Title: **Monday, February 1, 1999** Freedom of Information Review committee

Date: 99/02/01

9:06 a.m.
[Mr. Friedel in the chair]

THE CHAIRMAN: We may as well call the meeting to order. Everybody that had indicated they were going to be here at the beginning of the meeting is here. I understand that Mike Cardinal will be a little bit late. Janis, you had indicated that you would have to leave at about noon.

MRS. TARCHUK: Yeah.

THE CHAIRMAN: Okay. Both Pam and Pamela are not scheduled to be here today, so we may as well start.

The first thing is the approval of today's agenda. We have two documents that were presented as a result of the work that's been done, and then we have a memo from Gary Dickson. There are since then two other documents that you've circulated, Gary, that came late on Friday. I've asked Diane to distribute them this morning.

MR. DICKSON: Just in connection with the agenda, Mr. Chairman, I had some of the material, which I guess arrived in my Edmonton office on Friday, faxed to me but not all of it. Can you clarify what your expectation is in terms of what we're going to accomplish today? I had thought that what we were going to try to do today was finish off the final report, but it's going to be a bit tough to do. There is a lot of material that's come in and only been provided to members -- effectively, some of this stuff I've seen for the first time this morning. So I'm happy to go through it, but I just want to flag a concern that for us to make, if you will, the final determination of what's going to be in the report, it's going to be tough to do with the short notice in terms of seeing the material.

THE CHAIRMAN: Well, I would expect that we would not be in a position to make a final determination because there has been some new information come in, and at the very least we would need committee members to have an opportunity to digest some of that.

In terms of expectations, I'd like to go through the two documents. I think your memos are advance warning of some of the concerns you have, and they will come up as we go through sort of a page-by-page review of these documents. They would fit in there rather than being dealt with separately. It depends, I guess, on how intense the information that is newly arrived would be as to whether we could deal with some of it or what might have to be left over. At the very least I would expect that we're going to have to have one more meeting before a final document could be put to bed.

So I'm hoping we could go through it, generally discuss what is put in front of us: does that meet the criteria of what we sent the technical people back to do? The only thing I would hope is that what we will be dealing with today is not a general regurgitation of every issue but those which we feel are not properly addressed or have something new to them or something that would require a revisit.

MR. DICKSON: In that event I'd be happy to move adoption of the agenda as it's been distributed, Mr. Chairman.

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

We have the minutes of the December 14 committee meeting. Could we have a mover for that? Moved by Gary.

MR. DICKSON: With one correction. If you look at page 96, there's a motion ascribed to me. In fact, if we could just change the wording of that, it should be:

> Moved by Mr. Dickson that the government look at incorporating in the act some positive requirement for public bodies to protect the safety of information and confidentiality.

It doesn't mean very much if we don't say "in the act," because otherwise I'm saying much the same in terms of what Ron Stevens then moved in his successful motion. Just add the words "in the act" after "incorporating," and then where it says "some positive requirement in public bodies to protect the safety," change that to "some positive requirement for public bodies to protect the safety."

I'd move the adoption of the minutes with that correction, Mr. Chairman.

THE CHAIRMAN: Okay. I certainly accept that as a correction. Any others? All in favour of the minutes being adopted with that correction? It's carried.

If we could go to the first document, the Summary of Public Responses, I'm going to suggest that we simply go through these page by page, not reading each one. As we stop on the page, anyone who wants to can raise a concern, a question, whether it's on the comments from the respondents or something new that may have arisen from the time we first endorsed the interim report on the first-column recommendation itself.

Does anybody have any other suggestions as to process? I'm hoping this may help us go through it fairly smoothly. I think the first page summary is just statistical, so we'll pass that.

MR. STEVENS: If I could just make an observation. People indicate in their response that they would like clarity relative to a definition. For example, if you take recommendation 3, there's a couple of comments there, one saying that they would support a clear definition of "security and administrative investigations" and another one saying "unclear as to meaning -- will there still have to be a penalty or sanction under an enactment?" My general recommendation relative to those kinds of comments is that the narrative in the paper, the final document, to the extent reasonable address those kinds of concerns rather than dealing with them specifically.

To the extent that somebody who is impacted by one of these recommendations reads it -- we have to recognize that what they read were the bare recommendations -- and still is unclear, I think we should make the effort to try and address the concern as expressed, generally speaking.

THE CHAIRMAN: I also have to remind everybody that in our recommendations we were dealing with the significant concept or the intent of the act, that we weren't writing the legal terms. It is possible that in the actual drafting there may need to be some definitions added or enhanced, and maybe those people who are here today who would ultimately be doing work on that could keep that in mind too.

So with that, let's proceed with page 2. What I'll do is just spend a couple of seconds. If I don't hear anything, any observations, I'll flip through these fairly rapidly, but that doesn't mean I'm trying to cut off debate. So if I go too quickly for you, just rein me in.

Page 3.

