Title: **Monday, November 23, 1998** Freedom of Information Review committee

Date: 98/11/23

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

THE CHAIRMAN: Perhaps we can get the meeting started. I understand that Pamela Paul will join us later. Janis Tarchuk I don't think is going to be here this morning, and Mike Cardinal should be, so hopefully those that are going be here will get here soon.

The first thing we need to do is approve the agenda. I'm going to ask to add one item to the agenda after 3, and that's to set up a date for another meeting.

MR. DICKSON: I had some comments, but they can wait until your new item about a new meeting.

THE CHAIRMAN: Okay. I was going to do that after approval of the minutes, just add on a discussion about adding at least one more day.

MR. STEVENS: I'll move approval.

MS BARRETT: Yeah. I agree, except the last two sets of minutes don't show me present, and I was.

THE CHAIRMAN: That's the minutes. We're on the agenda.

MS BARRETT: Oh, sorry. I thought you were moving the minutes.

MR. STEVENS: No, I was moving the agenda.

THE CHAIRMAN: All in favour?

The next item, then, is Approval of the Minutes.

MS BARRETT: So moved.

THE CHAIRMAN: Did you have a correction?

MS BARRETT: It's okay. Diane's going to check.

THE CHAIRMAN: Okay.

MR. DICKSON: One concern -- in fact, I'll raise it right now, Mr. Chairman -- is that by meeting so frequently, I'm not even able to access the Blues from the last meeting. We cover a lot of ground in every one of these meetings. We have lots of discussion. You know, one of the great features of the Legislature committees is the fact that you have access to *Hansard*.

Now, I haven't been able to bring up the Blues, and I know the final copy isn't finished -- and I just want to raise the concern -- whether it's in terms of reviewing the minutes for accuracy or being able to do follow-up. I'm anxious we don't end up revisiting things that have been determined, going through old debate, whatever, but also anxious to make sure we follow up on all of that myriad of things we undertake to look into, to get more information on. So I have this concern. Having a meeting less than a week . . . [interjection] I beg your pardon?

MR. CARDINAL: You don't trust yourself?

MR. DICKSON: Okay. I have a shorter memory than my colleagues, Mr. Chairman, so I'm asking you to indulge me. I do think it's important that we ensure our meetings don't occur faster than the capability of *Hansard* to be able to produce the record of the last meeting. Otherwise we're undermining and devaluing what I think is a pretty useful tool for any committee.

THE CHAIRMAN: I can appreciate your concern, Gary. I know the problem with the Blues during session is that the session recording takes priority for *Hansard*, and we can't do anything about that. I think the fact that we're sitting in a committee that happens to be recorded is a little bit unique. More committees than not don't have that opportunity, and I personally feel comfortable with my own notes and, you know, the comments that we can make. Having to go back and read the verbatim might be a nice feature, but I have trouble agreeing with you that we should slow the process down so that that would be available.

If we don't proceed at this speed, we're going to be, I feel, late enough that we would never get a recommendation in in time to deal with it in the spring session of the Legislature. As it is now, well, for sure we're not going to get a final report in time to table with even this fall sitting of the Legislature. At best we would be able to get a preliminary report in, and I'm personally having some trouble with the optics of even tabling a preliminary report, because to the people outside reading it, that would look like: well, these guys have tabled it anyway, and any further feedback is not going to be meaningful.

I was actually going to ask, as we got towards the actual recommendation part of it, if the committee members felt that it was very important to table a preliminary report simply just to make sure that all MLAs and everybody who was interested got one. As I said, simply the optics -- because if it's tabled, some people may feel that it's a done deal and no further input would be reasonable.

I honestly believe that we have to forge ahead; otherwise we're going to miss any opportunity for spring session. As it is now, we are going to be running into the Christmas season no matter what we do if we give even a couple of weeks for some additional feedback.

MR. DICKSON: Well, Mr. Chairman, I agree. I'm not in favour of a preliminary report. Let's finish the report. The other thing is simply to check with *Hansard* and ensure what the earliest possible date is that they can reasonably commit to be able to provide us with the last meeting's *Hansard* and just factor that in when we're arranging further meetings. I mean, we're here and we've got an agenda and we're going to proceed, but I am just flagging the concern I have.

THE CHAIRMAN: Diane did some checking and actually had some information on the times. I don't know if they can commit, but if available, what's the earliest time?

MRS. SHUMYLA: I checked with *Hansard* as well this week, and just as Gary said, House proceedings are first and meetings are second. I believe they're short-staffed, so they're doing the best they can to keep up. My understanding is that the Blues from this meeting may not be available till late Thursday or Friday, again, of this week.

MS BARRETT: We meet again on Monday; right?

THE CHAIRMAN: Uh-huh.

MS BARRETT: That should be early enough; isn't it?

MR. DICKSON: Well, only if we're operating sort of a meeting behind.

THE CHAIRMAN: Now, the other thing, too, is that once we've gone through these, this will form the basis of a rough draft of recommendations, which the staff will bring to us, and we will be dealing with that. By that time, certainly, we'll have been able to go back, if that's important to you, to get the copy of *Hansard*, and the wording of the recommendations will give us an opportunity to make changes if there are some real problems with it.

MS BARRETT: A clarification from Diane. I thought you meant the Blues from today's meeting would be available on Thursday.

MRS. SHUMYLA: That's right.

MS BARRETT: From today's meeting.

MRS. SHUMYLA: From today's meeting. They should be available late Thursday, Friday morning.

MR. DICKSON: When will the Blues be available for last week's meeting? That's what I've been looking for and couldn't find.

MRS. SHUMYLA: They were completed on Friday. The Blues were completed on Friday.

MR. DICKSON: Okay. I couldn't get them off the screen today.

MR. CARDINAL: Just a comment on that issue. I've always said that this is only one review of no doubt many reviews of this particular process, and I don't think anybody expected this committee to resolve all the problems that are out there for the next 10, 15 years. We're here to do a review, to do the best job we can of what we're assigned to do, and ensure that when we finalize that report a recommendation is in there to make sure that the next review continues dealing with the process.

I don't think there's one quick answer for the whole issue. We'd be foolish to think we're going to have all the answers here in this process. We won't. So I think we have to keep positive and say: look; we'll do the best job we can. If we make one or two mistakes, I don't think the world is going to end. The next review will no doubt catch that stuff.

THE CHAIRMAN: Okay. I'm going to ask the committee. The only dates we really have available during session are Mondays. We've pretty much eliminated any other day for a reasonable option, so we have two hours every Monday morning. The alternative is then to drop off every second week. That, I can assure you, would not get us into a final report by January, but if those are the wishes of the committee, I'd go along with it, but my recommendation is to continue with one meeting every Monday until we finalize this. Could we have some kind of consensus?

MR. DICKSON: I'm happy to move a motion if it helps crystallize the discussion and allows us to move on. The motion would be that

> future meetings be scheduled in sufficient time to allow *Hansard* to produce *Hansard* from the last meeting in advance of the next meeting.

9:13

THE CHAIRMAN: That in essence would be every second week.

MS BARRETT: No.

THE CHAIRMAN: I don't think we could produce *Hansard* . . . [inaudible] We may, if circumstances work out, get the Blues, but I don't think there's even any guarantee of that. They're doing the best they can.

Okay. That motion in essence would say every second week. Any further debate on that?

MR. DICKSON: Well, presumably, Mr. Chairman, that only applies during session. Presumably out of session it would take less than that time period.

THE CHAIRMAN: The first week after that would be Christmas week, so as I said, we would be well into February.

