

Title: **Monday, December 14, 1998** Freedom of Information Review committee

Date: 98/12/14

9:03 a.m.

[Mr. Friedel in the chair]

THE CHAIRMAN: Well, I guess we have enough people here to start the meeting, so we might as well call it to order.

The first item on the agenda is Approval of Agenda. I'm not sure if this is specifically what you wanted, Gary, but the reference in 4 is to the issue that you wanted to raise, so whether it's got the right title or not, that's what the intent is.

MR. DICKSON: Okay.

THE CHAIRMAN: Do we have a mover for the agenda? Moved by Ron. All in favour?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Approved.

The minutes of the December 7 committee meeting. If we could have someone move the adoption. Now, I understand there are a couple of errors.

MR. STEVENS: There are a couple of changes I would like to make on page 95. I always look to see if my name is spelled correctly. That's why I picked these particular ones up.

THE CHAIRMAN: You finally found one where it wasn't, eh?

MR. STEVENS: In the paragraph that relates to 104 there are two possessives relating to my name where the apostrophe is before rather than after the final "s." In 107 the result is noted as "agreed," whereas in fact my recollection is that there was an agreement that no amendments be made.

THE CHAIRMAN: You're correct. As a matter of fact the recommendations show it with no action. I also apologize, because Diane did give me these minutes to read, but I think I did it in about a minute and missed that myself.

MR. STEVENS: So with those changes I would move adoption of the minutes.

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

The next item, then, is a discussion on an issue that Gary Dickson wanted to raise.

MR. DICKSON: Thanks, Mr. Chairman. It struck me that while this committee is still in its deliberation about how, if at all, the FOIP Act should be changed -- we had two reports that have been distributed to members, and I want to make some observations. To, I think, review, we had talked before about what sorts of information should be in commissioner's reports and so on, and also in the report from the Department of Labour we didn't have the current year's report at that time, so there were a couple of things from it that I think bear on what we're dealing with. I'm talking about the two reports: one from the IPC and then one from the government department.

What's really clear -- and others may have noticed the same thing when they went through the two reports -- is that the IPC report is 34 pages long. It gives you detailed statistical information

in terms of the stats, the number of cases opened by type, cases opened by public body, number of complaints, advice/recommendations. They talk about the breakdown between complaints and fee waivers and the time taken to process cases. So if you contrast that report with the report done by the Department of Labour, the annual report '97-98, it's much shorter. It's about a third the length. It's 10 pages long. It identifies some aggregate number of requests, but they're divided between general and personal information. But what you find is there's no indication in the government report in terms of which departments are most responsive and which are least responsive.

I think the concern with this, Mr. Chairman, is that frankly you simply don't know where the problems are in your system. If the purpose of having an annual report is to be able to identify areas where the act is working really well and areas where you have problems, then frankly the report we get from the government isn't very helpful.

The other two things I wanted to raise. We talked a lot about section 15, and we also talked about the business of MLA records. What was interesting to me -- and this is a statistic I don't think we had when we were dealing with these two issues. Firstly, it's interesting that section 15 was used 54 different times as a basis to withhold information. I suggest that in light of that, we may want to revisit our treatment of section 15 and see whether there isn't more information that can be released in spite of that and rewrite it. The other thing is that when we talked about MLA records, I remember a comment to the effect that this wasn't necessarily a big issue. But, you know, there were 23 cases where Albertans were trying to access information around MLA records, and it seemed to me that that warrants perhaps a rethink.

The other two points. You've got information about \$2,426 in fees being waived but no indication if that's a personal request or a general request or how many applications are involved, no indication of how many times an application was made for fee waivers. If you don't have that information in the government report, how on earth do you know whether discretionary opportunities are being used reasonably or unreasonably? Then the last thing, as we look at the report, is just that there's no disclosure of the number of cases abandoned after a fee estimate is provided and nothing paid by the applicant.

Some of these things we've talked around, and to be fair, Mr. Chairman, some of them we've made decisions on, but it seems to me we've got some fresh evidence. I'm going to suggest that before we conclude our work, we may want to revisit both the issue of MLA records, section 15, and then the adequacy of the reporting from the Department of Labour.

THE CHAIRMAN: Okay. I just want to make an observation before I open this for discussion. I believe essentially that this is revisiting two discussions that we did have through the meetings. First of all, I'm going to refer you to the list of no action recommendations. It's called Issues Considered and Resulting in Recommendations for No Change.

MR. DICKSON: This is in the draft report, Mr. Chairman?

THE CHAIRMAN: In the draft report.

Unfortunately we didn't number them. They're in bullets. The reason for that is these were being typed at about 1 o'clock on Friday afternoon, and I just didn't have time to edit them. Otherwise they would never have gotten to your offices. So that's an oversight.

The very bottom bullet of page 2 talks about considering whether "recommendations should be made regarding the inclusion of more detailed statistical information," et cetera, et cetera, "in the Annual

Report.” The recommendation at that time was no action.

You raised the question, Gary, and perhaps fairly: is the purpose of the reports to discuss how the act works, or is it to report on the activity related to the administration of the act? Now, with the IPC office I could see possibly part of the purpose being to discuss the act itself, but even on that I would have some doubts. I think the purpose of a report is to deal with the activity that that organization had relating to the administration of the act, and likewise with the Department of Labour.

Now, your comments lead into: should there be more reports of that kind of activity? I think that’s a fair question. We also discussed MLA records, and the decision from that one was to recommend that the act remain unchanged and that those records be dealt with through the Ethics Commissioner’s office. So they were in fact discussed, but if there is something that you feel is significantly missing from the discussions, then we can discuss it briefly, but I hope we don’t get into revisiting each issue.

Ron, you had a comment?

9:13

MR. STEVENS: Having regard to your comments, Mr. Chairman, I don’t have any.

THE CHAIRMAN: Anyone else?

I’m not trying to make light of it, Gary.

MR. DICKSON: No, no. Mr. Chairman, to be fair, I guess all I can ask is whether there is interest, other than from this member of the committee, in terms of reviewing the decisions that we made with respect to section 15, with respect to MLA records, with respect to at least some of the elements that we would prescribe to be included in the annual report from the Department of Labour. If there is none, then that’s the end of this discussion. If there is some on any of those issues, then it seemed to me we might have a brief discussion in terms of revisiting those previous decisions made.

THE CHAIRMAN: I would think there would be nothing wrong with suggesting that the comments are on the record -- they’ve been made a couple of times -- and that both the department and the IPC office looked at them. If they feel that it would enhance the report -- I mean, any suggestions are always good. I’m very reluctant, though, to put in a report that specific changes should be made, because I don’t think we do that in the requirements for reports of any other either legislative office or departmental reports. The reporting procedures are fairly general, and the content itself is usually a matter of policy, which changes quite regularly, I guess. I can appreciate that the policy might be a little bit loose. You’d prefer it a little bit more restrictive in terms of dictating what should happen, but I think we’ve kind of gone through that discussion and didn’t agree. I don’t see that this is going to get a lot of support, so we’ll move on then.

MR. DICKSON: Well, thank you for the opportunity, Mr. Chairman.

THE CHAIRMAN: You haven’t won too many, Gary, and I appreciate your frustration. I hope we aren’t looking at these things and taking them absolutely lightly, but I think it’s probably a philosophical disagreement on how some of the things should happen.

Before we specifically deal with the issues on the recommendations, there are four items that were either inadvertently or, I think in one or two cases, deliberately set up for a revisit because of some concern with the result or where they were looking for a little bit more information.

To accommodate timing, I have taken the liberty of drafting suggested recommendations so that they chronologically fit into the list of recommendations. Simply because they’re there doesn’t mean that’s a preconceived notion that it is going to be approved, but if we hadn’t, then the numbering system would have changed completely once more. The other thing is that I’m really hoping we might be able to go through these recommendations today and get the preliminary report out. Otherwise you folks have the pleasure of our company next Monday. If that might not be enough of an incentive to move along, I don’t know.

The recommendations themselves are in two separate formats. One of the ones is an affirmative recommendation that should reflect the discussion of the questions that were raised earlier. Then the second set is two and a half pages of recommendations for no change. I think in the report we need to show that issues were discussed and that they were dealt with, even though the recommendation was for no change. That would indicate to people who made suggestions or who reported that these things weren’t simply ignored.

In dealing with them, other than the four that are still Summary of Issues questions, I’m going to suggest that we don’t go through these item by item, because it could turn into just a debate rehash of what we’ve discussed earlier. I’m going to ask, once we get past those four, that we raise those recommendations that you have a problem with. Hopefully the discussion will be that they improperly reflect the decision as you thought it was, not to go back and revisit the issue. So we’ll see how that works out.

MR. DICKSON: Just a process question, Mr. Chairman, and this is probably as good a time as any to raise it. When I look through the committee recommendations, both of the two documents you described, it suggests that this committee has gone a very different road than in fact I understand it did. The committee agrees; the committee agrees; the committee disagrees. If I were looking at this, as Albertans hopefully will be as we finish our report, this gives no sense of the issues that we found problematic or the issues we wrestled with. All you have is just the product.

There were a number of these issues where there were differences of opinion, in some cases major differences of opinion. None of that is highlighted anywhere here. I’m mindful of Standing Order 65, but it seems to me that we found ways, for example in the health information steering committee, to ensure that when people looked at the report, they were able to understand the issues that for the committee were more contentious, that sort of thing.

To prepare the report virtually as if there were unanimity and we were all sort of lockstep in agreement on each of these issues I think does a disservice to the kind of rigorous discussion we’ve had. I think, frankly, that the report is invested with more value and more importance if to the reader, when they look at this thing, there’s some sense of the things that the committee quickly agreed on and were unanimous on -- I think that’s important to state -- and there were things that were some major issues.

So I raise that now, before we get into the minutiae of the report. I’d like some thought in terms of how we’re going to handle those cases where there was unanimity and highlight that and those issues where there were some disagreements.

THE CHAIRMAN: The points are absolutely correct, Gary. I apologize for not bringing them up. As we were doing this, we also drafted a brief covering front couple of pages, and part of what’s already written in there indicates that the recommendations were varied, that in some cases there were opposing views and the recommendations may have been a considered compromise. I think I’d even made the observation that the views were not necessarily

unanimous among the committee members and, in fact, often were not unanimous. I should have brought that along.

You don't by any chance happen to have a copy of that?

MS KESSLER: No. I didn't bring it with me. Sorry.

THE CHAIRMAN: Okay.

That would go out with the recommendations. We wrestled with what is going to go out in the preliminary report. In the final report this should be the executive summary section, the two sections you see in front of you. That would be followed by a more detailed explanation of some of the background, how the issues were dealt with. I have a hunch, though, that at that point this thing is going to be a hundred-page document, and considering the number of people that are going to get this first report -- and if you totally disagree, feel free to say so. My views are that the people that are going to be looking at the preliminary report are essentially those that have made submissions for changes. They will be reasonably conversant with either the act or the parts that they're concerned with and will have a sense of some of that background.

