use its share to be donations and in kind, the majority of the money would be coming from the GRF, which in essence would make that community playground a public body. I don't think that's the intent of this, but we do have in the issuing of grants,

which CFEP is, a contractual requirement that they have to account for how the money was spent. It's a very detailed process, and I think that's the appropriate place. I would be quite nervous about how this is going to be interpreted. You would have a proliferation of public bodies that we couldn't imagine. I think anything less than the entire funding has to have the flexibility, at least, of being in a contract.

MR. DICKSON: Mr. Chairman, with respect, you make a good point in terms of CFEP. I'm not interested in making the Silver Springs Community Association subject to FOIP because they got some money for a new hockey rink, and that's a good point. What I am concerned about is that we could put \$2 billion into an oil sands project and still have a minority interest. That's my focus. Let me be clear. That's what I'm worried about. If that happens, it could be a 2 percent minority interest, but that's a couple of billion tax dollars that isn't being subject to FOIP. We're creative enough; we can build ways to ensure that the Silver Springs Community Association isn't going to be subject to FOIP. That's not the target here. That's not my concern. My concern is those resource projects where in the past this government has committed substantial dollars, always in a minority position but it still puts at risk Alberta taxpayers and Alberta tax dollars.

THE CHAIRMAN: I can appreciate your point, but I think the same argument applies, that if the government were about to put \$2 billion, heaven forbid, into Suncor, the wording of this would mean that Suncor would become a public body. I don't believe that's even the intent of what you're suggesting. I would, in view of a couple of concerns you raised, be willing to expand what we just did in 7(c) and suggest that that same contractual requirement would be in place if the government supplied the majority of the financing; in other words, ensure that there was a contract, that it wasn't done just by handing it out. That would, I think, expand 7(c) to include some of the things we've missed. But to automatically force it to become a public body I don't think would be either practical or maybe even possible. Does anybody maybe from Justice or Labour have any observations?

MS MOLZAN: The only comment I would make, Mr. Chairman, is just what you've already raised, which is the problem of the charities: you know, capturing a small group that decides that they're going to volunteer their time to get a hockey rink built in their community or something like that. That's where you get into some of the problems of the financing. Of course, as you've also pointed out, once someone's in, the whole thing applies to them, and I think that with a lot of these organizations there is not so much for the privacy side but for how they're going to train people and be able to provide access. I think that some of the issues that have been expressed in the past somewhat relate to these groups saying: "If we're going to be subject to that, then it may be such a burden that we just won't bother to volunteer our time and build a hockey rink. We just can't do it."

I think it's difficult, too, in this definition and in this act to somehow differentiate between the types of situations that Mr. Dickson is referring to just in this definition and all the charities and things which you don't want to capture. So it may not really, as you've already indicated, be the place to be trying to change it in this definition, that in fact it's something that needs to be addressed someplace else, not a matter of completely in or completely out.

THE CHAIRMAN: Have we beat this thing to death?

MS BARRETT: We'll, I'm not sure. Did we consider wholly financed or the majority financed?

THE CHAIRMAN: Well, I think that was Ron's point: where do you draw the line? The majority could be a simple majority. Donna confirmed what my suspicions were, that we're talking here of a definition of what would constitute making an organization a public body. Yes, there should be accountability. If there is any money, particularly significant money, then there should be a requirement to report to the extent that that financing plays a role in the operations of an organization, the fact that it came from the government.

MS BARRETT: Well, I'm very sympathetic on that. I mean, I just don't think that micromanagement is appropriate here. Maybe she's right; maybe there's another area they could look at.

THE CHAIRMAN: I think we should leave 6 alone but try and capture someplace else the message that if there are significant dollars going in, there must be accountability.

MS BARRETT: I'd be happy with that.

10:26

MR. WORK: Mr. Chairman, I've tried to stay out of it because it's kind of a policy question. I guess I should say that the reason the commissioner was silent on this - I think where the debate has been going seems to be towards financial accountability primarily, and the commissioner's belief is that the full responsibility for financial accountability in government doesn't lie in FOIP. There are other mechanisms to see to financial accountability. That's not to say that freedom of information doesn't have a role there, but in not coming out vociferously on this, we were cognizant of the role of the Auditor General and the role of public accounts and estimates and so on. I guess the question for the lawmakers is: to what degree do you want this additional measure of transparency and accountability? Again, the commissioner's position was that with things like community associations and those kinds of things, there are mechanisms to trace that money, to hold bodies accountable for that.