MR. DICKSON: You have the advantage, Mr. Chairman. I don't know how long this session's going to go on.

THE CHAIRMAN: I'm guessing as well as you are, but right now everybody's books are cleared until the middle of December.

The motion loosely translated would be: cancel every second meeting or have a meeting every second week. All in favour of that? Opposed? Okay; that's defeated. We'll continue with our weekly meetings as best we can.

Did we have a motion to approve the minutes?

AN HON. MEMBER: I don't think so. Did we?

MS BARRETT: Yeah, I did.

THE CHAIRMAN: Who did?

MS BARRETT: I did.

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

That brings us, then, to the addition to the agenda. I'm asking that we set another meeting for December 7 from 9 to 11, as we have now.

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

THE CHAIRMAN: I'm wondering if it would be prudent to book the 14th as well just to make sure that we don't have any loose ends. Whoever moved the other motion, I'm sorry; I didn't catch it.

MR. DUCHARME: I'll move those two days, December 7 and December 14.

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

Okay. We just completed question 15(b) on the worksheet. Question 16, next on the list: "Should the FOIP Act Review Committee make any specific recommendations pertaining to the inclusion of the private sector in the Act?" We have discussed this several times. My recommendation, to sum up a bit of what we talked about -- I know this was not a unanimous decision, but I've worded here a suggestion that it is not the intent of this committee to make recommendations pertaining to the inclusion of the private sector in the act at this time but that outside influences such as the tabled federal government bill may require such action to be considered at a later date but only after considering fully the implications of that bill and any other influences. My feeling is that it's premature, and I don't believe that it's really the general desire for the province at this time to get

involved in legislating privacy and access in the private sector to that extent.

With that, we'll open it up to debate. Pam, then Gary.

MS BARRETT: Thanks, Mr. Chairman. I did not bring with me the IPC submission nor the response to the public submission. Can you refresh my memory as to the IPC position on this?

THE CHAIRMAN: I wouldn't trust my memory to do that. The original recommendation did deal with something to the affirmative. But in discussions my sense was that that wasn't a firm stand, that there were pros and cons to it. Maybe I will leave it to you, the two people here representing that office, to bring us up to date.

MS WILDE: Yes. Actually what the commissioner had recommended is that provincial privacy legislation should be enacted at some date. I do not think that the commissioner had intended that this act be amended so as to cover the private sector, but he did indicate that it was important that this type of legislation should go ahead. To be specific, he stated that it would be important to incorporate the principles of fair information practices in any potential privacy legislation as well as to establish a requirement that there be an oversight body, such as the commissioner's office, in such legislation.

I think this has become fairly important recently, as you've stated, with the proposed C-54 that has been introduced into the House of Commons, as this will impact all provinces, including Alberta. So this is definitely an issue that will have to be addressed, if not now, in the near future.

THE CHAIRMAN: That kind of was the essence of what I was suggesting, that we have to recognize that that bill, if passed as it is tabled, would have a severe impact on the provinces. In other words, if provinces didn't have their own parallel legislation, then the federal act would prevail. I'm assuming that would be subject to challenge in any event, but that doesn't mean at this point that we should assume anything. My recommendation was basically that we don't deal with it at this particular review, because it has implications and probably needs a level of in-depth study beyond what we either have done or would have available to us, but certainly before that legislation took place, there would be fair warning that we would have to be prepared to do so.

MR. DICKSON: Two points. The first one is that in your motion you refer to the federal legislation. I think that the bigger issue is: where are we going with health legislation and management of registries, which are already private businesses? It's clear that, quite apart from the federal legislation, there are already provincial initiatives, things within the legislative competence of the provincial government, processes under way which are going to be already addressing that, and I think there are going to be incursions. There is going to be legislation which is, I think, pretty clearly going to impact elements of the private sector. It's not just the federal legislation; it's things going on.

I'm left with this. If we don't at least make, at minimum, some fairly strong recommendations for the need to address these things in a comprehensive fashion, who is going to know that better than this committee? I mean, we've got people here, Mr. Ducharme and Mr. Stevens, who were key players on the health information steering committee. We've had presentations from Municipal Affairs on what's happening with the concerns that have been identified with registry services. At the very least we've got to be able to reflect what we've heard, and it's got to be something much more I think, with respect, than just a lame comment that this is going to have to be looked at somewhere down the road. We want to underscore the emergency to this and the importance of doing it in a comprehensive fashion.

You know, we're not going to agree. I've indicated before that I think this committee should be tackling those things. I understand that it's not the committee view, but surely, then, we can make some fairly forceful recommendations to the Assembly in terms of what should be happening in this area and not just leave it on the shelf, Mr. Chairman.

9:23

MR. STEVENS: I share Gary's view that there are a lot of initiatives that are out there at this point in time dealing with information in the private sector. I don't share, however, his view that it's necessary for this committee to make recommendations to it. I think that from my perspective what's important is that the report do a reasonable job in indicating the state of affairs -- the existence of the federal bill, the fact that there are some initiatives -- and indicating that this is a trend elsewhere and that it ultimately is something this government should be looking at. But I think it falls far short of making specific recommendations.

MS BARRETT: Mr. Chairman, because we've been back and forth, I assume we haven't dealt with question 20, with respect to the registry services. I remember we discussed it maybe under the rubric of another question, but no decision has been made on that; correct?

THE CHAIRMAN: No decision, no. Hopefully we'll get that today.

MS BARRETT: All right.

THE CHAIRMAN: In an earlier meeting the suggestion was that it be dealt with separately because it is an issue right now that's exempt from the act. If the health information privacy act -- is that what it's supposed to be called, something along those lines? -- would be a stand-alone act, if the recommendation is made, in essence those two would then be dealt with. I think the point you're making, Gary, is that they should all be under the one act or addressed in some way under this act. I believe that's contrary to recommendations of the health information committee.

MS BARRETT: Can I have a further question, then, on that?

THE CHAIRMAN: Yes.

MS BARRETT: What is the status of the health information process right now?

THE CHAIRMAN: Ron might be able to answer that.

MR. STEVENS: The health information status is that the steering committee provided a report, which came out in July. There's further policy work that has been done since that point in time to flesh out some of the issues, and there's currently a son of Bill 30 that will be coming forward in the spring.

MS BARRETT: Okay. Thanks.

MR. DICKSON: Mr. Chairman, I may not be quite as dense as you think. I understand that the committee has determined that they don't wish to try and roll those other issues into the work of this committee. I'm not happy with it, but I'm resigned that that's the decision of the committee. What we're talking about now is how

forcefully we make recommendations to the Assembly about the need to co-ordinate these different initiatives which impact the management of personal privacy concerns in the nongovernmental sector. That's really where I'm focused. I'm sorry if I didn't make that clear.

I respect the decision that's already been made that we're not going to engage further in those areas as a committee, but I'm simply saying that we have, in my respectful view, the very best vantage point of any group of MLAs in this province in terms of, as Ron Stevens put it, sort of the confluence of the three different initiatives we've identified. What committee of MLAs has got a better grasp of how these things are going to intersect? All I'm encouraging is a fairly strong recommendation to the provincial government that rather than allowing three parallel, independent processes to be worked through, which may end up with conflicting, contradictory results or maybe complementary results, surely we're smart enough as a group and as a province that we can take some charge of this and order it in some fashion. If it's not to be this committee, then we've got to let government know that there's a problem to co-ordinate these things or that there's a challenge to co-ordinate.