The final report would be one for the more general readership, people who may never have read the act, you know, who are just picking one up or one way or another are looking at it and need more background. I'm a little bit concerned about putting up the full thing, first of all, because that's going to take some time to do, to actually draft and prepare all the background. All those background documents that the committee received will probably be the essence of some of that background, but we can't possibly use all of it, because I have a stack in my file which is about three inches thick. I'm hoping that our report isn't going to be like that.

So it's going to take a fair amount of drastic editing. Those things should be reflected probably more in the final report, but there will be a covering letter and a couple of pages of a covering explanation, which the committee will see before it goes out. I just wish we'd had time to have it complete for this meeting.

Go ahead.

9:23

MR. DICKSON: Well, with respect, a two-page cover letter saying, "On some issues we agreed, and on some issues we didn't," I don't think does it, Mr. Chairman. If we were unanimous on an issue -- and there were a number where I remember we said "Agreed" and we moved on -- I think it's important to signal that. You know, I'm not talking about recapturing all the discussion. We've got minutes that record those things where there were disagreements.

Yes, it takes some time, but we've invested a lot of time and energy in this thing. A lot of the people around the table have invested a lot of time and energy. Why wouldn't we want that report to strongly reflect what we've done? So I've got a really big problem, Mr. Chairman, if your suggestion is that we're going to put out an interim report in this fashion with just a two-page cover note saying that on some issues we didn't agree. To me that's not fair either to the process we've been part of or to those hopefully large numbers of Albertans who are going to read this.

MR. STEVENS: I think that in general terms Gary has a good point. Having said that, I think that the process that you've outlined addresses it. As far as I was concerned, what we were coming here to do today is to ensure that the points which appear on this draft document accurately reflect what we have done, either by way of making recommendation or by way of considering and recommending no change. It's certainly appropriate to indicate in general terms that there was agreement in some cases and significant disagreement in others. But I think it's important to capture the

points of difference in the narrative that goes along with the recommendations so that it is recorded for people who are interested and recorded for future times when this act is reconsidered.

But it is in that fuller document that I see the description of the debate that occurred here and the policy points that were discussed rather than in this what I would consider to be a summary document, which says, "These are the recommendations," without an explanation as to why. You can read this document. It doesn't tell you the logic that went into the decision, but that will come. That will come in the document that will be prepared over the course of the next month or so.

From my perspective as a member of the health committee, that you referred to at the outset, that was in essence the approach that we adopted there. However, we didn't have an interim report; we had one report which happened to have the recommendations, which were described at the same time. The process here is different.

THE CHAIRMAN: What's actually going to happen from here is this report is intended to go out to those people who made submissions as well as to anyone else who asks for one. It's not going to be a general mailer. These were the terms that we originally set out. It's not in any way closed or private, I mean, as these meetings are. I still feel that what we need to do is get something out that people can read fairly quickly. Those people will have been conversant with the issues. They will see what the result is. If they're in any way interested in more detail, *Hansard* is also available. That would show them the discussion, if necessary.

Again, this report is for the purpose of getting out the preliminary results. Those people will be quite conversant with the background on their issue. They will say: "Oh, here's a recommendation. Does it miss the point of the recommendation and suggestion I made, or does it not?" Those people will know.

I certainly appreciate your point, Gary, of explaining how we got to that. In my opinion, there just simply isn't time; otherwise, we're going to be here at the end of January still preparing that document. If we can get this thing out with some very basic background -- and I appreciate it will be very basic -- this will give folks probably till about the middle or near the end of January to respond. Even though we said we might allow two weeks, we can't expect the Christmas holidays to be considered a reasonable time. I think we have to assume that virtually anything after next week until the first working day in January, even though some people do work, wouldn't be considered a reasonable, available time for discussion. So if we don't do that, we're going to be quite late.

I'm going to suggest that we send this out, and then during that same time period, while we're getting secondary feedback, we -- and I use the word "we" loosely, because I'm looking across the table to the people who will actually be doing all the work -- can build in the essence of the discussion. It can't be anything close to verbatim but some essence of the discussion, which will form part of the greater report.

MR. DICKSON: Not to belabour this thing, Mr. Chairman, but I'm more concerned now than when I raised the thing initially.

You know, some Albertans looking at this may have felt we were captive of information processors and application requesters if they looked at the huge number of responses we've received. We've been getting responses from people as the thing has gone along. To me I don't see the compelling need to go back to those people whom we've been so closely aligned with, all of those public bodies and so on, and give them an interim report so they have another two or three weeks to look at it.

I'm more concerned about Albertans who haven't been part of this process because we didn't have public hearings, because of the

limited kind of advertising we did. I mean, those decisions were made, but I'm saying that as a consequence of that, there hasn't been the sort of public attention paid to this that I would have hoped to see. So I don't feel the same compelling need you, Mr. Chairman, and maybe other members of the committee do to sort of go back to the municipalities and the universities to give them yet another crack at it. I'd sooner see us spend the time to make sure we put together a really good report, and if that report comes out in the middle of January rather than in the middle of December, fine.

I just think that once you do this sort of summary thing, here's what happens. If I'm one of those stakeholders and I don't like one of the recommendations of the committee and I get this report and I just see a bunch of things that the committee decided, I'm going to think it's fair game to have another crack at the two or three things I didn't like. If I get the report and it says, "After discussion this was not unanimous," that signals to me that this thing was really tossed around, that this was really pursued, and it probably suggests to me that there's little point in my trying as an aggrieved stakeholder to put my oar in the water one more time and try and further it.

I think it strengthens the report to make it more encompassing. So I'm frankly very opposed to the process you're putting forward, Mr. Chairman.

THE CHAIRMAN: I'm going to make the observation, though, that this was the commitment we did make when we sent the discussion papers out. This was the process that we had selected, whether it was perfect or not, that we would go back out to the people who made presentations. To that point and to the first part of your discussion, I agree that there's something missing at this stage, but I'm going to disagree with the second point that you made, that we should turn this list of recommendations into, essentially, another discussion paper and go out for a full-blown review.

That's what it would amount to if we say that generally we're going to throw this thing out and everybody has a crack at it. Anyone who has an interest can make comments on it, but I have no intention of turning this into another discussion paper and saying: here we're in the middle ground; let's have at it again. So on that last point you made, I'm going to disagree with you, Gary.

9:33

MR. DUCHARME: Mr. Chairman, you just covered the issue that I was going to mention.

Mr. Dickson, the point I'd like to make is that you did come up with the suggestion that different groups that did have submissions would want to see how the discussion took place. I guess I'd reference back to the fact that this committee has had *Hansard* recording everything that's been said, so anyone who definitely does want to clarify the reasoning can go back and request copies of the *Hansard* in terms of being able to see what type of debate actually took place. In that, I find that this committee was quite different because everything was recorded, in comparison to what took place in the committee on health information.

THE CHAIRMAN: I would even go so far as to say that if someone legitimately felt that they needed some background, we would make copies of *Hansard* available on request. And I say: within reason. I'm assuming that not everybody is going to ask for one. I think, if anything, this has been about as open a process -- now, I'm saying that realizing that when I say open, I mean that everything here has been on the record. Some may disagree with the amount of discussion or how things unfolded, but it would be pretty hard to argue that there is any information or any documents or any presentation that isn't absolutely available to anybody that wants it.

I don't think prolonging the process is going to accomplish that much. I'm going to recommend that we proceed as we had planned.

MR. DICKSON: Well, Mr. Chairman, let me try and put it in a fashion we can vote on so we can dispose of the thing. I'm going to move that

any interim report from the committee reflect those issues on which there was unanimity and those issues on which there was not.

THE CHAIRMAN: Okay. The motion is made. All in favour? Opposed? The motion is defeated.

It would probably be fairly easy to describe it, because I think there were about five items that everybody agreed on.

MR. DICKSON: Actually, Mr. Chairman, there were over 30.

THE CHAIRMAN: Were there?

MR. DICKSON: Yes.

THE CHAIRMAN: I'm being a little bit facetious.

Okay. If we can move on to the Summary of Issues document. The first is item 7. The numbering has changed from the last time you saw this question. It was originally question 14(a). Item 7 now refers to the current list of recommendations.

You also have been distributed a document called Table of Concordance, which really means cross-reference. Hopefully, as we're going through it, because the numbering process changed and evolved as we were going through it, we now are in a sequential numbering system that very closely follows the chronological order of the act. So we've now renumbered them to meet the recommendations.

The first one is now recommendation 7. If you look in the documents -- this is one of the ones that I had said was inserted a bit tongue in cheek -- recommendation 7 is a bit lengthy, and it presumes some additional changes. My personal feeling was that "created" or "formally created" really didn't make a lot of difference. With "created or owned" -- in other words, if a public body, I guess we should call it, owned another organization -- that still says what it's supposed to do. I am not convinced that we need to change anything there.

Deleting the words "under the authority of" possibly has some validity. I'm thinking of a case where a local board may permit an organization to be set up. In other words, it may not be under its absolute jurisdiction, but it would have permitted it to be there. An example would be a hospital auxiliary. An RHA would have perhaps some connection with that, but the hospital auxiliary would simply be a charitable organization raising funds for equipment or services in a hospital. So the words "under the authority of" could be deceptive there. I throw that out for discussion.

Anyway, before I get away from it, you have an addendum page. I'm suggesting that number 7 should read that

section 1(i)(xvi) should be amended for the purpose of clarity, by removing the words "under the authority of."

So it would be a simple change. Any concerns, comments? Do we agree?

MR. DICKSON: I'm sorry; I'm just trying to find the last page. I've got the committee recommendation -- that's page 4 -- and at the top is clause 7. That's what you've been talking about. I'm looking at the attachment, which is number 14(a). Correct?

THE CHAIRMAN: There is also a discussion thing now.

MR. DICKSON: Right. So is that what you're referring to, or is

there a third document?

THE CHAIRMAN: There is a document which looks like those questions that we went through called Summary of Issues.

MR. DICKSON: Right.

THE CHAIRMAN: Okay. The very top one is number 7. It used to be called 14(a).

MR. DICKSON: Okay.

THE CHAIRMAN: That's why the attached reference also speaks to number 14(a). I apologize for the confusion, but trust me; we were doing this at about noon Friday, and there was just no time to retype some of these things.

I guess the question here is: is there some concern with removing the words "under the authority of"? Further, is there the necessity to use the words "formally created" rather than "created or owned"?

MR. DICKSON: Mr. Chairman, I'm sorry; I need some help. Somebody's gone to a lot of work preparing a list of local government boards and agencies. Can we have some examples of what would have been included before but will not be under your new definition? I'm interested in a concrete way in terms of knowing which kinds of boards in the city of Calgary would no longer be subject to FOIP.