THE CHAIRMAN: I think you're right. We're probably getting off in the wrong direction here of accountability.

MR. WORK: I didn't mean to say that, sir, but if you want to go there.

THE CHAIRMAN: I think that part of it is a very astute observation in that we're dealing here with freedom of information, and the topic we were on was financial accountability more so than whether or not receiving some money from government automatically made you a public body for freedom of information purposes. I think that maybe that wasn't what you intended, and I suspect not, but it certainly triggered putting me on the right track. I think that emphasizes more maybe that having done what we did with 7(b) and (c), we can now leave 6 alone.

MR. DUCHARME: And I so move.

THE CHAIRMAN: Okay. Moved by Denis. All in favour? It's carried.

MR. DICKSON: I'm sorry, Mr. Chairman, I was voting against that. If I put my hand up too quickly, I didn't want to do that.

THE CHAIRMAN: Okay. We have half an hour left.

Number 14.

The definition of a "local government body" includes boards,

committees, commissions, panels, agencies or corporations created or owned by municipalities, housing management bodies etc. Should the definition of such boards, committees, commissions, etc. of local government bodies under the Act remain as is, or should it be clarified by referring to entities "formally created" rather than "created or owned", and deleting [the words] "under the authority of"?

Does everybody understand that? There is a paper that was supplied with the agenda. I'm not sure whether everybody got these early enough yesterday that you had a chance to read through them.

I'm reading that there is a bit of concern in terms of clarity. Am I correct, Sue?

MS KESSLER: That's correct. There is a clarity problem with the way the act is currently drafted.

THE CHAIRMAN: This doesn't change the intent of anything but clarifies what the present practice is. Does anybody have any objections to that?

MR. DICKSON: I'm wondering if there's some perspective from the IPC on the proposed change, number 14(a), on the paper.

MR. WORK: I'm not sure we have the paper.

MS KESSLER: It's in the back of the questions.

MR. WORK: Oh. Okay.

MS KESSLER: It's question 14(a). There's a background paper behind it.

MR. WORK: I don't have that in front of me.

Interesting. I went with the commissioner to the AUMA meetings in Calgary last week, and certainly anything that your committee can do to clarify for them the extent of their involvement I'm sure would be welcome by the urban municipalities. I guess we don't have much more to say other than any clarity you can bring to it would be welcome.

On the point of the expansion of it, I guess all the same arguments that you had amongst yourselves on the previous two issues about expanding FOIP with respect to bodies related to government probably pertained. I suppose the commissioner's main criteria in this is probably partly financial and partly if the public has to deal with a body in order to go about their daily life and in order to receive the services and do the things that they're entitled to in this society. I would think the commissioner's position would be that the commensurate degree of accountability and privacy protection should attach to that.

MR. DICKSON: I also attended the AUMA conference and saw some of the spirited feedback from municipal representatives around the province. I've just skimmed this thing now. There may be some really small boards and agencies which are of little consequence; there are others that spend significant amounts of municipal tax dollars. I'd like to sort of accommodate with a more specific definition, but I'm worried about leaving out – and I can't tell from this two-page thing – something that spends potentially millions or hundreds of thousands of local dollars. If that's the case, then I want to make darn sure that they're subject to the act.

As I go through it, for example, the Calgary Public Library is, I think, pretty substantial dollars. The Centre for Performing Arts, substantial dollars. Some of the other ones, disaster services committee, I don't know. I mean, I see the list here, but I'm

looking for some sort of order in it. If we were to go with the alternative narrower definition, do we leave out any significant local public boards that our constituents and taxpayers may want to be able to get information on under the act?

THE CHAIRMAN: I think we dealt with libraries, but as an example . . .

MR. DICKSON: I just use it as an example, Mr. Chairman, because it's a multi-million dollar operation.