MR. STEVENS: Speaking to the health information, the steering committee in that particular case in its recommendations this past summer indicated that in its view it was appropriate for stand-alone legislation that would not be included. Hence our mandate excludes health information. That committee was not unmindful of the fact that it was necessary to co-ordinate between this legislation and the proposed health information legislation, and as such, a recommendation was made in that regard. In fact, people are going forward to ensure that the appropriate co-ordination is done. I don't think it's necessary to say that, because it's already happening. So I can speak to that particular issue: people are dealing with it in that way.

THE CHAIRMAN: One question, Ron, just to clarify. If the legislation goes ahead from that as anticipated by the committee, the IPC office would still be the office that administers it in terms of interpretation and appeal and such. Is that not correct?

MR. STEVENS: Correct. I think, if I recall correctly, the office gets a new name, but effectively it's the same people.

THE CHAIRMAN: To me that would reflect the need to co-ordinate, making sure that rulings and such are consistent with each other.

I know that originally, when I saw that recommendation that it would be stand-alone, I had some doubts about it. Then after we got involved in this review, it struck me that there are sufficient unique circumstances in that legislation, and I believe that the same thing applies to the registries, for example. Simply incorporating them into the FOIP Act would not do it justice. They deserve to have some legislation or be part of another piece of legislation that would allow the uniqueness to be recognized. I'll speak a little more to the registries thing when we get to it.

I agree with you, Gary, that there needs to be co-ordinated effort, the best possible efforts that are available, but if you're saying that those should be in one act, I don't share your view on that, unfortunately.

MS BARRETT: I think what Gary is arguing is that we just send a message to the Legislature that the next time around, when the act comes up for review, a big flag has to be put on the question of inclusion of the private sector. If that's the case, I'm fine with that. I think that is an appropriate message, including the dovetailing of acts so that they are co-ordinated. I don't think there's anything the matter with the message, if that's what Gary's getting at.

THE CHAIRMAN: Okay. If that's the message, it will already be included in what was the very last number on the list, which we've already dealt with, which suggests that we have another review in three years dealing with the review of the inclusion of the MASH sector plus the implications of the federal legislation. That flag should already be raised in that recommendation.

MS BARRETT: The sky is falling.

MR. STEVENS: And it's not even 1:30.

MS BARRETT: That's right.

MR. CARDINAL: Tell us it isn't, Gary.

MR. ENNIS: Doesn't anyone believe in Santa Claus anymore?

MS BARRETT: For the purposes of *Hansard* would you just let me explain why we're saying that? We've got banging noises in the ceiling.

THE CHAIRMAN: It sounds likes carpenters, but thankfully they're slow carpenters.

MR. DICKSON: Those are just Albertans wanting more openness.

Mr. Chairman, if I could just say, Pam Barrett quite correctly recognizes what I'm trying to do, with just one qualification. We've already had the discussion, I thought, that on this privacy issue this may not wait for the next regular review of the act. So I think what I was attempting to suggest is that we signal to the Legislature in a fairly urgent tone and an important tone that this is something that's got to be addressed in a comprehensive fashion now and that the government should move to do it quickly.

THE CHAIRMAN: I'm going to suggest, then, that we deal with it with the last question -- I forget the number -- that when the recommendation is drafted, we'll go through the wording of that one and try and get a consensus on the tone of the urgency then. Certainly it will be in there, and then maybe we might have to arm wrestle a little bit to deal with the tone of the urgency.

9:33

MR. DICKSON: As long as we understand, Mr. Chairman, that there are two separate things we're talking about. One is the review with the feedback from local public bodies after they've had some experience with the act and so on and doing the kind of stocktaking we're doing now. The other one is a number of imminent changes on the legislative horizon that require some co-ordination, and that may be in the next 12 months. So as long as we're clear on the difference.

THE CHAIRMAN: I agree with you that that needs to be addressed. We did take the initiative during this discussion, knowing that even our final report would not be out in time to flag the concern that that legislation is now sitting on Parliament's Order Paper and that our corresponding people here in Alberta should be taking note and making comments. Also, there have been messages back and forth to registries. As a matter of fact, that's the reason why they were here. There are outside things

happening, and we knew that we couldn't get to them before our final report. So some of these signals actually have gone back and forth. I'm not ignoring what you're saying. We'll deal with it when we make that last recommendation.

MR. DICKSON: Thanks very much.

MR. CARDINAL: Just a comment on that same issue. The tone of the urgency has to be reasonable, or I won't be supporting any issue on that matter. It is a very sensitive area. It's a major move in a new direction, and I think it's one area that has to be carefully done and carefully assessed over a period of time. I don't think the world is going to end, whatever we decide on our report, one way or the other. It's a major, major change in the direction when we include private industry. I definitely will not be supporting it unless it's very, very reasonable.

MS WILDE: I'd just like to make an additional comment. While the commissioner's office realizes that this will be a major change and this is a new thing that has come about, the commissioner agrees with Gary Dickson that this is fairly urgent in that the implications of Bill C-54 will be felt in Alberta in a very short period of time. From the commissioner's point of view, he feels that this should be looked at sooner rather than later or at least that a committee be established to start looking at this instead of waiting until the three years have gone by and then starting to look at what sort of bill should be introduced in Alberta or what sort of legislation should be enacted in Alberta.

MS MOLZAN: Mr. Chairman, if I might just let the committee know that Alberta Justice is actively involved in dealing with the federal government and other provinces in regards to Bill C-54, so it's not something that we're simply ignoring. Mr. Dalton, who has appeared before this committee in the past as a researcher or an information person, has been in Ottawa in the last couple of weeks, which in fact is why I've now sort of taken his place, and we are very actively involved in what that bill is going to say and what's going to finally transpire. Certainly at this point we can't say what the outcome will be, but in regards specifically to the clause that indicates that that bill will apply to the provinces if they don't have similar legislation, there's going to be a lot of input from the provinces, and my understanding is that there is a process now with the federal government and the provinces as sort of a committee or collaborative process where they're looking at what that bill should say and whether that clause should be there and so forth. So it is something that Justice is aware of and certainly very highly involved in.

THE CHAIRMAN: Well, we've gone around and around on this. Before we draft our final report, there may be new information out. If we could leave it for now, I guess, pending the resolution of my recommendation that in the event there is additional information available before we finish our final report, we could make specific recommendations on that legislation, but it would be in the context of the final recommendation in terms of time and continuity. Would that be acceptable?

Okay. That moves us into the extension of the same topic, which is question 20:

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

Last week we had people from registries, and -- I forget the consultant's name -- the consultant that they had hired gave us an overview of information that they had gathered. The report from the registries to the minister is expected about the end of this month. The topic has been discussed here several times. The concern -- and I expressed it a few moments ago -- was that there's a uniqueness in registries, which, in my opinion, does not make it a suitable candidate to be under this legislation. I believe that much of the information, if not most of it, that is collected by the various registries offices is for the purpose of protecting the interests of people other than the applicant. That's why those registry practices have been set up. If we intend to maintain that practice, I don't believe it would be suitable to put it into this act.

Again, I've written something out here maybe just to put my thoughts in proper words and to open or extend discussion on this. I'm suggesting that we use something like: recognizing that much information collected by various registries is for the purpose of protecting the interests of people other than the applicant, that historical practices of providing that information be upheld to the extent that it is necessary for those purposes and that registry services remain outside of the FOIP Act.

Now I'll open it for discussion.

MR. DICKSON: I understand, Mr. Chairman, what you're trying to do, but the text of your recommendation sounds like we've got acute hearing when it comes to the interests of the parking lot operators . . .

THE CHAIRMAN: I'm sorry; I missed that.