MR. DICKSON: Well, hang on for a second. I thought we were still back on page 2. Are we just not going to deal with the

recommendation from the IPC in terms of clarifying the definition of those health care bodies? I'd like some discussion around that before we move off it.

MS WILDE: I believe our recommendation has been reflected in the draft.

MS KESSLER: It has been. It's been reflected in the draft report. Unfortunately we neglected to add the comment in under item 2, but the recommendation of the IPC was a minor one, and we made it in the draft final report.

MR. DICKSON: Okay. I haven't seen that in the draft final report. So what did we go with? Using the same definition, "directly owned and operated," in both cases?

MS KESSLER: We inserted "directly owned and operated" after "nursing homes" in the first line.

MS WILDE: That was our concern, that it be consistent, and I believe that has been corrected.

MR. DICKSON: Thank you.

THE CHAIRMAN: Okay. Now page 3.

MS WILDE: I have one comment regarding page 3. I believe there's -- I wouldn't say a misquote. But I don't believe that the summary adequately reflects what the commissioner has stated in his submission in regards to recommendation 8. The commissioner has come out and said that he believes that EPCOR and ENMAX should be included in the act but that section 24 would protect much of the sensitive business information. I think it's a little bit inaccurate to say that he believes the large amount of personal information collected by the utility billing companies should be protected. I don't believe that that was what was stated in the submission.

9:16

THE CHAIRMAN: Okay. Since these documents, by virtue of how this committee is operating, tend to be public documents, it might be worth while to correct that, then, so there are no misconceptions. You're suggesting that the last half of that sentence be struck, from the word "and."

MS WILDE: Yes. And also that this summary include the fact that the commissioner has come out and said that he believes that EPCOR and ENMAX should be included within the act and not be excluded from the provisions. It doesn't list that here. It just says that he believes there are adequate safeguards within section 24. And that's true: he does believe there are adequate safeguards within section 24. But he also believes that EPCOR and ENMAX should be included in the act.

THE CHAIRMAN: And that's obvious from the letter, but it isn't reflected here.

MS WILDE: Yes. That's right.

MR. STEVENS: A comment. I think it's appropriate for parties at this table to comment on the accuracy or otherwise of the references in the summary response document. I don't think it's necessary to change the document. The fact is that the complete text of the commissioner's response to the recommendations is part of the record. People who want to read it in fullness can access that, and the record will disclose the point made relative to this. If there's any suggestion that we should be rewriting this summary document, I don't think that that's necessary.

THE CHAIRMAN: I agree in that sense, but this observation in here probably is significantly different than how I would have read the letter. I think it's probably made here for the committee's information more than anything.

MR. STEVENS: Right. That I heard it is my point.

THE CHAIRMAN: And that we don't have to change the document. It isn't going to be reprinted, if that's what you mean.

MR. DICKSON: The thing that makes me a bit anxious, just listening to Ron's comments a moment ago, is that when we get into some of the things related to schools, I'm going to suggest that we should be looking at some substantive change to the draft final report. I mean, there was a reason why the majority of the committee was anxious to get out a preliminary report and specifically solicit feedback. I took from Ron Stevens' comments a moment ago that he was not prepared to and didn't want to see us in fact relook at some of the issues that have proven contentious, whether it was with schools or whatever.

Now, he may have meant something more narrow than that, but I just wanted to flag that concern, because I think until we finish the report, we want the best possible product that we can have. If our preliminary report doesn't do it, doesn't deal with the legitimate needs, for example, of schools or any other group, then I think our obligation, our responsibility is to try and recraft it and make sure it does address that.

THE CHAIRMAN: I don't believe that's what Ron said, and I'll let him answer that. I understood this to mean that we all have copies of the actual written submissions, the letters themselves, and that we were simply not going to only rely on the abbreviated notes that the technical people put before us in this report. In this case it was addressed because it seemed to have missed the mark of the letter itself. But the decisions that we make would, hopefully, be based on committee members having read the more detailed documents.

MR. DICKSON: Okay. I take that point.

THE CHAIRMAN: Ron, go ahead.

MR. STEVENS: Well said.

I do feel compelled to respond to the other part of what Gary just mentioned. From my perspective, to the extent that people reiterate the information that was before us as we went through the debate, discussion, and analysis leading to our recommendations -- to the extent that nothing has changed, my own personal view is that there's no need to revisit the matter. What's important about this process is that it gives an opportunity for people to see the context of our recommendations, to suggest that there's lack of clarity, to suggest that there's any inconsistency, things of that nature, or to offer something that perhaps was not before us. But to suggest that because somebody has taken the time to write and say, "Just like I told you before, I strongly disagree with your point of view; we have to redebate the matter," I disagree. If the information was in front of us, my inclination is going to be to say: let's move on to something that's new. So since we're talking about general approaches to the issue, that's where I'm coming from.

THE CHAIRMAN: Okay. I think the point has been made.

We're still on page 3. Any other observations?

Page 4? Page 5?

MR. DICKSON: Sorry. Can we slow down, Mr. Chairman? I'm trying to read this as we go through.