THE CHAIRMAN: There is also one observation I had when I read the backgrounder on question 14. If you look near the bottom of the first page, it creates a multiple part test, and it has: where "the entity must be," and it has a list of things. Then it says: "AND"

- all the members or officers must be:
  - appointed
  - chosen by.

That seems to be different from what we had in the government definition, where the word "or" appears in there. The way it's written right now, it would be questionable. It could be an agency appointed or created by the municipality. But if all of the members were not appointed by the municipality, then that could exclude it. In other words, there is a loophole there, and I'm wondering: from the legal perspective should that word not be "or"? Because you capture the same theme as we did with the government public body, where any one of several conditions would capture the group under the act.

10:36

MS MOLZAN: Mr. Chairman, we've grappled with this definition a lot, for a long time. It's very difficult to create a definition that's broad enough to capture all the entities that are intended to be captured without closing the door to others. This definition basically is very similar but not identical to the British Columbia definition. It's not in the other provinces. It really is something that's in British Columbia. Ontario has a separate act that they apply to their local government bodies instead, and they've chosen to leave out certain entities like universities and so forth.

You are right. It does make it a little bit of a different test to include "and" rather than "or." It is a different situation from the government proper or the way that public bodies presently are dealt with under the act. Whether it should be an "or" or not, I guess it depends on exactly which bodies you're trying to capture, and I think that's the difficulty. With this definition it's easier to look at public bodies or government proper and identify all the entities and fit them into the test that was discussed under question 6. But with the local public bodies or local government bodies, you've got situations where some entities can be very, very different because of the types of functions. I mean, a taxi commission is very different from a zoo. They have very different functions. They receive different levels of funding and so forth. So that is why I think the test is different, in essence, from the public bodies'.

I guess I can't answer as to whether it should be an "and" or an "or." I can tell you that the way it reads now, there may be some entities that have one individual appointed by a municipality that would not be captured, like appointed to a board of, let's say, a charitable organization of some type. I'm not sure how all the museums and zoos and so forth are set up. If they have only one person appointed, they may not be captured under this. However, there are other entities, one I know of, that include a number of members, and they're each appointed by a different municipality. All the members are appointed by a municipality. It's just they're all appointed by different ones. So that one, you know, is captured right now.

I guess the difficulty is you have such diverse organizations that if you make the definition too specific, looking at the suggestion of just entities that are formally created, if you were to adopt wording like "by bylaw or other legal instrument," that is similar to section 89, that type of wording, you may then leave out entities. I'm not sure if the one I described, where all the municipalities each appoint one person and they each fund that proportion, however many municipalities there are, and they each receive funding directly from their own municipality, whether that entity would be captured – I'm not sure if that's created by the bylaw.

It isn't something that is, I guess, very easy to clarify because of the divergence in the entities. One of the options that may be considered is actually just naming bodies. Then you have the problem of what happens when they cease to exist, and you have a list that no longer applies. As we know, things can change very quickly in government and I'm sure with municipalities. As funding comes and goes, entities can be created or dropped, you know, overnight. So, again, that doesn't maybe solve it. It may be a matter of simply helping in trying to guide these local governments through applying this to their different bodies.

I can say that when the act was brought in for government proper, even at that point, the process was years to go through all the entities in government proper and determine if they should fit in. It isn't a simple process, because as I said, if the definition is too specific, you miss a whole bunch. If it's too general, maybe you capture some you don't intend to. But I think that some of the underlying principles about funding, though they're not in the definition, are also considered in trying to apply where you see dollars directly going in. Again, there should be some accountability for that, especially when an entity is wholly funded. So even though that's not included, it's referred to on the second page. The criteria is something, in terms of funding and so forth, that also is considered.

THE CHAIRMAN: Okay. Well, that can be captured there, but I think the first part of what you were saying really gave the ammunition to my argument that the wording here is too tight. Let's say that the regional ambulance authority had one or two members from every one of, say, six municipalities. It would definitely have been created by a municipality, but not all the members were appointed by the specific municipality, so it could theoretically be excluded from coverage under the act. I think it reinforces the suggestion that the word should be "or," and I'm even going to the next bullet where it says that all the members must be appointed. In the government determination we talk about the majority of the members being appointed.