MR. DICKSON: We've got acute hearing when it comes to the interests of parking lot operators and private investigators and the legitimate privacy concerns of Albertans are somehow in some sort of lower category. My sense had been from an earlier discussion that the committee had no will to get into this. If that's the decision of the committee, that we're simply going to leave this other process to go wherever it's going to go, then that's fine, but I couldn't accept that wording you've put forward in terms of the reason why we're not. The reason, I understood, was that this committee feels that we're going to let the Department of Municipal Affairs pursue their consultation, that is going to result perhaps in legislation, and it'll be debated in the House, full stop, and that we were not going to deal further with it here. This is one of those areas where, with respect, it's useful to have *Hansard*, because others may have a different recollection.

MR. STEVENS: Well, I can say that both of you represent my sentiments. I think, Gary, that the reasoning that you just put forward is part of my thinking, but I can say that to both of you.

9:43

THE CHAIRMAN: The only thing I would like to correct. My suggestion has nothing to do with the recommendation made on behalf of -- what did you say? -- parking lot attendants and whoever the other one was. To me the information that is collected by registry is for the benefit of anybody as well as the applicant, and it doesn't necessarily mean a parking lot attendant. The information on a land title, information on permits, licences, and things like that are most often, in my opinion, to protect the interests of people around, whether you are an adjoining or nearby landowner, whether you're another driver on the road, these sorts of things. I don't think that has anything to do necessarily with parking lot attendants. I certainly believe that part of that is to make the enforcement of infractions to legislation and bylaws easier to deal with, other than what would otherwise be some very clumsy and maybe expensive alternatives. It's not to the particular

interest of any one group.

MR. DICKSON: Mr. Chairman, with respect, let's be really clear. This is not about parking lot operators exercising a legislative function. They're private operators using information to collect a civil debt. Let's not mix apples and oranges here, with respect. This is not an enforcement of anything other than a civil interest, a civil claim. They're not in there on your behalf or my behalf or representing some greater public interest than their particular commercial interest.

MR. STEVENS: I think the chair put forward a general principle which certainly I'm prepared to accept. You've specifically pulled out one of the many, many examples that you could relating to the current practice, and I think, as you properly said, you will undoubtedly have your day to debate that if in fact Municipal Affairs comes forward with legislation dealing with it. I don't think we're going to advance the cause today. As a matter of principle I don't have any quarrel with what the chair has put forward.

THE CHAIRMAN: I'm going to maybe point to some specific wording on what I said that might address a little bit of Gary's concern. I talked about: that is collected "for the purpose of protecting the interests of people other than the applicant." That was a direct reference. Then I went on to say, "That historical practices of providing that information be upheld to the extent that it is necessary for those purposes." I'm assuming that there would still be in whatever legislation it's in some addressing of information that might be held in those registries that had no relevance to the interests of third parties. I sensed from even the discussion last week with the ladies that were here that they were aware of that. If this recommendation is upheld, it would be information that is necessary for the purpose of protecting the interests of third parties. That's the only information that should be available. I think I used an example earlier: if in a driver's licence there is a record of some infraction, whether it's a speeding ticket or impaired driving or something like that, that isn't necessary for the protection of third-party interests, in my opinion, and that sort of information would not be given out.

MR. DICKSON: Mr. Chairman, I think we can deal with this really simply. My problem is that the motion that you've thoughtfully crafted imports a normative assessment of what's going on now, and I just want to avoid that. All I'm saying is: can we not just agree that as a result of our discussion -- I think we've agreed to disagree -- this is a matter that's going to be resolved or addressed in a parallel, separate process? We don't have to get in and as a committee start talking about sort of where we think the balance should be and so on. Isn't it just easier to say that that's an administrative matter, there's another process dealing with that, and that will go where it's going to go? I don't, with respect, think we have to get into this sort of normative valuing of different competing interests. That's where you and I are going to continue to disagree, Mr. Chairman. So I'm just saying that we can move on from this if we just talk about it in a process thing rather than trying to have it both ways, by talking about a process resolution and then tucking into it some normative statements we don't all agree with.

THE CHAIRMAN: One thing for sure: we agree to disagree. I guess as to how it'll come out, I've made a recommendation that we do address it in a one-sentence statement, but I'll leave that to the committee to decide.

Lisa.

MS WILDE: Yes. I would just like to state that what the norm is right now may not be sufficient. In the office of the Information and Privacy Commissioner we believe there should be some further review of this issue and that it should be looked at at a later date. To simply state "to protect the interest of third parties," as it now exists, may not be sufficient, and there should be some further review in that area. Perhaps incorporating it into further legislation at a later date may in fact be the way to go.

THE CHAIRMAN: Well, that's I think essentially what Municipal Affairs is doing, reviewing that in further detail and determining how it will come into other legislation.

MR. STEVENS: Do we need a motion for your recommendation?

THE CHAIRMAN: It wouldn't hurt. Then maybe we could deal with this.

MR. STEVENS: I'd like to move your recommendation as stated.

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

I'm blinded here by the sun, and one should never complain about sun at this time of the year.

MR. CARDINAL: No, don't complain. Just enjoy it.

THE CHAIRMAN: Question number 110.

> Should the word "record" in section 4(1) (c.1) of the FOIP Act be changed to "information" so that the personal information collected by the Ethics Commissioner is excluded from the Act?

This is a request from the IPC office. I think it's clarification. Everybody agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Question 31. This is a very lengthy one, and I think everybody can read as well as I can. I'm not going to read it to put it into the record.

We have had discussion on this. Peter Gillis is here with us today and is going to speak to this. The earlier discussion dealt with whether this would be good practice for government. My comments originally suggested that while this might be excellent practice, for a public body to provide such service and possibly as a matter of policy, I had some real concerns with writing into the freedom of information act the necessity of providing translation or interpretation or providing formats other than the written format that records normally exist in, whether that was the essence of an act. I understand it's in the federal legislation and may be in others, but the question I think we really want to ask is: is that an extension of freedom of information, or is that an extension of government service practice?

Peter, welcome back. I understand you've had a pretty difficult stint and that this is likely to continue for a while. We're certainly glad to see you back with us.

9:53

MR. GILLIS: Thank you, Mr. Chairman. I was asked to do a bit of research on this provision, and I'll just briefly summarize what I've discovered. It is only the federal Access to Information Act and Privacy Act that have this type of provision in them. It's also proposed, by the way, in C-54. It's included there as well. It resulted from a very similar process as here, a submission from groups with sensory disabilities that both government publications and the equivalent of the Freedom of Information and Protection

of Privacy Act include something that would deal with alternative formats. There were extensive consultations as a result of that, and what is in the federal legislation and regulations was the result of those consultations with the groups.

As to the other concern, with frequency, there are about 12,000 federal access to information requests a year and about 16,000 Privacy Act requests. The federal government does not keep statistics on this particular aspect, so I canvassed a number of the leading departments on both sides. They say that it's very infrequent that they get a request that deals with information from someone with sensory disabilities, maybe once every three years. So it's not that frequent.

The other thing that I think is worth considering is that it's all couched around the regulation, couched around reasonableness of approach. So, for example, if you had a thousand pages and somebody wanted that translated into Braille, that probably would not be a reasonable thing to do. There's a number of things that mitigate against that. One is that Braille is perhaps less common than we think as a reading device for the sensory disabled. The other of course is cost. It works around reasonableness and cost. The vast majority of, I guess, reproductions of records are in electronic form, because this is becoming more and more the form for the sensory disabled. Either it is something they can read large on a screen or the computer itself reads the document to them, takes the place of a reader.

So that's basically where that is. I can't answer the question as to whether it's a service standard or whether it's something that's merited in the legislation, but in an area where it's working, that's basically the way it's going forward.