THE CHAIRMAN: My opinion is that there would be absolutely no change. This would just clarify the wording that, say, a charitable organization, simply because it was connected with a local body, might be expected to be in but is not intended to be in.

MS SALONEN: That's right. I think the objective that we went to was to simplify it, that it was confusing to interpret, and we couldn't find anything that would be captured by the term "under the authority of" that wasn't captured by the other term "appointed." So by removing it, that was an attempt to simplify it; it doesn't make any change to the list.

MR. DICKSON: I'm certainly not opposed to it.

MRS. TARCHUK: Just hearing that, I'll go ahead with the motion then. I move that

section 1(i)(xvi) should be amended for the purpose of clarity by removing the words "under the authority of."

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

The next one is an issue that we'd dealt with, and then just as we had approved the motion, there was really some question as to -- this is recommendation 30, the old question 36(a); it's the second item on the Summary of Issues -- this issue about the withholding of the name for references and evaluative opinion, the 360-degree review process. It's recommendation 30, and you'll notice that on the page it's flagged because it was unique. It really wasn't approved.

9:43

At the last meeting we discussed the fact that we had, probably through my misguidance on it, inserted the words "course evaluation." In fact, the provisions that were being requested would be for an evaluation of an individual. It could also be course evaluation, I guess. But we removed the words "course evaluation." Also in that discussion there was a suggestion, if we were going to make the change, that this process be available to other public

bodies, not necessarily exclusive to postsecondary institutions. So the reference to postsecondary institutions is removed here to go along with the motion that was passed.

Having done that, we said: well, is there some justification or is there a need or has there been a request from other public bodies to be included in this? We asked the department staff to bring us back a little bit of information on that. There is a covering backgrounder, referred to as question 36(a), which has that in about the centre of it. I'm assuming that one of the people here might have been the author of that and might want to spend a minute or two just discussing it.

Diana, they're pointing at you.

MS SALONEN: It certainly is happening in places other than the postsecondary area. The personnel administration office in government has a process in place that they have recommended to ministries. It's a guidance; it's not a mandate or a policy. It's starting to be used in a variety of places throughout the government. The PAO's policy, though, recommends that the idea is for feedback to the individual for a learning and development experience. In order to benefit from that, they need to get the feedback so that they know how to improve their performance.

Often it's recommended that the individuals steer the process themselves and send out the questionnaires and receive back the responses themselves and then take it to their supervisor and say, "This is what I found," so that there isn't any secrecy of who is saying what. But that is not universally the way it's implemented. Each ministry is free to implement it the way they want, likewise in the educational sector and the schools. We understand that certainly principals, when they do their evaluation of teachers, receive input from a variety of sources, including parents or peers. There are various ways of dealing with that and how the information is disclosed back to the individual.

We went back to the postsecondaries to see what the actual practice was there. We saw that that was not universally consistent either. Some postsecondary institutions give the complete reference back to the individual. Others make a summary and provide that back to the individual so that they can see what was said without any identifiers on it. In many cases they were saying that that was very important, that they needed to protect the confidentiality of the people in order to make it valid. But we didn't find any that totally didn't disclose anything, that the individual did get comments of what was said about them.

THE CHAIRMAN: I should remind everybody that the intent of this is that the content of the recommendations or evaluative opinions would be available to the individual they're about. It's just the identifiers that would not be included. It's also discretionary. As in some cases presently, all of the information, including the identifier, is made available. That's how the agency could do it.

MR. WORK: Mr. Chairman?

THE CHAIRMAN: Yes, Frank.

MR. WORK: I guess the thing that caught my eye from the perspective of the commissioner's office -- again, I know the committee didn't want to dictate wording to the ultimate drafters, but I think a critical feature of what's written on this page is that it be part of what's termed here a proper evaluation process, which might be better put as a formal evaluation process. I assume by that that the intent is that if the material is submitted when it's actually going to be put to a known use, like the employee or whoever is being evaluated knows that these are the rules of the game and that this information is going to be collected about them and used to evaluate them in a very formal and clearly understood way, that's what's protected. But, for example, with poison-pen letters or occasional

comments that you might get on an informal basis or just on a nasty basis, this would not apply to that kind of thing. That's obviously the case from the wording, but I wanted to confirm that with you.

THE CHAIRMAN: I would have no objection. As a matter of fact, exactly the same thing occurred to me in an earlier document. The word "proper" was used. I had at one time edited this and changed it to "formal," and then I thought: well, that's not what the motion was. So I left it there, but I would not only agree with you; I think we should do it.

MR. STEVENS: I just wanted to comment that the last time this was before us, I wanted additional information with respect to why we should expand it beyond postsecondary, and I am satisfied with the information that has been provided to us.

THE CHAIRMAN: Are we agreed that this could go in suggesting that the word "formal" would replace the word "proper"? Consensus?

HON. MEMBERS: Agreed.

MR. DICKSON: So just relating it to the three options on the background paper, 1, 2, and 3 . . .

THE CHAIRMAN: It's 2. In fact, in there the word "formal" is used as well.

MR. DICKSON: That's what I was looking at, and that's why I've been confused by the discussion.

THE CHAIRMAN: Well, in an earlier document, the one we had at the last meeting, the word "proper" was in there, and I think "formal" is a better word.

Okay. We're agreed on that.

MR. STEVENS: Do we need a motion on this, Mr. Chairman, or have we already agreed?

THE CHAIRMAN: By consensus we've been doing a lot of it.

Okay. The next one is recommendation 69. It was brought up as a result of a discussion at the last meeting and doesn't have a formal reference number. It dealt with offences and penalties. Section 86(1)(e) is actually fairly narrow on what can be an offence. It talks only about destroying a record for the purpose of it aiding the request for the record. As a result of the discussion -- I'm not sure where I got all the words from -- I'm suggesting we would add, in addition to "destroy," also alter, falsify, conceal any record or direct another person to do so, which would expand the offences. There are some examples in other provinces where they get really carried away. I'm not sure how much further we want to go, if there's any end to the spectrum, but I think this is a reasonable expansion.

HON. MEMBERS: Agreed.

THE CHAIRMAN: And 111. This was again a question raised at the last meeting. We got into a bit of a discussion as to what happens when services are contracted by a public body to companies who may not be resident in either Alberta or Canada. From the discussions I thought it would be a good idea to find out what was actually happening. I spoke to George Samoil, the chief information officer, to see what was going on, and apparently there is a fair amount of discussion on this topic going on right now. The problem is that they haven't totally identified all the problems.

Right now the responsibility for choosing to deal with a company that may not be Alberta based or subject directly to the Alberta information and privacy rules rests with the department, and they have made strong recommendations about care and responsibility. It's not as easy as saying you can't do it, because there are some companies who wouldn't exist if you had to deal only with an Alberta company. This wasn't one of the examples, but it occurred to me that in the work Alberta Health is doing with IBM, for example, there are probably only two or three companies in North America that are capable of providing that kind of service.

9:53

I'm not sure that we're in a position where we can make a recommendation with a yea or nay other than right now to make it very clear that a department has the responsibility to ensure in its contractual arrangements what those problems are. Also, if there are recommendations going to the ministries, at least, wherever possible, use a Canadian company, all things being equal, because we know what the Canadian information and privacy rules are and we have a little better feeling for that. But right now I don't think we're ready to jump in and make a recommendation because we don't know the problem, let alone the solution.

I apologize for that long backgrounder, but this was the information you asked for. I did ask George for a letter, which is included here.

MR. DICKSON: Mr. Chairman, I had expressed some concern about this area last time, and I very much appreciate you following up.

THE CHAIRMAN: It was your question that raised this.

MR. DICKSON: Right, and I appreciate the letter we've got. It's clear that this has been identified as a concern. It seems to me it would be probably very helpful to Mr. Samoil, and I propose to move that the committee recommend that the government look at some codification of principles in terms of safeguarding data which is transmitted outside the province of Alberta.

We're not writing the statute again, Mr. Chairman. All we're doing is saying that it's clear that the chief information officer is alive to the issue we talked about last time. They're talking about safeguards to do it by way of contractually. I think it's better to do it on sort of a pangovernment basis, all 17 departments, and just say to them that we think the government should look at some legislated test so it's consistent across 17 departments and it's not simply left to some departments to go down this road and others not to. That seems to me where you are if you simply leave it to each department and their contracting. So my motion is simply to make a recommendation that

government look at incorporating some positive requirement in public bodies to protect the safety of information and confidentiality of the information once it's moved outside the province.

THE CHAIRMAN: Okay. Your last statement was on policy. Originally you said codify, and then in your last comment you were on policy. I would certainly agree with you if at this stage we could set up a policy. My concern at this point would be that I don't think we're ready to put it in legislation. But I would certainly accept the recommendation if it allowed some flexibility and moved towards some kind of a general across-the-board policy, remembering, however, that this would also include, if we're making this recommendation, a similar offshoot to other public bodies, which we may or may not be ready to jump into.

MR. DICKSON: I'm not suggesting the test. I'm not suggesting what the threshold is. But it seems to me that if in December of '98

all of this work has been done by the information council already, before the time we get around to rewriting the act, my suggestion is to let those departments indicate what should be incorporated into the FOIP Act in terms of principles. All they can be is principles. Simply all we would do is flag that it's an issue of some importance to us as a committee and that we think it warrants not just on an ad hoc contract basis but on a pangovernment policy basis -- and the best way of ensuring it's consistent and it's important is to put it in the act. I'm not sure whether I'm being responsive to the concern you raised.

THE CHAIRMAN: I just want to make it clear, Gary, if you're talking about principles being something that the government would set up, being at this stage designed by administrative policy regardless of at what level it's endorsed -- hopefully it would be endorsed at the level of cabinet and the whole works -- but at this point not requiring that it be in the legislation. If that's what you're talking about, I would not only agree with you; I'd support it. If you're asking to put it in the legislation, that is essentially what I was arguing against at the beginning.

MR. DICKSON: Okay. But understand that I'm suggesting we go to Mr. Samoil and say: tell us or tell the Minister of Justice or the Minister of Labour how we would draft, what kind of a section would complement what you're doing and put it in legislation.

THE CHAIRMAN: The response essentially was that they're not quite ready to do that and couldn't do it within the next six months or so.

This letter is in response to a discussion I had with George, a fairly lengthy one. There were all kinds of pros and cons. It's not that they're trying to be evasive; they are definitely trying to address the problem. They just don't know how at this point, particularly not in such a way that it could be strictly put into a piece of legislation. They're not only willing, but they're way ahead of us in terms of identifying policy.

MR. DICKSON: My final comment is that if they're not ready, then presumably the government is not going to put it in the legislation. All we're doing as a committee is simply saying that it's a matter of some importance and we recommend that it be provided for in the act. If they're not ready now, that's one of those recommendations that presumably sits there, and then when the government is ready, they will bring it in. We're talking about signaling the order of importance we attach to it.