I'm going to suggest that we've probably raised enough questions here that might want some sober second thought, and I'm going to toss it back to Justice and to the commissioner's office to maybe have a look at that and bring back a suggestion that might be more in line with the government definition so that we'd keep a parallel as much as possible.

MS MOLZAN: Mr. Chairman, if I might make one comment. I didn't refer specifically to the difference in the second bullet under the multiple part test where it says that all the members are

- appointed
- chosen by, or
- under the authority.

I think "appointed" or "chosen by" probably would make it narrower than the public body test right now. "Under the authority," though, is a broad concept, and it doesn't necessarily say legal authority. So that may capture actually more than the public body one does now. As I said, it's something that we can look at again,

but I don't think, unfortunately, the answers are going to be very clear on how to deal with this.

THE CHAIRMAN: Well, I don't think we were debating whether the wording suggested at the bottom of 14(a) – if there is some clarity to come out there, that wasn't what we were debating here. It was whether the essence of what is already in the act is accurately capturing what was intended. I've suggested we postpone it, but I've got several hands going up.

MR. WORK: Mr. Chairman, if you want us to have another look at that, I'll hold my comments.

MS BARRETT: I think we can resolve it right now by putting "or" after the word "and": and the majority of members or officers must be.

THE CHAIRMAN: I think there's some content on the second page that might have to have a little bit of a look-see just to make sure we've got everything here that's supposed to be.

MS BARRETT: Sure. No problem.

THE CHAIRMAN: I am a little bit concerned. Some of our discussions earlier have been maintaining a parallel between the requirements and the jurisdiction of a provincial government public body and now the expanded local authorities public body, that we don't create entities that are completely different, that there should be as much as possible a bit of a parallel in how they're set up.

MR. DICKSON: Well, I was just going to say to that, Mr. Chairman, that I'm not so worried about absolutely identical approaches. Municipalities have a whole set of different challenges, and I'm just interested in a model that works for them. It seems to me that if we had to even use a different test – if it works for municipalities, provides clarity and certainty, and serves my concern of making sure we capture major municipal undertakings, major municipal expenditure areas, then frankly I don't care very much if it happens to deviate a little bit from the provincial model. Let's just find one that's going to work for municipalities.

THE CHAIRMAN: Yeah. And I did say "as much as possible"; I didn't say exactly.

Anybody else before we move on?

MR. STEVENS: I just wanted to say that from my perspective clarity should be number one. So your recommendation on the second page of the memo, point 2, clarifying the definition is appealing to me, because it sounds like that is something the municipalities would welcome. It would make this a more easy to understand definition.

This memo makes reference to the fact that the issue can be studied again when this act is next reviewed, and we can take a look at what's included and what's not at that point in time. But in general terms I would agree with Gary. I think what we should do is develop a definition that is readily understandable and easy to apply. We can study it later to see if there's something that's been missed.

10:46

THE CHAIRMAN: Okay. I think 14(b) ties closely enough to it. Question 43 is also tied to question 14, so we'll defer that entire block.

I think we have time for one more issue here. Question 15(b):

we've really dealt with this. We just never did bring it to the conclusion that we should have. Gary, I'm acknowledging the letter that you sent to all of the members relating to that section, but the discussion we had at the time was recognizing that this committee did not administer the act or did not get involved in any way managing what came out of the recommendations. What you have here is a draft letter that would be instructions from this committee to self-regulating organizations which would require some compliance. If the administrators of the act chose to send such a letter, I think it would be at their discretion. I'm not so sure that we should be drafting and proposing the letter.

MR. DICKSON: Mr. Chairman, that hadn't been my intention at all. We've had this discussion before. We've talked about the fact this committee is soon coming to an end. We talked about the fact we can't do the follow-up. The suggestion I thought had been: would I volunteer to try and draft a letter which we can consider attaching to the report or make part of the report saying that we would urge the government to canvass self-governing professions on this basis? I can change the letter, but the notion is to ensure that government dialogues with those self-governing professions and conveys two messages. One, we want you to be alive to and respect fair information practices on some sort of access provision. We don't really want to do the heavy-handed legislative thing. I'm sensitive that if you don't build in some incentives, things don't happen. So the prospect was: you do the letter in whatever form, and all we can do anyway is make recommendations. We just encourage them to follow-up.