THE CHAIRMAN: Okay. Thanks, Peter.

Gary, you had a question?

MR. DICKSON: Well, a comment, Mr. Chairman. The Alberta Human Rights, Citizenship and Multiculturalism Act prescribes that employers, landlords, and people offering services to which the public customarily have access shall not discriminate on the basis of a physical disability, and both common law and decisions of human rights commissions have developed a very clear notion of duty to accommodate. It seems to me, particularly given the perhaps infrequency of these kinds of requests, that there's an obligation for this province and the provincial government in terms of its departments to lead in this area. I think it's appropriate. It's consistent with this special piece of legislation that's been around Alberta for many years that we build in that duty to accommodate with the reasonableness qualification that's been suggested. Anticipating some who may say, "Well, if we don't get a lot of requests, then why bother?" I'd just come back and say that the province of Alberta has to be able to model or demonstrate sensitivity to the very physical needs of Albertans, and we should reflect that in our legislation, Mr. Chairman, as well as our practices.

MR. CARDINAL: Just briefly on that. Gary, I wonder: do you have an estimate of what a process like that would cost if it was compulsory for every department or agency to develop a process of that nature? Does anyone know? That's one issue. The other one I think is departmental. At least our government has some responsibility within departments to be able to deal with it when it is required, and I think they do a very good job of that now with the information that's being processed.

MR. DUCHARME: Mr. Chairman, I guess I'd like to indicate that there should probably be a recommendation coming from this committee to the various government departments stating that it could be a very good practice, in terms of providing for individuals with sensory disabilities. But I don't think it's necessary that we have to incorporate a section into the FOIP Act in order to be able to achieve the desired outcomes for these individuals.

MR. STEVENS: Interestingly enough, I had an opportunity to deal with an issue along these lines just last week. One of my constituents who is visually impaired contacted me and wanted some information with respect to one of the current bills before the House. Their practice actually is to use tapes and to have someone read the material to them, and they can play it back on tape rather than Braille or some form of reader per se. So I started going down that road to see how I might be able to accommodate them in providing a tape and getting someone to read. Interestingly enough, there is somebody available in my area that is a reader at $45 an hour. I believe this individual could have provided a tape to me. That would have been the cost, and it depends on the length of time. But happily I was able to contact *Hansard*, who provides a reading service, so I was able to provide a tape with some of the relevant debate to the constituent. So there is a recognition of this; that's the first thing I would like to say.

Secondly, there are clear examples of Albertans having access to this type of information where it's reasonable and feasible. My sense of it, after having listened to all of this, is that a matter of policy or practice is the way to go. I think we can underscore that, where reasonable, efforts definitely should be made to accommodate those who have that type of need.

THE CHAIRMAN: Were you back on again, Gary?

MR. DICKSON: I'll wait until after everybody else has spoken, Mr. Chairman.

MS BARRETT: Well, if I'm understanding what the government members are saying, they're saying: well, the various departments and all of those public bodies that come under FOIP should be told to be accommodating for people with sensory disabilities. If they're going to be told to be accommodating, then why don't we just put it in the act? I think it's a nice gesture to let people know that they have that legislated assurance. I mean, if the departments are going to be told and all the public bodies under FOIP are going to be told to be accommodating, why not put it just right in the act?

THE CHAIRMAN: The point I was making though, Pam, was that it's one thing to have it as a good practice. If we're dealing in any mandatory way with how civil servants or people who are part of any public body should act, that's one thing. But the Freedom of Information and Protection of Privacy Act: is that the appropriate piece of legislation? My feeling was that it was not. The human rights act, whatever its full title is, addresses it in some way. I realize it's not prescriptive in this sense.

10:03

The problem with putting something in legislation is always the fine line: where is the degree of reasonableness? Where do you stop? Peter used the example similar to the one I used earlier. If a few pages of something can easily be interpreted or a photocopier used that has the ability to expand the size, that's one thing, but the minute you get into that, now you get into the interpretation of when it's reasonable and when it isn't. This is just going to be another thing that the Freedom of Information Commissioner's office is eventually going to have to deal with. I think it's one thing to say that good courtesy, good administration,

good policy should handle this issue, but mandating it in legislation I think simply asks for trouble. That's why I'm strongly recommending that we leave it out of this act.

I know that somebody reading this may say: well, he's awfully insensitive to people with handicaps. I happen to have three members of my own family that have physical handicaps, and I am very sensitive to their needs, but I still don't believe this is the act to deal with it.

MR. ENNIS: Mr. Chairman, the practice in our office to this point and the practice, I believe, in many government provincial public bodies has been to use section 9, the duty to assist, in a very customized way. The section requires that "each applicant" be assisted with a complete and open and accurate response. To this time we've had the occasional case where someone has had a sensory disability of some kind that has made it hard for them to work with information in standard forms, but we've also had situations where a handicap is not evident and hasn't been evident to a public body but becomes evident to us as we work through things. I think, in fairness, we discover that many, many people have different kinds of handicaps; senior citizens, for example, often being visually impaired.

In my experience efforts are made by the public bodies to accommodate those handicaps, and they certainly have been made in our office wherever we've become aware of them. I'm sure there are cases that we've missed. But it seems to be an issue of how you treat individuals under the act, and there's an opportunity for the public bodies to deal on a one-to-one basis with individuals and come to know that there is some kind of an issue that they have to deal with in communicating.

THE CHAIRMAN: Pamela.

MS PAUL: Yes. My apologies for being late, first of all.

You mentioned, Mr. Chairman, that you feel that mandating this under the act would lead to trouble. I'm just curious as to what kind. Do you envision that people are going to abuse the act or the right of access? What exactly do you mean by trouble?

THE CHAIRMAN: Confusion. I'm sorry. If I used the word "trouble," I didn't mean it in that sense.

MS PAUL: Oh, okay. Confusion in what sense? As to how they're going to deal with the degree of information or releasing the information or what?

THE CHAIRMAN: No, no. To what degree you interpret, translate, provide in another format, the reasonableness of it. Different people are going to look at it and decide when enough is sufficient or, you know, simply because it's written, anything and everything. My honest opinion is that we'd better leave it out. I think that right now there is a requirement to assist. I'm not sure if you said this, John, and I'll invite you to clarify. There is a provision there that certainly opens it to some test of reasonability right now. Adding to it I don't think is going to improve it any without adding more confusion.

I invite you, John, to correct me if that's not how you interpreted it.

MR. ENNIS: That's a very good summary of what I was trying to say, Mr. Chairman.

MS PAUL: Okay. That explains it, because I was confused about the trouble rather than the confusion.

THE CHAIRMAN: I'm sorry. If I used the word "trouble," I didn't mean that.

Gary, you said that you wanted a final word.

MR. DICKSON: Just one comment. It's been a useful discussion, and I'm encouraged to hear the flexibility shown by the commissioner's office and the good practices of a number of public bodies. But I just make this observation. I think that sometimes we're a bit spooked, or we apprehend maybe more concerns than we need worry about. There are no absolute rights in the FOIP Act. Section 2 is rife with balancing and competing interests, and the way we've dealt with this in Alberta is to appoint a commissioner with a proven record of common sense and pragmatism. So I think the sorts of problems and confusion that some anticipate will not materialize.

I guess what I'd just come back to is that government administrative practices aren't transparent to most Albertans. A piece of legislation tends to be. I think this is one of those leadership kinds of things. I'd like physically disabled Albertans to be able to read a statute of the province of Alberta and find there that there's some explicit recognition and respect for the challenges that they encounter trying to exercise a fundamental information right. So I'd urge members of the committee at least to make the recommendation.