THE CHAIRMAN: One last comment is that I'm not about to suggest a recommendation which we know couldn't possibly be accomplished in the time frame that's available, and that's as a result of the discussion I had with George. So I'm going to suggest that we do make a recommendation that a set of principles and guidelines be established but at this point in administrative policy.

MR. STEVENS: Do we need a motion?

THE CHAIRMAN: I think we would.

MR. DICKSON: I think I've got a motion on the floor we should vote on first, Mr. Chairman.

THE CHAIRMAN: Oh, I'm sorry. This whole debate was clarifying whether you were talking about in the legislation or by policy. Yours, then, is by legislation?

MR. DICKSON: Yes, that's the recommendation.

THE CHAIRMAN: Okay. All in favour? Opposed? It's defeated.

Probably to get this on the books properly, we should then have the alternate motion, that the same thing occur but by policy.

10:03

MR. STEVENS: I'd like to move that
the committee urge the government to establish policy guidelines to identify procedures to enhance existing data outsourcing protection, including the issue of transborder data flow.

THE CHAIRMAN: What is in there after the word "including"?

MR. STEVENS: The issue of transborder data flow.

THE CHAIRMAN: Transporter?

MR. STEVENS: Transborder.

THE CHAIRMAN: Oh, transborder.

MR. STEVENS: I'm going to have to take elocution. It's not a word that gets into *Hansard* every day.

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

Okay. Now we're on the document Committee Recommendations. As I said before, I'm going to ask -- I don't know how successful we'll be here -- that instead of going through these item by item and risking the possibility of a rehash, we raise those in the order they appear here. I'm not going to read 1, 2, 3, and 4. I'm going to let you jump ahead to the next one in line that you have some concerns with.

I'm also going to ask that we don't go through and redebate the issue, as we had done it before, unless what's written here doesn't reflect the decision. If we get into that kind of a debate, I'm trying not to be dictatorial, but at the same time I'm going to give limited licence as to how far we expand this.

So with that, we'll open it up on the recommendations.

Gee, that means everybody likes everything, and we can just adjourn. Hardly.

MR. STEVENS: Well, I assume we're doing a page flip, effectively.

THE CHAIRMAN: Okay. Let's do it page by page, page 3 being the first page.

MR. DICKSON: Page 3 appears at the bottom. Is that correct? Okay.

On item 5, did we not at least recognize that the federal legislation is much weaker than the provincial legislation? That's not clear in paragraph 5, this notion that "access and privacy requirements of the Federal legislation should continue to apply." Can't we put in a normative thing, that we think Albertans are entitled to the higher level of protection that's afforded by the Alberta legislation? Surely what we want to do is move there as quickly as possible. This seems a lot lamer than our discussion about Alberta being a little more assertive about doing this. That's my recollection.

THE CHAIRMAN: Well, the discussion centred around whether or not we could do it. We felt fairly certain that there was at this point a conflict, that likely the feds would claim -- and there's reason to believe that until something was changed -- their legislation was paramount.

If you look at the wording of it, we were suggesting that the

Minister of Justice not only negotiate our FOIP requirements into the contracts but that they “communicate with the Federal government to seek clarification as to when the contract can be opened for this purpose”; in other words, not waiting until the end of the contract but, if possible, opening it up whenever they might agree. This was not really one that we felt we could dictate, because the way it’s worded right now, we likely would be told to go fly a kite. Other than that, this probably is lame because it’s the best we could do.

Somebody over here. Ron?

MR. STEVENS: I think the wording in paragraph 5 reflects the decision, which is really what this document is. I think in earlier discussion it was noted that the rationale regarding the decisions is not reflected in the decision and that that may well be part of the narrative that accompanies it. So what Gary has raised, from my point of view, is a rationale, an embellishment, if you will, and I’d be happy to see that as part of our discussion section on that point.

THE CHAIRMAN: With the expanded recommendations later on. Okay.

Page 4.

MR. STEVENS: Paragraph 13 is one that you had a note on, Mr. Chairman. I would like to propose some alternate wording that I think more accurately reflects the intent of the committee, and it relates to the last sentence. The change that I’m proposing would appear on the last line after the words “complied with.” I will read this out as if it’s completely new, although I am using some of the words that currently exist there. The phrase that I would use to replace “would exempt that profession from being subject to the Act” would be: would avoid reconsideration whether that profession should be subject to the act.

THE CHAIRMAN: That reflects the concern I had, because the way it was worded there assumed that the consideration was built into the act somehow or another. If we weren’t going to include self-governing professions, there was no way we could go back and say that they’re all of a sudden going to be there, because there wasn’t any provision. All we can do is avoid reconsideration of it being there, so I think this would be a better way. Again, it was one of those where I didn’t want to change the words because we already had a document that was kind of explicit.

MR. DICKSON: Just on recommendation 14 and not wanting to get into the narrative, but this is a matter of some importance. We spent a lot of time looking at it. We’ve had a lot of input. Had the decision been made that we were going to look at private-sector regulation in the next three-year review, or were we going to recommend to government that it look at it at some other point? Because remember that we had discussion about whether reviewing this in three years’ time is going to be timely enough to be able to participate in the debate around -- what is it? -- Bill C-54.

The World Intellectual Property Organization came to my attention the other day. There’s a whole bunch of activity going on internationally that has to do with protection of databases. We’ve never talked about the WIPO and there being a draft treaty on database protection. It’s going to have a big impact, in terms of government information, on confidential information, and I don’t know where we go with this. I’m raising it because it was brought to my attention as something that’s going to have a big impact in terms of Alberta legislative competence. It’s another one of those international/national initiatives that’s going to have a big impact in Alberta, and whether we simply mention it or encourage somebody in government to look at it, I don’t know.

I haven’t had time to go back to *Hansard* to look whether we specifically said that the privacy issue ought not to be dealt with until the three-year review or whether we in fact suggest to the province that they should get after this sooner.

THE CHAIRMAN: There may have been some suggestions in the discussion, but the motion specifically said “approximately three years.” The very last recommendation deals with the review process, and we used the same words “approximately three years and thereafter at least every 5 years.”

The problem with being more specific is that we know the legislation is tabled, but we don’t know that it’s for sure going to pass, and we don’t know whether the challenge in I believe it’s Saskatchewan would stand. So it’s very difficult to be more specific as to when this review would go on. We say “approximately three years.” That’s the best information we have as to when it would affect the province. I think the message gets through that that is a date that is of concern. To be much more specific, unless you go into a lot of whereases and wherefores, is going to be difficult.

10:13

MR. DICKSON: My only concern. We clearly talk about a three-year review after local government sectors have had that experience with the act, so there’s no urgency with that. I think there’s a great deal of urgency with this. I remember we had the discussion, and at least my recollection, unless somebody has got their *Hansard* handy, is that we thought the two didn’t have to be linked; in other words, there could be a review. A government could be looking at C-54 and the reaction to that independent of the regular three-year review of the act. I’m trying to break those two apart. As I say, I don’t have *Hansard* for that day in front of me.

THE CHAIRMAN: I can see adding some words like “or earlier if circumstances should make it necessary,” showing that there’s maybe some flexibility required.

MR. DUCHARME: But, Mr. Chairman, if my recollection is correct, I believe you had at that time forwarded a letter to the various departments informing them of this Bill C-54 and that, you know, they’d be aware of it.

THE CHAIRMAN: I don’t remember the exact correspondence that went, but I know we made several phone calls and I think we sent some information reflecting the discussion that took place here. But we could expand it by saying something like “or earlier if circumstances should make it necessary.” That would cover the intent that it’s the legislation and the date which might eventually be there, and whether it successfully stays, that would determine when the urgency would apply.

MR. DICKSON: Yeah. The point is breaking it free so it can operate independently of the regular three-year review.

MR. STEVENS: So we are adding those words as you suggested, Mr. Chairman?

THE CHAIRMAN: Sure, if there’s no problem with it. I’m going to suggest the words “or earlier if circumstances should make that necessary.” It’s fairly general, but I think the intent is there.

MR. WORK: I think the addition is a good one. The commissioner’s office had a concern with that provision, that government should not go to sleep for three years on this issue and just say: well, we’ll deal with it then. It’s hard to tell when Bill C-54 will come into force,

but as early as possible would probably be 2002, I think, for the private sector. I think before then an informed decision should be made by the government of Alberta whether to challenge C-54, whether it's good legislation and to go along with it or whether to implement their own equivalent regime in Alberta. Certainly we would hate to see them put that decision off till the last minute, so the wording you've suggested is appropriate.

THE CHAIRMAN: The other part of your comment about government not sleeping for three years I presume has reference to the fact that you've spent a lot of time in the Legislative Assembly in your earlier life and recall how exciting the debate is.

MR. WORK: I never found that to be a sleepy place, Mr. Chairman.

THE CHAIRMAN: I would hate to put words in your mouth.
Okay. Page 5.

MR. DICKSON: Just one item. When we talk about local representatives -- where is it? I guess it's item 19 -- I was a bit surprised, and Frank may have some perspective on this. At the AUMA conference in Calgary there was a lawyer there talking about a concern to individual councillors, and that was their records. The representative from the Sharek law firm in Edmonton said that on the basis of Ontario decisions, council members, aldermen, that sort of thing, because they're not employed by the municipal corporation, just take the view that those records aren't subject to FOIP at all, that they're independent operators, that this wasn't a big issue. It was a surprise to me because we never looked at it from that perspective. We spent a lot of time talking about how to protect councillors' records and notes and that sort of thing, and I was a bit surprised when this lawyer suggested that this was a nonissue and that was the way Ontario dealt with it.

So I raise it because it's some new information that we didn't have when we talked about it. I don't know whether Frank has some different advice for us in terms of the need for this. I'm taking him by surprise, because I didn't mention it to him before.

MR. WORK: No. Mr. Chairman, I recall the statement that Mr. Dickson is referring to. In fact, I have heard that view expressed, by one person anyway, from the city of Edmonton. I don't know if it's the city of Edmonton's policy or their interpretation of the act, but the notion that -- alderpersons?

MS PAUL: Aldermen.

MR. WORK: Aldermen. Thanks.

Aldermen are not employees and therefore not subject to the act; I'm not sure about that.

One thing to remember is that Ontario has a separate freedom of information act for municipalities. It's not part of the provincial act, as it is here. I'm afraid that beyond that I don't know what to say about it. I find the proposition that aldermen are not employees of the municipal corporation a difficult concept. I don't know if government might have some perspective on that.

MS MOLZAN: The only information I might add, Mr. Chairman, is that the act does hinge on the whole concept of custody or control. It doesn't really matter whether you are employed or not. So I have some concerns. I'm not completely aware of what position they're taking. As Mr. Work pointed out, the Ontario legislation is a separate act and is different. It does exclude a number of bodies that we've included. Theirs is a bit of a different regime.