I may have, once again, been wearing my rose-coloured glasses, but I thought there was actually some harmony around that sort of approach. We wouldn't be sending the letter to anyone other than government and to the Legislative Assembly and urging the appropriate ministers to do that follow-up. I thought it was pretty tame.

THE CHAIRMAN: Well, I agree with you that there was a consensus on what we should do, and where it probably got a little bit fuzzy is that we at one point said that you and Ron may bring back some wording. We sort of danced around it. I can appreciate that what you're doing here is submitting what you would consider the wording.

MR. DICKSON: I've shared it with Ron as well.

THE CHAIRMAN: Yeah.

There are some things in the content that I would disagree with, but the general concept is correct. But I still think our recommendation should be to the government to do something, including some consequences, if you like.

I scribbled into my margin here some notes which go back to something I said earlier on a suggestion and a recommendation along the lines: that the government design a common general guideline outside of the FOIP Act pertaining to a fair information practice relating to both access and privacy which, if followed by self-regulating professions, should preclude a need to bring these professions under the act. Now, that was something along the lines of the wording I used earlier.

The common general guideline, I'm suggesting, is necessary because different departments administer different professions. I don't think there needs to be a hodgepodge of requirements. For example, the Department of Education deals with the Alberta Teachers' Association and other professions, most of which are under the Department of Labour, but I think there needs to be a common theme to it. I think we're talking about fair information

practices which include both access and privacy, because existing fair information practices do not include both, and the condition that if this is set up, then they would not be brought under the act. So there is a condition, and there would be in the recommendation a penalty for not doing it. I thought that captured the three concepts that we're trying to bring under it.

MR. STEVENS: I'm just wondering, Mr. Chairman, whether the question that's posed under 15(b) is effectively what you have just described. I appreciate that perhaps yours was a bit more detailed, but it seems to me that your suggestion is very much similar to the wording in this question.

MS BARRETT: Actually you're right.

THE CHAIRMAN: Yeah. That's what happens when you read three different documents at the same time.

If we say yes to that, that covers the essence of it.

MR. DICKSON: There's a nuance here. This is probably more prescriptive than what I was suggesting. I'm trying to be as sensitive as possible to the variety of challenges and so on that those different professions face. I guess when you talk about the list of criteria, the code, I don't know how we capture this on paper, but I'm anxious it not be overly prescriptive. That's the best way I can put it. I would sooner put more focus on challenging those organizations to come up with ways respecting these things in the code, even if it's not intended that way. I'm just wary of it creating some problems.

MR. STEVENS: If I might make a comment. I certainly share the view that the exercise is not to be prescriptive, but if you're looking at the wording here, it seems to me one of the word sets Gary used was "common general guideline" rather than "set of criteria." I mean, to me guidelines are a step off criteria. I think "conformed" sounds very prescriptive, and "substantially complied with" might give some sense of discretion so that being close could be good enough in the right circumstances.

MR. DICKSON: And that's why I was uncomfortable with just the text we've got in front of us in 15(b).

MR. STEVENS: So if I might, perhaps I'll move that we recommend to government . . .

THE CHAIRMAN: You want to substitute "common general guidelines" for the word "criteria."

10:56

MR. STEVENS: I'm just going to read it out here, once I get the way the question would be framed.

We should make a recommendation to government related to self-governing professions and occupations that common general guidelines relating to fair information practices be established, which, if substantially complied with, will exempt that profession from being subject to the FOIP Act.

THE CHAIRMAN: All in favour? It's carried.

Okay. We've got about three minutes left, and I just realized, Gary, that I said I would entertain your debate.

MR. DICKSON: My question was just this. To those of us who were on the health information steering committee, there was, in effect, a consultant who was brought in at the end of that process or near the end of the process to write the report. You know, I've

got great admiration for the work that's been done and the support we've received from the Department of Labour, but I'm interested in this report being credible in the whole community, not just with public bodies.