There is going to be lots more discussion in the Legislative Assembly. This may be an excellent signal to every one of the 17 government departments and every other provincial government body to review their practices, and maybe by the time this comes into the Legislature, every provincially controlled public body will be able to come forward and say: we have a practice to address it, and this is what it is. Maybe we'd achieve something really useful.

So I still think we can do better than simply an administrative practice. I'd like to see the leadership that's implicit in express recognition.

THE CHAIRMAN: Okay. I think everybody's had a chance to beat on this.

Question 31(a). Are they two distinct questions?

MS BARRETT: Not really.

THE CHAIRMAN: I think the answer to both has to be the same, either yes or no. So the question is: do we want to expand the act to require that the "duty to assist" requirement would be expanded to conversion, translation? I think everybody understands the intent of the discussion. Do we want to expand the scope of the act, or do we want to leave it as is?

MR. DICKSON: I move that we answer 31(a) and 31(b) in the affirmative.

THE CHAIRMAN: Okay. The motion is there. All in favour? Opposed? I vote with the opposition. So that motion is defeated.

MR. DICKSON: I hope this is a habit that you acquire, Mr. Chairman, in the House as well as in the committee.

THE CHAIRMAN: I'll resist the temptation to respond.

MR. STEVENS: Mr. Chairman, when you were making the comment, you may have said that you were going to agree with the opposition, but I think you meant opposition to the motion. My friend Mr. Dickson perhaps had another view. I think it's

important that you clarify for your reputation.

10:13

THE CHAIRMAN: Okay. I'll make it absolutely clear that I voted in opposition to the motion. As chairman I had to break the tie.

Question 33: "should information about loans and loan guarantees be excluded from section 15 (i.e., 'harmful to business interests')?" There is a paper attached, I believe. We've actually discussed this issue several times, as well. This again is a problem of degree, I guess. The attached paper shows a number of government programs: Agriculture Financial Services, Alberta Opportunity Company, Treasury, rural electrification loans, universities and colleges acts loans, Alberta Mortgage and Housing, Métis settlement student loans, credit unions, and Treasury Branch. This could lead to the question: where does it stop?

I think the intent of the inquiry to expand it is understandable, but my personal opinion is that it would get us into as much debate on where you draw the line as we are now. My personal opinion is that we should not expand the existing position.

MR. DICKSON: Mr. Chairman, I haven't had reason to feel this with most of the other background work the committee has been provided with, but I have to tell you that I feel that the background submission we've been given is one that I think is unfair. Somewhere lost in all of this is the fact that if I want to find out as a taxpayer what the interest rate is, if I want to find out some basic information about a loan guarantee that I and all of my constituents are on the hook for, we run smack into section 15.

I'm looking at where it says "FOIP Requests," and it talks about the experience here under the two bullets. Sometimes the information that's being sought is less periodic budgets and financial statements than the prevailing interest rate, the terms of repayment. Those are the kinds of things that I think are core information that Alberta ratepayers, citizens, are entitled to.

To me it's just such a fundamental proposition that gets lost in sort of the minutiae, the detail, of the two-page presentation. It comes down to this. If that third party, if that commercial interest is loath to disclose the terms of repayment of their loan, their interest rate, the maturity date of the loan, the purpose of the loan, then the answer is real simple: find your financing somewhere else; find equity financing rather than debt financing or find it from a commercial lender. To me this presentation is a great defence of the status quo, but it inadequately addresses the bigger public interest in a higher level of accountability.

I've been involved in a number of unsuccessful FOIP requests for things that I think Albertans are entitled to know. If I'd been better prepared, I could have brought samples of the FOIP requests and read them out to members. [interjection] I'll be happy to share with my friend Mike Cardinal some samples so he can see. I think this is the kind of thing that if he looked at it, he'd say: yeah. His constituents should be entitled to get that information. What this doesn't make clear is how little information is currently available because of the section 15 bar.

THE CHAIRMAN: Just for clarification. Perhaps to John. In the first response of your office to the recommendations, am I reading it correctly that you're suggesting no change? It's on page 3 of the first response to the public submissions, I believe.

MR. ENNIS: Mr. Chairman, that's the response dated November 9?

THE CHAIRMAN: I just made a note to myself, and I unfortunately have so much paper here. November 9. It would be on page 3. At least I hope I've got the right reference here.

MR. ENNIS: Just bear with us, Mr. Chairman. We're leafing through the correspondence. We'll be with you in a moment.

THE CHAIRMAN: Unfortunately, when I went through this on the weekend, I couldn't give anybody a call to clarify that, so I just made a note to myself. It just happened to catch my eye as I was going through this.

MR. ENNIS: Mr. Chairman, it's in our early September response to the public submissions. I'm sorry; I was looking through our responses to the government submissions.

MS WILDE: Is that the September 1 letter that you're referring to?

THE CHAIRMAN: Yes, I'm sure it is. The first response to the public submissions.

MR. ENNIS: I think I will turn that one over to Lisa. She's been involved in preparing these responses.

MS WILDE: What we said in this letter was that we thought that generally sections 15 and 16 in the act worked well, that in section 15 the stringent three-part test had to be fulfilled: first, it must be proven that the disclosure of information would reveal trade secrets, commercial, financial, labour relations, scientific, or technical information; second, the information must be supplied in confidence; and third, the information must pass a harms test.

In regard to loans to third parties, what I can tell you is that the commissioner has recently issued an order -- that's order 98-013 -- and in that order he stated that both the amount of interest accrued on a loan to a third party and the information regarding the interest chargeable on the loan could be withheld under section 15. Now, what could not be withheld is the formula for determining an interest rate for the loan and other matters.

Whether the committee wants to provide an exception to section 15 I think would be a policy decision. Whether they want to make that section more open to disclose more loan information, that would definitely be a policy decision. What I can, though, point out is that under section 15(3)(c) it states that "the information [that] relates to a non-arm's length transaction between the Government of Alberta and another party" cannot be withheld under section 15. So there is that exception there.

What I can also tell you is that the commissioner has interpreted that section 15(3)(c) exception, or the term "non-arm's length" in that subsection," as meaning that when the interests of the parties cannot be considered separate for some reason, meaning that one of the parties exercises control, influence, or another type of pressure, moral pressure perhaps, on another party, that information would not be withheld under section 15.

Now, if that is not considered sufficient by the committee, I think that's something the committee would have to address.

THE CHAIRMAN: Okay. That ruling would be the present policy, and the commissioner's office feels comfortable that the act as it exists can handle -- that's such a fine line of degree that in my opinion that is still the best way to handle it, that the commissioner ruled using total discretion.

MS WILDE: Well, the commissioner in this case felt that this information should not be withheld under section 15. Again, in this case he did not feel that it was a non arm's-length transaction,

so that exception didn't apply, but there may be circumstances where there is a non arm's-length transaction.

10:23

THE CHAIRMAN: But if it was defined, it would be very difficult to use discretion and say: here is a case where it obviously didn't meet the existing tests. In other circumstances it might be totally different. If you try to define it, how do you catch that kind of a decision in a clause or two clauses of an act?

MS WILDE: Well, I think the commissioner is always in favour of leaving things a little bit more open in that he is able, then, to exercise his judgment and exercise some flexibility in obtaining a just result.

THE CHAIRMAN: To me -- and I realize it's a totally different issue -- it isn't a lot different than the one we just spoke about on the issue of access in different formats. I mean, there may be circumstances where it is reasonable and is not. There was a case where giving the commissioner the discretion was probably the best thing to do.