Certainly when you look at the concepts of custody or control, it

could possibly capture records of a public body that are with an entity that is not a public body, such as -- I'm trying to think of an example off the top of my head -- perhaps a Swiss bank account, let's say. It may still say that the records in that bank, if they are under the control of a public body of a department, would still be subject to FOIP. Now, that public body would have to somehow get them back and provide access to them. So even though the entity, the third party, that's holding them is not employed and is not even a public body, it really depends upon the issue of custody or control.

So I think the wording in this recommendation 19 really does reflect this concept that if they're doing work that relates to the municipality or in the function of their job, it's potentially in the custody or control of that local authority. I think this clarifies that it should still be subject to the act, and I think it would still be. I'm not sure if employment or ownership are specific concepts that were avoided in this act, because there's a whole different legal way of dealing with those, and there are different laws in the courts and so forth that deal with those. I wouldn't think that employment should make a difference.

10:23

MR. DICKSON: I'm satisfied it's not clean. I simply raised it because it was an interesting argument I had not heard before.

We might as well go with the recommendation we've got here, and between now and then if somebody in the Justice department looks specifically at what's going on in Ontario, a decision can be made in terms of whether it requires statutory revision or not.

THE CHAIRMAN: Okay.

The next item, going on to page 6, if we can.

MR. STEVENS: There's a word that we should delete from the opening sentence under the heading Obtaining Access to Records. The word "to" after "obtaining" should be deleted.

THE CHAIRMAN: Okay. That probably happened in the editing process. I agree with you there.

MR. DICKSON: Mr. Chairman, just back to the bottom of page 5, item 22. I don't think the word "emergent" is intended. Emergent means something developing. I thought what we talked about were urgent situations. The whole point for leaving it by way of regulation was the argument that the Legislature is too cumbersome and too slow. Emergent: to me that's not urgent; that says something different.

THE CHAIRMAN: Well, I'm going to disagree with you on the intent. In my opinion we were talking about urgent situations, that these were evolving because of the process of getting a piece of legislation onto the Order Paper and into the Legislature.

MR. DICKSON: Emergent means a developing issue. It has nothing to do with urgency. It just means, you know, something starting to percolate away. That would be no reason to do it. I'm just saying that I understood the discussion was in terms of time and so on. I just think: let's take the word out.

THE CHAIRMAN: Others?

MR. STEVENS: It seems to me it deals with situations where you have to deal with it by regulation rather than legislation because of the timing. I don't know that it necessarily means it's an urgent matter either. So I sort of agree that it could be both. From my perspective what we were saying is leave it in because of

circumstances that arise where it's appropriate and the only vehicle available at the time will be regulation. So that was the context in which I saw it. I didn't see it as a matter of urgency necessarily.

THE CHAIRMAN: And that's the way I felt, that these were evolving issues. If you look at the wording of it, we're really saying that the present situation should be allowed to continue. The second part is a suggestion as to how it might be handled. There's nothing that requires the department at any time to pass legislation. Our suggestion based on the discussion was that there should be some kind of an understanding as to how that might be used, that the regulation wasn't intended to be the pre-eminent option, that this allowed some flexibility for the departments to use regulation when it was necessary because circumstances changed. I know the point that you're making is to narrow it.

MR. DICKSON: No.

THE CHAIRMAN: But I don't feel that was the intent of the actual decision or the response that was made.

MR. DICKSON: I think, with respect, people often use "emergent" thinking it means emergency, thinking it means something time sensitive. In fact, it means something different. It's just the use of the word. I have no problem with Ron Stevens' comment that it's in those cases where time dictates, that you can't wait for the Legislature, whether it's urgent or not, but there's some time sensitivity to it. I agree completely. That's what I thought we agreed to. When it says, "reserved for emergent situations," that means any new, developing trend; that would be an emergent situation. That's not what we talked about.

THE CHAIRMAN: I thought it did, but okay.

MR. STEVENS: Well, I don't have my dictionary here. Personally I'd be happy if we used the words "time sensitive" rather than "emergent." That reflects my understanding of what we talked about.

THE CHAIRMAN: Are we agreed to that change? Okay.
Back to page 6. Page 7? None. Page 8?

MR. DICKSON: Just a second. Before we leave page 7, on number 30 we just had a discussion a little bit ago that said that we were taking option 2 of the three options; right?

THE CHAIRMAN: We didn't say we were taking option 2. You asked which one of those it was, and I suggested it probably most closely reflected 2, but it wasn't intended to be a verbatim inclusion of it.

MR. DICKSON: Okay. I just want to be clear that if I'm an employee and I'm subject to this thing, there is a discretionary withholding of the name of a source and identifying content of the reference, but all the rest of the material should be available to the employee. That's my understanding of what we'd agreed and what we discussed. Presumably, "identifying content" qualifies both "individual references" and "evaluative opinion." I just want to be really clear on that, Mr. Chairman.

THE CHAIRMAN: That was definitely the intent.

MR. DICKSON: Okay; that's fine.

THE CHAIRMAN: We even discussed and it was made clear that the content of the evaluation should be available to the individual not only just for the sake of knowing it but for the possibility of correcting it if they could make an argument that it was not factually right.

Okay. So we move on to page 8 then?

I don't want to get too presumptuous, the way this thing is moving here, but Diane just asked me a few minutes ago -- we have lunch coming in at about a quarter to 12, but if this moves along as it is now, we may not be here for lunch. Is there a sense that someone has something further down that you might have some real problems with that's going to drag us past 12? If we cancel lunch, we should do it now. The alternative is that if we don't get done, you're going to do it without lunch.

MR. STEVENS: I vote for canceling lunch.

MRS. TARCHUK: That's a good incentive.

THE CHAIRMAN: Okay. That doesn't mean we'll quit before 1 if we've still got something to do.

MR. DICKSON: When your blood sugar runs down, you get more ornery; don't you?

THE CHAIRMAN: I'll resist the opportunity to comment on that.
Nothing on 8?

That having been said, if we are going to run through, does anybody want, say, a five-minute washroom or smoke break or anything like that?

HON. MEMBERS: No.

THE CHAIRMAN: Okay. Page 9?

MR. STEVENS: You finally got us on a roll, and you're trying to break it.

THE CHAIRMAN: I just can't believe it yet. I see it but . . .
Page 10.

MR. STEVENS: On 10 I think there's a point, if I may, Mr. Chairman. Recommendation 58 deals with the "disclosure of class lists that are at least 9 years old." It's not that that wasn't a recommendation, but it may be worth while reconsidering that recommendation in light of recommendation 51, which was -- well, it's there. The fact is that it may be that the committee would see 51 as being more comprehensive and, in any event, including the recommendation that is currently 58 so that all we need is 51 because it would include the disclosure of class lists.

10:33

THE CHAIRMAN: I agree with you. I had a note here that it was redundant. What happened: 58 was approved before we got on to 51. You're right; 51 easily includes the intent of it.

MR. DICKSON: Recommendation 56. I haven't looked at *Hansard* from last time. We spent a lot of time talking about postsecondary educational institutions and use of alumni data for fund-raising. Can somebody point me to where in *Hansard* we agreed to 56?

THE CHAIRMAN: *Hansard* is here. We had a lot of discussion on two issues. I should have brought my notes from the last meeting, when we came back and corrected the intent of several discussions.

Now, the alumni one was a question dealt with all on its own.

MR. DICKSON: You see, I can't remember whether I just spoke and voted against it or whether the whole committee had some discomfort with it. I mean, I've got lots of problems with 56 as it's worded. I guess I'm looking for some direction in terms of whether that was just another lonely dissent voice or whether there was some broader sense of concern.

MR. STEVENS: Well, now that you've told us that there are 30 points of total agreement, I'm confused on that one myself.

THE CHAIRMAN: There's no doubt in my mind that this one was approved. There was some question as to whether it should just be freewheeling, and that's why the italics were there that suggested that as soon as it was practical to do it, a consent form should be used, but we weren't going to pull the rug out from underneath the existing practices. Since there's a possibility that some alumni could be fairly old by now, going back and getting some of these documents would be difficult. So it was almost like a grandfathering clause. But I'm certain we did this.

MR. DUCHARME: That's the way I recall it, Mr. Chairman.

MS KESSLER: I believe that recommendation actually should have said, "Use and disclose existing alumni data." That was the intention.

MR. DICKSON: Because failing that, what possible incentive would there be for the institution to put in place a different process if you can just carry on? The easiest way is to do what they always have done in the past. Sue's comments sort of accord with what I thought we had discussed and maybe decided.

THE CHAIRMAN: Okay. We can insert the word "existing."

MR. STEVENS: Agreed.

THE CHAIRMAN: We sort of jumped away from it, but I'm assuming that there's concurrence with Ron's suggestion that 58 be struck. It's going to be interesting, because the next time you see this document, the numbers after that are going to change by one notch then.

Okay. That's it for page 10. Page 11.

MR. DICKSON: Can you just slow down for a moment here, Mr. Chairman? You're a faster reader than I am.

THE CHAIRMAN: I didn't read it; I memorized it.

MRS. TARCHUK: What were you doing all weekend?

MR. DICKSON: Well, I made all kinds of Xs with the things I disagree with. I have to go through the next questioning of the things we'd already determined in spite of some dissenting voices.

MR. STEVENS: Well, you've got a lot less to remember if you only remember what you agree with.

MR. DICKSON: My New Year's resolution, Mr. Chairman, for '99 is to try and be more persuasive as a legislator.

THE CHAIRMAN: As long as you can do it in 20 words or less, we agree.

MR. DICKSON: A major concern was recommendation 67. It's just the way it's worded. There's no need for "clarification of the conditions under which an adjudicator might be appointed." That's clear. It's when the commissioner is in a conflict. That's never been an issue. "To clarify who may request that the Minister begin an adjudication process": that's not an issue either. It's the commissioner who decides -- at least that's been the experience in the one case that went to an adjudicator -- the commissioner, maybe with a little help from an applicant, who decides when he's in a conflict situation. The problem is: what happens then? So that whole first clause has been a pet issue of mine, but I don't remember anybody else having any problems with it.

The issue is to clarify the reporting mechanism. You remember we talked about the length of time. There's no time limit. Once the commissioner reports to the government that he's in a conflict situation, it then gets thrown into this no-man's-land awaiting the Chief Justice of the Court of Queen's Bench to appoint a judge who will then at some point agree to hear it. That's where we have no time limits and the thing really gets out of whack. So that's what I thought the problem was, not the front part in terms of determining when there's a conflict and what happens when there's a conflict. It's trying to tighten up that process. Other people may have a different recollection of it. It's not so much determining when there's a conflict. It's how we can pin that down so all the rules don't get thrown out, the rules in terms of how long it takes to have the thing done.