Some legislative committees would in fact have independent experts and resource people advise them as they went along. Now, we've not gone that route. I mean, what we've done is we've been working largely with the excellent resources we've had in Justice and Labour and so on. But when it comes to writing the report, I thought we should at least address the fact whether it would be worth while bringing in a consultant who's not, frankly, in the employ of the provincial government to assist us in doing the final report and final recommendation so that when we finish this thing, it will be clear that this is a product of an independent process, that it's not captive to those public bodies who are processing requests any more than it is captive to members of the public that are affected by the act. I just thought we should have the discussion at some point. We haven't really talked about that.

THE CHAIRMAN: Well, you're right. Maybe we haven't talked about it at this point, but I think if this is what we were going to do, it would have been absolutely essential to have that consultant sitting in and being part of the discussion, because for someone to come in from the outside, even if we had the financial resources available to us to do this, and try to capture the tone of the discussion as well as the specifics of the answers I think would be impossible. I'm thinking that even though the Department of Labour essentially is going to be writing this as the administrators of the act, the wording is going to come here for editing and comment, change, deletion, or whatever is necessary. It's simply a matter of translating what we've done so far, and if those translations aren't accurate, that's what we're here for. But I can't see, Gary, at this stage bringing in someone from outside and hoping to be cohesive at all in terms of what we've done over the last four months.

MR. DICKSON: If I could just make the observation – and I guess I'm influenced to some extent by the health information steering committee, where we had a number of meetings and had a lot of discussion before we got down to making the final decisions. A consultant, sort of an independent writer, was brought in, didn't attend all the meetings, did not have the benefit of any *Hansard* there, certainly had the benefit of some meetings toward the end, and then was able to write the report. Here there is the benefit of *Hansard*. I mean, I can see arguments from both sides. I simply think that we ought to address it.

MR. STEVENS: If I could speak to the health information matter. Our writer in that particular case was very familiar with the area and in fact had been involved in a number of the documents predating our report. So it was a question of somebody who was incredibly familiar with that subject matter, and as Gary has rightly pointed out, we had that as part of the budget, part of the game plan

from the beginning. Also, the writer was brought in at the appropriate time to get a flavour of what was going on. So my own sense of it, Gary, is that while that might well have been a good way to deal with this, it's a little late in the game to replicate what we did in health information.

MR. CARDINAL: Just a quick comment. I think the process we have in place is workable, and I think the staff are doing a good job and should be commended. If there are any major changes in direction in the future, I think it should be part of the recommendation of this report for future review. This is not a one-time shot. This review will continue. We won't be around, and it'll still continue.

MR. DICKSON: Mr. Chairman, I was at pains; I meant no criticism of any of the resource people in either of the departments that have helped us. That's not the point.

THE CHAIRMAN: I believed that was understood too. I think your comments are valid, Gary, in the sense that someone maybe further removed could add an objectivity to it that we might not absolutely have. But I think the committee members here are intelligent enough to see if the answers to what we've been dealing with have been translated accurately. Also, keep in mind that we've been dealing with this in terms of general recommendations. We didn't get into the editing of the specific words. That flavour should be easy enough to capture. If we were dealing with a quasi-legal document, then that might be a little different. Then it may need a certain kind of expertise. But even that is available. I think we have more lawyers around this table than . . .

MR. WORK: Just on an administrative matter. The commissioner, or maybe it was me, wrote you a letter, that the committee should have, dated November 16 having to do with your request that the commissioner's office talk to Labour about some outstanding issues. Since that November 16 letter was written and delivered to the committee, we met with Labour, with Ms Kessler and Ms Salonen, and the commissioner has been persuaded to modify the position in that November 16 letter. So now I've got a November 17 letter that I would like you and the committee to be aware of. Shall I give that to the committee clerk, or would you like me to hand that out?

THE CHAIRMAN: You can give it to Diane, and then we could all have copies of it.

MR. WORK: Okay. It's just to let you know that it is coming or is on its way. Thank you.

THE CHAIRMAN: Okay. With that, it's 5 after 11, and I apologize for running overtime. The meeting is adjourned.

The committee adjourned at 11:04 a.m.]