MR. DICKSON: Well, a couple of things, Mr. Chairman. Firstly, this is a public policy issue. I have great respect for the commissioner and his rulings. I don't feel in any way bound by what he's done in the past. I'm asking any member of this committee to tell me why they think somebody receiving money from the provincial treasury shouldn't be obligated to disclose the principal of the loan, the maturity date of the loan, the interest charged on that loan, and the repayment terms. I'm not even talking about what security is taken, because that may compromise proprietary information. But can any member of the committee think of a reason why those basic kinds of factors shouldn't be disclosable?

I'd just make the other observation, Mr. Chairman. You know, we've heard a lot of talk around the table about transparency and openness. Why should an Albertan have to root around through commissioner's orders all the time to find out? It's not evident in terms of reading section 15. I would think that everybody around the table, because they've said it at different times in our meetings, would want to make this clear enough so that a businessman or a businessperson coming to the provincial government or AOC or coming to Treasury with his or her hand out knows straight off that there's going to be some accountability, some transparency in terms of those key kinds of elements. Anyway, I'd be very interested in hearing the argument of why those things that I enumerated at the top of my comments shouldn't be publicly available in every case.

MR. CARDINAL: Just a comment on the same issue. I'd like to know a suggestion of why you'd want to do that. I mean, what would the purpose be? I feel that section 15(3)(a), (b), (c), and (d) already cover it sufficiently to deal with that particular issue. Why would you want in detail the personal, individual transactions of a farmer's finances in the Athabasca area? What would the purpose be? In 10 years as an MLA in that particular region -- the majority of the heavy-oil industries and Al-Pac are in my constituency; a lot of the farmers finance through ADC, and a lot of individuals take out mortgages that are pretty well all CMHC guaranteed -- I haven't had one request or one concern that there needs to be a process in place to access my next-door neighbour's information. There's just no interest out there, unless maybe the media wants it or the opposition wants it for other reasons. I cannot see the public out there benefiting by opening it up.

Section 15(3)(a) says that this does not apply if "the third party consents to the disclosure." So if my neighbour down the road says, "Fine; you can access all my information on my business loans," that process is in place now. I don't think we require too many changes in this area.

MS BARRETT: Well, I agree with Gary on this because there are a lot of traps already in the act to provide for protection of individual information. If there's a statutory obligation for an institution to make information public -- and I like the specifics that Gary enumerated -- then they may be cautious or feel accountable for their lending or loan guarantee practices. Keep in mind that almost nobody wants to know their neighbour's financial arrangements, Mike. Probably nobody wants to know my neighbour's financial arrangements. But there are organizations that do borrow, and the terms of that borrowing or of loan guarantees should be made public if it's taxpayers' dollars.

I am arguing that we would have been able to find out the arrangements between the Treasury Branches and West Edmonton Mall a long time ago if this act had allowed for it and if we wouldn't have had to wait until the Provincial Treasurer released the information on August 4 of this year. That's the kind of information that would probably be sought out. Protection of individuals' privacy is a top priority under this act, and everywhere it says: unless you can get their consent. But if the commissioner was faced with a choice of releasing the financial arrangements between AOC and a small business, I'm certain the commissioner would use the harms references that are throughout the act but particularly in sections 15 and 16.

THE CHAIRMAN: Okay.
Gary?

MR. DICKSON: No. That's fine, Mr. Chairman.

MR. ENNIS: Mr. Chairman, it may be helpful for the committee to see that when we're dealing with cases of access to information of individuals, for example farmers or other individuals who have loan accounts with lending institutions, there is a point at which section 16 actually takes up that issue as a privacy right if they are individuals. So section 15 tends to be used more often in cases of legal persons who are not individuals, therefore companies. In our experience section 15 has been very much focused on contracts in general -- arguably loans would be a style of contract -- and it often is the case that within a contract there might be some kind of financial arrangement that is something like a loan or some kind of forwarding of money. I think it would be a difficult thing to isolate information about loans or information for the purposes of loans from some of those contracts. It hasn't been an issue for us in the office. We've had many cases on loans. They've been sorted out one way or another, and we have many cases in front of the office at this point on loans. But there hasn't been a problem with section 15 in terms of dealing with the parties on that issue.

One thing that is probably worth raising is that there is a common wording in section 15(3)(c): "information relates to a non-arm's length transaction between the Government of Alberta and another party." That wording is found in another section of the act, in section 1 in definitions. In that section that same term is defined to have a meaning for the purposes of that section and not for the purposes of section 15. So the commissioner has actually had to find that that terminology in section 15 means something different in 15 than it is defined to mean in section 1.

MR. STEVENS: A couple of comments, Mr. Chairman. I'm intrigued that Gary thinks that this section doesn't work as it

should. There is a test that's established, and part of that test is confidence. As a lawyer Gary should understand and appreciate the importance of confidence and information that is given in confidence. The fact is that information that is given in confidence is cherished, especially when you practise law. This particular test protects the information that among other things has to establish that it's given in confidence. It also establishes a harms test. So this release of this information -- it is not sufficient that it's simply in confidence but that it also will harm. I think that's a very persuasive aspect to the test.

10:33

The other point that I wanted to comment on is Pam's reference to the information relative to the Alberta Treasury Branches that came out over this past summer. As I recall it, a caveat was filed by West Edmonton Mall at land titles that was ultimately disclosed, and to the best of my knowledge, at this point in time the document upon which that caveat was filed was a document in the possession of West Edmonton Mall. It was not, to my knowledge, first of all, a document that in any fashion was in the possession of this government until it was brought to our attention, and I guess the Auditor General will ultimately report as to the status of that document in the Alberta Treasury Branches. But I think it should be made clear that it was a banking transaction we're talking about, where the document in question was made public by the borrower.

MR. DICKSON: You know, there are a number of ways of dealing with this. They go all the way from saying: okay, from this point forward if I take a perspective approach, every agreement and every loan agreement entered into would require the disclosure of these elements. That's one alternative.

On the one in terms of the commissioner's rulings in the past, I just come back and say: I don't think we have to be caught or constrained in some way by what the commissioner has decided in the past. Let's talk about the public policy dimension of it. This is not a contract between two businesspeople. This is a contract between the people of Alberta and ABC investments ltd. I'm astonished when I hear a suggestion that treats the province of Alberta like some commercial lender. We hear a lot of bombastic rhetoric about how this is the government getting out of the business of being in business when the record is something very different. We have an opportunity here to learn from all of this nonsense that has gone on with the West Edmonton Mall and the way Alberta Treasury Branch has allegedly been used and to make a clean break from that and make some recommendations that are going to require a higher level of disclosure when it comes to an indebtedness that exposes Alberta taxpayers. I think we'd want to embrace that opportunity, and this is the time to do it.

THE CHAIRMAN: Denis.

MR. DUCHARME: Thank you, Mr. Chairman. I believe the legislation that is protecting the Alberta taxpayer is in place, and that is that the government is out of the business of being in business and that the legislation is there prohibiting them to lend money to business entities.

THE CHAIRMAN: Well, I think we've gone around and around. There's probably a philosophical difference here as well as anything else. We've heard pros and cons. Ron mentioned the issue of confidences and contracts. I think we've dealt, as well, with the fact that there is a test built into the act. I would have to suggest that even when the original act was designed, this same discussion would have gone on in some form or another, and I think government policy of the day would certainly have played something of a hand in how the present act was written. To that extent, allowing the act as it's written with the tests to be administered by the commissioner was the best way to deal with it, keeping in mind some of the intent of government policy. I don't think that has changed a whole lot in the three years the act has been in place, and I expect that those of us sitting around this table are going to reflect the views of which side of government we sit on, and that probably will have a lot to do with how everybody votes. I'm not sure continuing to beat on it is going to solve much more, but take one more chance, Gary, and then we'll have a vote.