I can remember one case where in fact we were looking at what seemed to me like three months from the time the request went forward to a review until the hearing was scheduled, and then it took a long time after that until somebody could access a copy of what Justice Cairns ruled. It seems to me that as long as we say that we're going to allow our commissioner to wear two hats, we've got to make sure we've got a process and so on to make sure there are some limits around it. There aren't any now. That, with respect, is I think the problem in 67, not the other things that have been identified here.

THE CHAIRMAN: Okay. When we had the discussion on this, it probably ranged a bit, but we didn't get into a lot of specifics because this relates to several sections of the act, and the consensus was that it should be looked at to clarify the processes. But in terms of timing, we also discussed the fact that it would be very difficult to put a precise time in because you didn't know when a judge could be seconded or whether there was court time available or any of those things. The discussion was around that we couldn't nail that down in the act because we didn't think it was ours to control. But the intent of this is to look at that whole area of those sections to see if clarification could reasonably be built into it. That's the way I understood it.

MR. STEVENS: Could I just say this? I've got the minutes. I don't have *Hansard* with me, but the question was:

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

Well, there's a word I can't read.

. . . an applicant requests the Minister to appoint an adjudicator and the powers of the adjudicator?

We agreed to that according to the minutes.

THE CHAIRMAN: The other thing I'm going to suggest for now and for later meetings that we have. If we've definitely missed the

point of anything at any time, it can always be revisited. But as we evolve -- documents are more cleanly written and everything -- we move also from the last document. We don't always go back and say: well, at one time we said something different. Hopefully when we leave here today, we'll have some consensus on the wording that's in here. If there's need to change it before the thing turns into a final report, we can do it, but the cross-references and the nit-picking on words -- and I'm not suggesting this is what's happening, but just to make it clear, we move from one document to the next.

10:43

MR. DICKSON: Mr. Chairman, I don't understand your comment at all. All I'm saying is: why wouldn't we want to make sure that whoever is looking at this knows exactly what the concern is? I mean, somebody else maybe had concerns around these other things. If so, that's fine. I can remember we had the discussion about getting a retired judge. Why wouldn't we be able to get former Chief Justice Laycraft or somebody? You know, he does work on a private basis. I think that would be fine, and we'd have some control over the timing and so on. To me that's sort of the issue. I wouldn't feel bound at all by going to the last document. If in fact it's inaccurate and it doesn't specifically identify what the issue was, we're just confusing whoever is going to get this and have to respond to it.

THE CHAIRMAN: I apologize, Gary, because I didn't mean your reference. I just took the opportunity to make the general statement. I realize that what you're talking about in this issue isn't one of maybe the semantics of a word here or there. You do have a concern.

MR. WORK: Mr. Chairman, sections 71 to 76, as far as specifying the situations where the commissioner might be in conflict, I think are as complete as they could be. It would be unfortunate if perhaps someone spends a lot of time as a result of item 67 trying to come up with new ways in which the commissioner might find himself or herself in a conflict, because I just don't think there are that many. This has been amended once in the past, and I think we've got it. What could happen is that if someone feels obliged to come up with new and exciting potential conflict situations, the commissioner might find himself hamstrung, and that would be unfortunate. I think that part is good.

My recollection is the same as Mr. Dickson's. He was concerned about what happens after the commissioner says: I've got a problem and I can't deal with this. I didn't take a note of that, but that was my recollection, that the concern really was: okay; the commissioner said that he's got a problem; he's kicked it out of his office; now what happens? So I guess what I'm asking for is if the committee is able to clarify that. I don't think the commissioner needs too much more clarification on where potential conflicts may lie for him. I think we got that.

THE CHAIRMAN: Donna.

MS MOLZAN: Yes. Mr. Chairman, I was just going to comment that I think one of the problems, going on past experience as well as reviewing the sections of the act, is that it's not so much to add in new areas of conflict, I believe, but it isn't really clear as to who can ask for an adjudicator. When you look at sections 73(1) and 74(1), it really talks about "a person who makes a request to the Commissioner." It doesn't in any of the sections seem to empower the commissioner himself to say: oh, I'm in conflict; I have a concern here. Section 74 just says that you put in a written request

to the minister. It doesn't really say who's supposed to do it, but the previous sections talk about the applicant rather than the commissioner. So I think there's some need for clarification.

That's sort of the impression I got when we had the discussion previously, to clarify those types of situations rather than maybe adding new things. In a lot of ways, as you've already indicated, there's some difficulty in going past that and getting into specific time frames and so forth. I believe that was agreed, that it wouldn't be pursued. I just did want to point out that who can ask for the adjudicator is an area that actually is unclear in the act, and it does need some tuning there as to whether it's just the applicant or the commissioner or whatever. That was just supposed to be part of the clarification, not a total redo of the section.

THE CHAIRMAN: Sue.

MS KESSLER: I was just going to mention what Donna just said.

THE CHAIRMAN: Okay. What we're talking about here is a general recommendation to look at clarification here. It's possible that some of these things identified might be quite well done as they are now. The question, the way I hear it, is that there is some concern that the process of adjudication and what follows after that might need some clarification too. With respect to some of the restrictions we talked about, those certainly would be considered when that was being reviewed, but I would see nothing wrong with including words like "clarify the powers of the adjudicator" and the "adjudication process." Something like that. Would that help? Would that touch it?

MR. DICKSON: Sure. I guess I'm just: if it ain't broke, don't fix it. I mean, I hear the concern. Some people think we have to focus on who can ask for the adjudication. I guess my only comment there is that in a practical sense that was no problem the one time we've been there. From an applicant perspective that worked just fine. I'd hate to see somebody come back with some recommendations in terms of clarifying what the departments of Justice and Labour think may be a bit unclear and not address that part that the applicant is really frustrated with.

THE CHAIRMAN: Should we add "and the adjudication process"? This is just a review anyway.

MR. DICKSON: Okay. Can we leave out, then, the first condition, further to Frank Work's comment? It says:

for clarification of the conditions under which an adjudicator might be appointed when the Information and Privacy Commissioner is unable to hear a case.

So we start with: "to clarify who may request."

THE CHAIRMAN: We just heard a comment that there might be some reason for clarification.

MR. DICKSON: No. No. With respect, what I heard from the Department of Justice was the second clause, which is: "to clarify who may request that the Minister begin an adjudication process."

MS SALONEN: Well, it may be clear to some people, but we've certainly heard input from the public who have argued that they want an adjudicator even if the commissioner doesn't think he's in conflict, from the people in the public who want an adjudicator because they don't like the commissioner's order. It is not clear to them that that's not the case under which you ask for an adjudicator. So the wording in the act is confusing to some people in the public.

THE CHAIRMAN: We haven't got any of that in any of the submissions. I don't remember seeing that raised in any of the submissions that we've received, in any of the 130-odd submissions.

MR. STEVENS: I guess my observation would be that there is a *Hansard* we can go back to to see what the debate was and the question voted on. I quite frankly didn't come here prepared to go into questions on that detail and certainly not to re-debate this particular point. Quite frankly, I don't recall the specifics of the debate.

THE CHAIRMAN: Actually, it was a fairly general debate because we were covering several questions and several sections of the act. That's the problem.

MR. WORK: Mr. Chairman, procedurally with a recommendation like this, "should be amended to provide for clarification of," et cetera, that puts a bit of a burden on the drafters. How does that work? What's the check on seeing that they've clarified that which should have been clarified and not a whole bunch of other stuff?

THE CHAIRMAN: Use it as a licence to change?

MR. WORK: Yeah. I'm not casting aspersions on the drafters. They're normally a pretty conservative group of people, having done that for a while. But just so that they get it right -- a couple of the things that Ms Salonen mentioned now do concern me. I don't want to belabour the point, but if the drafters came back with something by way of clarification whereby disgruntled members of the public could take the commissioner to an adjudicator, I mean, that would be absurd.

10:53

THE CHAIRMAN: I think it was the opposite of what you said.

MR. WORK: But that's what I'm saying. I mean, I don't want to see clarification go to that kind of extreme, because that's the kind of policy that this committee should be instructing.

THE CHAIRMAN: This deals only with the issue of when there's a conflict or a perceived conflict.

MR. WORK: Yeah.

MS KESSLER: I just wanted to say that I don't believe these are intended to be drafting instructions. I believe the preparation of drafting instructions would be the responsibility of the Ministry of Labour. So I presume that we would have some homework to do, to work with the parties and our legal counsel to come up with drafting instructions to ensure that the intent of this committee was enacted in proper legislation.

THE CHAIRMAN: I think also that we have to be careful that we're talking about the intent of the existing legislation. I don't know if it says that in so many words, that this is not a licence to go out and redraft a whole bunch of new conditions.

MR. STEVENS: I was just going to observe that we have the *Hansard*, we have the material that was prepared for this committee in association with this, we have the recommendations to the extent they were relative to this particular point, all of which, I assume, are available when you ultimately get around to doing your instructions regarding drafting. Then between now and the final report we have the opportunity to provide narrative that can explain in greater detail

the recommendation and what is meant by this.

MS MOLZAN: I was just going to add the comment, Mr. Chairman, that I think the clarification intention, from recalling the committee's discussion previously and I think in terms of even sort of streamlining the process, was just to try and meet some of the issues that Mr. Dickson brought up with regard to some of the timing. Even though who was asking for the review may not on the exterior have seemed to cause delays, it does cause delays when no one really knows who they're supposed to write to or allowed to ask or whatever. So some of that was meant to sort of build in some of the concerns that Mr. Dickson had for reducing the time it takes to get someone. If there's a clear process as to who asked for it, who can then respond, when they start to respond, and so forth -- there have been some gymnastics in the past, I guess, in trying to determine what the proper route is to even get things moving. I think that was the intention of clarifying it rather than to in fact try and streamline the process and get it moving faster.

THE CHAIRMAN: Okay. I'm going to make a suggestion here. If we look at the way it's written, in the first line it talks about "provide for clarification of the conditions." I think the discussion here reflects that we're not talking about inventing new conditions but that as they exist now, the wording might be somewhat improved to make it clearer. Why don't we insert the word "existing" conditions so there's no doubt that we're not changing the rules? Would that help?

MR. WORK: That would help, Mr. Chairman.

THE CHAIRMAN: I don't think there was any intent in this or previous discussion that there be a whole bunch of new rules or even one new rule. That wasn't the recommendation. Then we will still add the words at the end: and the adjudication process. That isn't existing; there might be a little bit of licence to touch on that. Would that be acceptable? Okay.

Anything else on page 11?

MR. DICKSON: I'm anticipating page 12.

THE CHAIRMAN: Oh, okay. We're on page 12 now.

MR. DICKSON: Item 72. It's the last sentence:

If the applicant is dissatisfied with the public body's decision, the decision would be reviewable by the Information and Privacy Commissioner.

Remember that we talked about doing it on a de novo basis?

The heads of public bodies will rarely be motivated to waive fees, and the concern was that if you're going to make it a precondition to apply to the head of the public body, at least when you went in front of the commissioner, you would have the broad jurisdiction, not the narrow jurisdiction. I think there was general agreement that that's what we wanted as a committee, that when it came in front of the commissioner, he wouldn't be bound simply, as he is normally, under the section 62 provision.

So it would be adding some additional words that would ensure that the Information and Privacy Commissioner would have a de novo jurisdiction or be able to review all of the evidence, not just a thin band of it.

Once again, I'm sorry I don't have the *Hansard* here. I'm relying on my memory, Mr. Chairman.

THE CHAIRMAN: The way this reads now and my recollection of the discussion is that the IPC office agreed that that was practice right now, that they were basically telling applicants that they should

talk to the head of the public body first, but we made it very clear that that decision was reviewable by the IPC office. Is there something in the wording here that doesn't say that?

MR. DICKSON: Well, when we say "reviewable," there are different standards. Donna Molzan maybe should be the one giving us the legal opinion. There are different sorts of tests. Generally, the commissioner has to review a decision made by a public body if it's a discretionary decision and determine whether the discretion was exercised lawfully and properly, not substitute his opinion for the decision of the public body if he just thinks it's an unfair one. Generally, I thought there was a level of comfort in that broader sort of mandate. If he's got that, fine. But why wouldn't we say it and make it really clear? You know, the lawyers who still have malpractice insurance may be the ones that should be offering some advice on the point.

MR. WORK: Mr. Chairman, maybe I can help with that a bit. We're assuming in this that no one is going to touch section 68(3)(c), which is presently in the act, which gives the commissioner the power to "confirm or reduce a fee or order a refund."

Now, I know what Mr. Dickson is talking about. In the act there are some cases where, when the commissioner reviews something a government department has done, he's limited. He can only say, "Yes, you did a good job," or "No; please reconsider it." He's somewhat limited in the extent that he can review certain decisions of the public body. I think the concern was that with fees the commissioner be able to fully review what was done with the fee.

What I'm saying is that I think there's nothing in 70(2) that indicates that the existing section 68(3)(c) will be changed, and if 68(3)(c) isn't changed, our view is that the commissioner has full what you might call *de novo* powers to review the entire decision on fees, not just to confirm the decision. So I don't have a concern about this issue.

THE CHAIRMAN: There is nothing in the recommendations that I'm aware of that changes 68.

MS MOLZAN: Mr. Chairman, I did do a note on that previously for the committee. I think Mr. Work's interpretation is correct. That's basically what I had concluded in my research, that were the act written differently in terms of the section 68 powers, I think Mr. Dickson's concern would be accurate, because generally on an appeal a judge would have different powers than they do when they hear something fresh, I guess, or firsthand.

But in this case 87(4) gives the commissioner the power to "excuse the applicant from paying all or part of a fee." Section 68(3)(c) says: "confirm or reduce a fee or order a refund." So they basically work out to being the same remedies that are available to him. The only difference might be the type of evidence, yet I don't think that would even be different, because the commissioner has already established some 14 basic steps and two overriding principles that almost every public body follows, I think, completely in terms of when they consider it themselves and then also when it goes to him. So the powers would be the same. I don't think there should be an issue.

MR. DICKSON: I appreciate the legal advice. Since fees are the one thing that people are probably more concerned with in terms of public interest -- this is one of those touchstones that's more important than almost anything else -- can we in the final report make that clear to people who may not understand the different levels and know that the commissioner's powers are limited when it comes to a review? I'd just like to make it really clear to people so that people know that if they're unhappy with a ruling on a request for a fee waiver, they'd be able to go in front of the commissioner

and have the full opportunity to make the case. So it's part of the public education aspect.

11:03

THE CHAIRMAN: No sooner did you say it than I saw people writing the notes.

MR. DICKSON: Terrific.

THE CHAIRMAN: Okay. The next item.

MR. DICKSON: Number 77. Didn't we decide that there should be a designate from the Official Opposition on there as well as somebody from the IPC?

THE CHAIRMAN: Your memory has got to be a lot better than mine.

MR. DICKSON: Mr. Chairman, you're not as tired as I thought.

THE CHAIRMAN: Well, I might have been if we'd dragged it out till about quarter to 1, but I'm pretty sharp this time of the morning.

Okay. We've done that. Can we go on to the second document? Unfortunately, as I say, these weren't numbered. I apologize for that. But they will be by the time you next see it. These are the no-change recommendations. Any comments on any one of those? These are all the ones that Gary wished were still in there.

MR. DICKSON: Well, I'm having a tough time disciplining myself to not launch into a normative assessment on which of these things ought to be in there.

THE CHAIRMAN: You are doing a good job of it though. I have to commend you on that.

MR. STEVENS: Do we need a motion to adjourn?

THE CHAIRMAN: Well, I guess we're pretty close to that.

MR. DICKSON: I see the last bullet here -- I don't think these are numbered -- on the second page. I guess this is the one that we had talked about before, about statistical information in annual reports. I guess we've already disposed of that.

THE CHAIRMAN: Now, just to clarify the process. We'll do the cover sheet. There are actually several pages in a rough draft form that probably could be available fairly soon. We'll send them out so the committee is aware of what's in there. Essentially it's just a narrative of what's happened so far. It does include, Gary, the concern that in some cases these reflected a compromise of recommendations from the public, and so that there's no question, we'll include a note that these were not necessarily the unanimous decision of the committee but the majority in each case.

Possibly in the final report, as we get to each section or each sector of the act, I'm not sure we're going to want to do a backgrounder on every one of 70-some recommendations. But if they can be grouped or however it will work out, the committee will have a role in approving those backgrounders as well. This is not something that's going to be done and just all of a sudden surprise you.

MR. DICKSON: Will you be able to distribute the letter to us so at least we can see it before it goes out? For all the reasons I said before, I'm really uncomfortable with this sort of interim report going out, so it's really important to me. I don't question what

you're telling us, Mr. Chairman. I'm just saying that I'd appreciate the chance.

THE CHAIRMAN: I would undertake that. I had never intended to send it out without your viewing it and the opportunity to comment on it. We just ran out of time and just couldn't possibly get this information to you for today's meeting and still do a proper job of editing it. It will include reference to the fact that these were not totally unanimous or even in a lot of cases unanimous. I won't be that specific, but I'll make it clear so that you and Pamela and Pam, because of being the minority in the group here, don't necessarily have to be accused of supporting something which you philosophically disagreed with. So I think that's the point.

MR. DICKSON: Yeah. It's too bad that people are going to have to wait for the final report or read *Hansard* to find out those things that we really agreed on.

The other comment I was going to make, Mr. Chairman, is that all of those people who made submissions are going to get a copy of the draft report. But we've always acknowledged, I think, that we got a disappointing response from members of the public. What are we prepared to do, either in terms of a web site notification or in terms of a newspaper ad, and by what opportunity are we going to allow people to know that an interim report is being done? You see, I assume that if somebody has got some strong view, even if they weren't one of the initial respondents, if they had something powerful to say, we'd look at it before we produced our final report.

So what I'm saying is that I know the public bodies are going to have another kick at it. I guess I'm just looking at the other side and saying: what steps can we take -- through a newspaper ad, through putting it on the Leg. Assembly web site, or something else -- to notify people what stage we're at in the process?

THE CHAIRMAN: Diane just tells me that we could put these recommendations on the web site. I had assumed this would happen anyway because some of the earlier documentation was there.

There's nothing in what I'm suggesting that would curtail the ability of anyone who is interested in getting this information. It's just that I would stop short of going out and doing another full-blown advertising review, discussion paper, you know, starting this whole process over again. The logistics, the cost, and everything else would cause me some problems there. If there are any ways that would be essentially no additional cost, because we are working within our budget, to get this information out, it would be available. If it's on the web site, great. If you can think of ways, if there's anyone you want to tell, by all means feel free to tell them to do that. If they want hard copies, we'll send them to anybody that asks for them. But I'm not really anxious to expand that process.

MR. DICKSON: Mr. Chairman, with respect, we can't go back to the beginning even if some of us wanted to. The point is that I read *Gateway* the other day, and there was a column in it about this proposed act. What it brought home to me is that there are a lot of people who have concerns around this thing. There have been some good recommendations that have come forward. Why wouldn't we want to share that with as many people as possible? It seems to me that I would think the government would want to build as much public support as possible around this thing as we anticipate legislation coming in maybe in the spring of 1999. One way of doing that would be if maybe the Department of Labour were prepared to volunteer to put a small newspaper ad in the major daily papers alerting people to the fact that the interim report is available, that if people are interested in accessing it, this is the number and the place you go to get at it.

I continue to have this concern that we've not done an adequate job of talking to, communicating with Albertans about this, and we

have a chance here, a low-cost means of sharing some information.

THE CHAIRMAN: Well, there will be all the press releases and everything going along with it, depending on how people pick that up. I'm opposed to the idea of doing more advertising.

MR. STEVENS: Well, I make the observation that the document that we're producing at this point in time does not have the narrative that goes along with it. It clearly is designed for those people who are part of the process to date and who have the background. So I make that observation. It seems to me that when we have the full report with the narrative, that is going to be of broader interest to the broader public because they'll be able to pick that up with the narrative and perhaps understand the point that's being made at that time. But I can't reasonably assume that your typical Albertan would pick up the document that we've just approved today and make a lot out of it without doing a great deal of work by way of background.

11:13

THE CHAIRMAN: That's kind of the second time we've gone around it today. I mean, there's no problem discussing it. I think we'll make every effort to make people aware that it's happening, but we didn't have money for additional budgeting for advertising. That's one area where we're, in your opinion, coming up short, Gary. I think this was part of the commitment we made, part of the terms of reference we undertook. Also, I think your comments reflect the fact that you would have preferred more advertising at the beginning as well, which we decided against.

MR. DICKSON: Moving on. Can we just outline the time then? You may have covered this already and I wasn't paying close enough attention. When do you expect we're going to sort of close off response to the draft report, and then when are we meeting? Maybe I'm getting ahead of where you want to go, but I'm just interested in knowing mechanically now what happens from now until the time the final product is done and published.

THE CHAIRMAN: I touched on it briefly, but I was actually going to get into it more in detail when you brought up your topic. What I was going to suggest is that as soon as this thing could be prepared in a format that could go out, which likely would take a few days to a week -- and that time includes the opportunity for committee members to see the covering pages and the memo that will go with it -- the public would be given up until about the middle of January, I would say, a minimum of two clear weeks, not including the Christmas holidays, and then about a week or so for the staff to put together any information that comes from that. We would not likely have a meeting until probably the first week of February.

Pamela, you had something?