MR. DICKSON: No. Mr. Chairman, I think I've exhausted the patience of the committee and my opportunities. I'm going to suggest we put it to a vote and dispose of the issue. My motion is going to be that

> we recommend an amendment to section 15 which would require the disclosure of the principal amount of a loan, the maturity date, the interest rate, and the repayment terms.

THE CHAIRMAN: Okay. The motion is accepted. All in favour? Opposed? I will have to vote in opposition to the motion. It's defeated.

Question 34. "Should a recommendation be made to simplify section 16, Exception to Disclosure Harmful to Personal Privacy?" The commissioner's office had made a recommendation which has since been withdrawn. I'm not sure if it's specifically relating to 34, but there are several issues which I think we'll have to lump together in the end dealing with simplification. It ties in the question of -- I don't remember the precise wording -- whether a request made to a public body needs to go through the formality of a FOIP request to make it available. If we could tie those into one discussion, I think that's going to end up taking a little bit of time. We have less than 20 minutes left, and that might not be the appropriate amount of time to deal with it this morning.

MR. DICKSON: I'm sorry, Mr. Chairman, apples and oranges, with respect. Sections 16 and 32 have really nothing to do with each other. I think trying to roll those two discussions together is going to make this enormously more difficult to resolve. Section 16 presents a number of interpretation issues, understanding issues. We've got our hands full just trying to deal with that, and I'd try and discourage the committee from then trying to roll in 32. These are discrete and important issues.

THE CHAIRMAN: Okay. Well, I'll let you make your case on what the issues are, then, that should be dealt with here.

MR. DICKSON: Well, if 16 is the next up, let's talk about 16. I'm just trying to say that section 32 is a whole different kind of thing we have to wrestle with. I'm just anxious we not have more on the table than logically, rationally makes sense to be together on the table at the same time.

MS BARRETT: It seems to me that the following two questions are very specific questions related to subsections of section 16, subsection (3) and then subsection 4(g). Why don't we deal with those first?

MR. STEVENS: The way I heard you, Mr. Chairman, was not dealing with section 32 but rather section 38. There was a clarification from the IPC's office in a letter dated November 17 -- and that deals with disclosure of personal information under section 38 -- where they provided two pages of comments.

That's what I heard you saying, but perhaps I'm in error.

10:43

MR. DICKSON: Well, I may have misheard you, Mr. Chairman.

THE CHAIRMAN: I was dealing with section 16.

MR. STEVENS: Section 38, as I understand it, at least that recommendation and discussion, deals with the issue of disclosure of certain personal information without the necessity of a FOIP application. I think that does in some respect tie into the discussion on section 16.

THE CHAIRMAN: It does. My reference was actually to 16(4), where it talks about when personal information is not an unreason able invasion of a third party's personal privacy. At least in my own mind I find them very related. In terms of clarification, I think the discussion has to take into consideration both of them almost at the same time. But if you disagree, I'm quite prepared to debate both of them.

MR. ENNIS: Mr. Chairman, the commonality of these two sections is that in section 16 the mechanics of the harms test are in there for determining an unreasonable invasion of personal privacy. The proposal that's been suggested on section 38 imports a harms test to section 38 that a public body would have to apply. A public body would then look to the wisdom of section 16 for the standards in that test, so the two of them are very closely bound up. In practice they are even now without that kind of amendment to section 38. People tend, when they're doing disclosures, to look back on the access rules to see whether there would be an unreasonable invasion of a person's privacy in releasing information. So the proposal that's before the committee sort of formalizes that kind of a response to a question about someone's personal privacy.

THE CHAIRMAN: As I've been spending time going through this, I caught myself not being able to separate those two sections of the act in terms of interpretation and administration. The recommendation of the IPC office that just came to us . . .

MR. ENNIS: The November 17 letter?

THE CHAIRMAN: The November 17 letter.

. . . in a sense sums that up, and I think it also captures a lot of the essence of that request. I don't think the request was to avoid the responsibility of making sure that the information was not legitimately available. It just avoided the necessity of going through a bunch of paperwork to get that. But I think the cautions that were in that letter were well founded.

MR. ENNIS: Mr. Chairman, the proposal around section 38 wouldn't be limited to the kinds of disclosures that are allowed under section 16(4) but would also include a challenge to the presumption of invasion of privacy that's in 16(2). Section 16(4), with a few exceptions, tends to be fairly straightforward counterexceptions to the privacy protection rules. The notion of a routine disclosure of some personal information that isn't an unreasonable invasion of someone's privacy really goes at the tests that are in 16(2).

THE CHAIRMAN: Diana, did I see your hand up?

MS SALONEN: I think the question you're referring to is 104. That's on the next page.

THE CHAIRMAN: I'm sorry?

MS SALONEN: It's 104. We list that one on the next page. It talks about:

> Should 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?

THE CHAIRMAN: In my mind I had lumped numbers 34 and 100 into that in terms of what is likely going to be a bit of philosophical discussion. But if the committee members disagree, I'm certainly willing to accept debate on both of them independently.

MR. DICKSON: Mr. Chairman, I'm sorry. I obviously didn't hear you correctly in your initial comment on this thing. Let's proceed to deal with the two in the fashion you proposed.

THE CHAIRMAN: They're different questions but I think philosophically deal with very, very similar issues.

MR. STEVENS: Time is winding down, but with the time remaining I would appreciate hearing from the commissioner's office in more detail on the withdrawal of the recommendation when it first came forward. I say that because when I read it initially, I was persuaded, I think, that it made some sense to make changes to it, and I don't know that I've had the benefit of your thinking on why that's no longer what the office recommends.

MS WILDE: All right. I will do my best to explain why we withdrew that recommendation. The recommendation initially stated that in 16(3) the reference to sub (2) should be eliminated. What that would mean is that when the head of a public body was looking at whether they must refuse to disclose personal information, they would take a look at the presumptions under sub (2), and that would basically be the end of the matter. After that it would be up to the applicant to bring forth other circumstances that might rebut a presumption. What a presumption generally means in law is that once you establish it, that is the end of the matter. The head of a public body can't then look at other factors, because if it's established that it's an unreasonable invasion or if presumption is established, like I said before, that's the end of the matter.

However, after looking at the structure of this section, we came to realize that a public body may often want more flexibility in that they may not just want to look at subsection (2) and that, in fact, the reference to a presumption should not be interpreted so narrowly to reflect the legal definition of "presumption" and that

in fact perhaps a public body should be forced to look at those other factors in sub (3). So we decided then to withdraw our recommendation so that a public body, when determining whether there's an unreasonable invasion, would have to look at all the factors and not just be limited and be able to look at sub (2) and say: oh, you know, there's a presumption; we don't have to do anything more.

That's basically our rationale. I hope that was clear.

MS BARRETT: It was to me.

MS WILDE: Okay. Good.

MR. STEVENS: Thank you.

THE CHAIRMAN: I think what we've effectively done is talked ourselves into not enough time to even pick up the next issue. I'm looking at question 35. Actually, the next two or three certainly are not going to be done in less than 10 minutes. Unless anybody has any objections, I'm going to suggest that we adjourn and deal with the next one next Monday morning.

HON. MEMBERS: Agreed.

THE CHAIRMAN: I'm going to declare the meeting adjourned then.

[The committee adjourned at 10:50 a.m.]