MS PAUL: Well, Mr. Chairman, I was just going to ask what my colleague from Calgary-Buffalo asked about: the time line, the time frame.

Also, you made a comment, Mr. Chairman, that you were going to do as much as possible to make the public aware that this process has been in place and that there would be full documentation of it, and obviously February is the target date. How do you envision getting the public informed?

THE CHAIRMAN: Well, if we put this information on the web site when that preliminary report goes out, we'll do all the necessary news releases and that.

MS PAUL: So are you just saying press releases?

THE CHAIRMAN: Press releases.

MS PAUL: The normal procedure.

THE CHAIRMAN: But coming up short of paid advertising.

MS PAUL: So why not just a small paid advertisement?

THE CHAIRMAN: Because we have no budget.

MS PAUL: Well, we're not having lunch today, so perhaps that funding could be allocated for a small ad.

THE CHAIRMAN: Well, I would agree to an ad to the amount of the cost of lunch today, which would probably get us into one of the free internal news bulletins. I'm being facetious; I'm sorry.

MS PAUL: I have to agree with my colleague that after all this hard work that's been done by committee members and whatever, I think there should be some small advertising done at the conclusion of this.

THE CHAIRMAN: Well, unfortunately I think we would have had to consider that when we set our budgets. I mean, I don't know where we'd go for money now.

MR. DICKSON: One other suggestion. Can we agree as a committee that all of the working papers and all of the submissions we've received will be turned over to the library here in the Legislature? All kidding aside, there is a serious number of students, researchers, people who are interested in not only the process but also the issues we're dealing with. You know, we collect a lot of material that I think people would be interested in being able to access. I'd like to see us make a commitment that all of these background papers and so on be made available to the Legislature Library.

THE CHAIRMAN: I have no problems with that. The minute they hit this table I think they became public.

MR. ENNIS: Mr. Chairman, I think you might recall that there are one or two submissions that were received from the public that contained inordinate amounts of personal information about third parties in them, and I think in a couple of cases they were referred to public bodies for program follow-up. I think you might recall that one writer conveyed to us the sad story of her family history and the attempt to get medical records from the parents of a punitive father and so on. I think there might be two or three cases where it would be important to protect the privacy of third parties involved in those reports.

THE CHAIRMAN: But can we proactively maybe do a little bit of screening on those . . .

MR. ENNIS: I think that would be appropriate.

THE CHAIRMAN: . . . so we don't get into the situation that we as a committee are being FOIPed? The idea being to make it as easy as possible for anyone interested to get all this background information. That's what we've said from day one, that what we do here should be an example of openness rather than a test of how ingenious we can be at hiding it.

If that wouldn't be contrary to anything in the act or something we were recommending, I'd suggest that if we could do that, if there was a quick way of editing what you just called -- I don't know if these are the words you used -- sensitive third-party

information . . .

MR. ENNIS: Yes. That's what it's about.

THE CHAIRMAN: . . . and then made it available in the library, would that work?

MR. WORK: Mr. Chairman, that's entirely up to this committee. This is a committee of the Legislative Assembly, and as such I doubt if your proceedings are subject to the act. The commissioner's office doesn't want to tell this committee what to do with the records of their proceedings. I think there's a parliamentary privilege issue there. So I think as chairman of the committee, sir, you probably have the ability to deal with those issues as you see fit. I certainly don't want to imply in any way that it's an edict or anything of the commissioner's office. "Edict" is probably the wrong word, but you know what I'm saying.

THE CHAIRMAN: Looking for good advice is what we're doing here.

MR. ENNIS: Mr. Chairman, I was speaking strictly as an adviser to the committee, not as a member of the office. That's the capacity in which I appear here.

THE CHAIRMAN: Actually, that's the way I did take it. You know, all grinning and smiling aside, I took it as good advice, and I think we should follow that. But I also agree that being an example of the openness -- and we've committed to making this information as available as possible to people who are reacting to it. If this is an economical way of doing it, why not?

MR. STEVENS: It means I don't have to keep a copy.

THE CHAIRMAN: Okay. Is there anything in the time lines and such that I've missed? Unfortunately, I don't dare go beyond what's going to happen in our first meeting in February. I think we have to wait and see what all comes in, but hopefully it will move reasonably quickly after that.

MR. DICKSON: Just the one comment. I thought that part of what we were doing was that we've been driven by a legislative agenda in the spring of 1999. With the scenario you've outlined -- that the committee wouldn't meet again, I think you said, until maybe the first week in February -- does that allow sufficient time for legislative change to be introduced? We've heard before, to the surprise and astonishment of some of us, that the government needs six months or something to be able to draft legislation to get it into the House. I guess I'm wondering: is the process you've outlined going to preclude legislative response in the spring session? If it does, then I've got some problems with the time line. There are people who want to see some change in some of these areas and want some comfort in other areas, and I think these people are hoping that will happen in the spring of 1999.

THE CHAIRMAN: Well, I can tell you honestly that we agree on that. If you recall, however, the original time line for this was to be finished by about October, and here we are two months later. The best we can do is move along and finish it. I think we would certainly be criticized if we didn't allow at least the full two weeks for public response. I feel that if I had been told that the two weeks included the Christmas break, I would certainly criticize that, so in good conscience I can't suggest we use the two weeks at Christmas. We're essentially going to start counting on the first working day of January. Then we have to have a little bit of time for that information to be compiled and gotten to us. From past experience

we've found that took about a week and a half to two weeks. So using my crystal ball, that's the best I can do.

11:23

MR. STEVENS: A couple of comments. First of all, I anticipate that most of the information we will have for our final report is currently already in existence and that the recommendations and reasoning we

have will for the most part likely remain as they are today. So it seems to me that the final report, with the narrative and so on and so forth, can likely proceed with small risk of being altered substantially due to comment relative to our recommendations. That's not to say that we won't consider points of view. It's just a practical observation that we've been at this for a number of months and have a great deal of information in front of us. So with that in mind, is it our intention at the next meeting, whenever it may be, to have that type of document in front of us so that we can work towards signing off on the final report that has the narrative?

The other comment I have is that given our busy schedules, it seems to me we should set a date and work towards it. Otherwise, we're going to find that it may be difficult to get the group together if we wait until sometime in mid-January to try and set something up for a week or two later.

THE CHAIRMAN: Well, my earlier comment was that while this is happening, while all the additional public feedback or the feedback from the people who have made submissions is happening, we would be drafting the narrative that would go with the final report, based on the recommendations as they are now, subject to change if anything comes in that suggests the recommendation should be changed, and the narrative might have to be changed too. But, yes, that would all happen at the same time, so that wouldn't be sort of a consecutive order of business.

I would agree, if everyone would be of a like mind, that maybe we should set the first Monday in February as our next meeting date. Unfortunately, I don't have a '99 calendar with me, but I undertake to clear that. I'm sure I don't have anything booked that far ahead.

Gary, you had another comment?

MR. DICKSON: Yeah. As I've been thinking about it, my concern is giving Albertans as much opportunity as possible to see this and digest it and think about it. It looks like in some respects that's really going to be delayed now. It seems to me that if there are two kinds of consultations, one being with the so-called stakeholders and the other one with the public, we have to balance which is more important. I'm more interested in advantaging the public.

The stakeholders. You know, when I think about it, we might be able to tighten up the time line you mentioned. The reason I say that is that the universities and the Alberta School Boards Association also have been able to access *Hansard*, and I think they have a very good idea of where we're at. I think the report is not going to have a lot of surprises. It's not like, you know, when the government did the Striking the Right Balance report around health information. They produced the thing in the middle of December, and the deadline was a date in January. So I think we can shorten the time line.

Ordinarily I'd agree with you, Mr. Chairman, that having Christmas in there is unfair to people responding. But the more I think about it, I think those people, for the most part the universities and schools and municipalities, have sort of been at our elbow throughout this whole process. I don't think they necessarily need as long as you're projecting to be able to digest and respond. I'm just thinking that since the effect of this is to then delay opportunity for Albertans to see and comment on the full package with the narrative description before we get into the House, maybe what we should be doing is tightening up the process and allowing more

public input.

THE CHAIRMAN: It's going to take two or three weeks anyway to get the rest of the narrative done. It's there in a three-inch deep package, and even if the department staff were able to do it in less than a couple of weeks, building in Christmas and weekends off and things like that, I'm not sure that it would be possible to edit it in that amount of time. I'm just looking at the time lines we've already given them and the amount of stuff that has had to probably be deferred. I'm using discussions with Sue and Diana, knowing what other priorities got bumped back. I just don't think it's fair to ask for that kind of information or, alternately, expect a half-baked narrative part of the report.

Whether the public needs a full two weeks or not -- and I expect we'd be criticized if we didn't give it to them -- we need it to put this stuff together. I mean, the best we could do is shave a week here or there, but then we're going to be pushing it again. I just don't see that we've done all this work now to shortcut it for a week.

MR. DICKSON: Let's be clear, Mr. Chairman. When you're talking about public, this isn't a public consultation we're doing now.

THE CHAIRMAN: It can be if people want it.

MR. DICKSON: Well, okay. But you yourself said that where Albertans are going to come in is when the full report is done with all of the background, the narrative, the explanation, and so on.

THE CHAIRMAN: No, that's not what I said, because after the final report is done and submitted, we no longer exist as a committee. The report is final. Then it's up to the Legislature and the government to take it from there. After the final report there is no more feedback to us. There could be feedback to the government, but in that case it would mean overriding what was in the recommendations. So once we're done, it's a done deal as far as our recommendation report is concerned.

MR. STEVENS: The other thing is that the draft report should be available to us I'd say a week before our meeting so that we have an opportunity to read it and reflect on it. So that speaks, in my view, to another reason why we should have it at the beginning of February.

THE CHAIRMAN: We might even try -- and don't consider this a commitment -- if we can do some of the narrative based on the existing recommendations. I'm being a little presumptuous, I guess, that there aren't going to be significant changes. If we can get some advance information out to you, we'll do that. It depends entirely on the physical ability to do it though. That's the best I can promise you. I think it would help to get as much of that as possible, but I'm looking at some people across the table that have really bent over backwards to get information so that it was available to us now. This is not hearsay, because virtually every Friday and Thursday night I've been part of trying to get a package together, which was based on the Blues not being available, the minimum amount of information, and just barely enough time to do it. I would just hate to prolong that problem.

MRS. TARCHUK: I would just like to say that I think the time lines you've laid out are totally reasonable, and having said that, I wonder if we could entertain a motion to adjourn.

MR. STEVENS: Did we set a date?

THE CHAIRMAN: Do we agree on the date?

MR. STEVENS: The first Monday in February.

THE CHAIRMAN: The first Monday of February happens to be the 1st of February.

Okay. Motion to adjourn. All in favour? Opposed?

[The committee adjourned at 11:32 a.m.]