Can I just ask for clarification? The comments from respondents that are shown in the right-hand column: this would just be culled from the package that was sent out at least a week ago? I got a package of further submissions, maybe two dozen further submissions. I just want to check, to make sure that that's sort of the source documents for the items that appear under Comments and Respondents.

THE CHAIRMAN: That's where it came from. There have been a few new ones, and depending on when this thing was written and last edited, it may include a couple that are more recent, but every response that came in, unless it maybe arrived on Friday, should have been sent to the committee. Probably it should have said: comments from respondents. But I think we all know what it's about.

Sue, you were going to comment?

MS KESSLER: The comments are from the source documents that we received up till Friday. The document does not include the submissions from the Hon. Gary Mar and from Lynne Duncan as well as the ones that we just received this morning. Other than that, it's up to date to that point.

MR. DICKSON: Okay. I appreciate the clarification. I've read all of the ones that we got in a package a week or so ago. I won't have read any of the ones that have come in the last part of last week. Thanks for the clarification.

THE CHAIRMAN: I think everybody has copies of the two that Sue was referring to, from Lynne Duncan from Advanced Education and Career Development and from Gary Mar, Education.

Okay. I think we were on page 4. Moving on to page 5.

MR. ENNIS: Mr. Chairman, on recommendation 17, which is on page 5, I believe, on 4(1)(e). The expansion of the exclusion that is in 4(1)(e) of "teaching materials or research information of employees" to exclude information of the institution as well as the employee seems to be something that's caused a bit of confusion out in some of the postsecondary institutions.

One of the interpretations that I had a call about was the notion that all research information of an institution would be somehow excluded under this section. That was somebody salivating with that prospect, that somehow everything could be buried under this section and excluded on that basis. I just thought I would point that out, that there is that interpretation afoot on this recommendation, that it is a way of springing out. Anything that is branded or baptized as a research project would find all the documentation excluded by virtue of this section. I don't think that was the intention of the committee the first time through on this, but I'm not certain on that.

THE CHAIRMAN: I couldn't say specifically, but the final draft would have a lot more background information in most instances to explain that kind of a misperception. There was a lot of stuff to read in that document, and when I went through it, I couldn't say specifically from memory whether that was the case here. Anybody want to comment on that?

9:26

I think a lot of these things were misunderstandings or in some cases a misinterpretation based on the preliminary report. There certainly was a risk. I'm aware from some of the feedback that some people simply read what was in the report, the bare recommendations, and unless they looked at any of the documentation of the meetings that we've had -- and in some cases it was obvious they didn't even read the act around the recommendation -- that would be the reason for the misperception. I think there are a few cases where it was obvious that some clarification could be required as part of the recommendation, not simply as part of the preamble around the final report.

MR. DICKSON: A new issue?

THE CHAIRMAN: Yes.

MR. DICKSON: Actually, also recommendation 17. I had occasion since the preliminary report came out to spend about two hours with the Calgary board of education FOIP co-ordinator and other people involved in processing FOIP requests, and that resulted in my letter to you, Mr. Chairman, as dated January 27. I think you would have only got it perhaps on Friday of last week.

This is interesting. I recall saying when we were dealing with recommendation 17: well, this is an issue for postsecondary institutions; it wouldn't necessarily be an issue for schools. The Calgary board of education was quick to point out to me, in fact, that there's substantial research material and so on that's done. The CB is probably the biggest school district in the country, so I don't know if it applies to every other school district. But they have queried: why wouldn't the same protection apply to the Calgary board of education?

I haven't had time to go back and look at the *Hansard* from that time, but I wanted to raise that concern they've expressed. I'm not sure. When I spoke with these people the question was: why wouldn't we be entitled to the same protection? As best as I could reconstruct or remember the conversation, I think it was largely on the basis that we know that postsecondary institutions do research, and they made a vigorous presentation on that. We tend not to think of high school teachers and boards of education doing similar kinds of research. If they do, I might sort of rhetorically ask: why wouldn't we afford them the same kind of protection?

Anyway, I wanted to put that on the table. I undertook when I met with representatives of the board that I'd do that.

THE CHAIRMAN: Okay. Well, I don't remember the absolute details of the discussion on it, but you're correct about the discussion. It was suggested that by virtue of how universities hire certain of their staff, research is an integral part of what they do and in some cases even an integral part of the course work. But the type of research that's done in secondary schools is much less so and generally not a part of the individual's employment with the institution. The schools as such don't tend to do research as part of their day-to-day operations, and we didn't feel that it was appropriate to include them. That's my recollection of the discussion. Maybe some of the staff people might want to enlighten us if they recall more than that. In any event, that would still be my opinion, unless someone can come up with some ideas of where schools and teachers in schools, generally, would become involved in research as part of their duties, at least research to the extent that there needs to be proprietary rights involved.

MR. DICKSON: Mr. Chairman, with respect, I may not have been clear. I'm not suggesting this is something that's generally done by most schools in Alberta. I'm not suggesting most school districts are engaged in it. My point is that we have some evidence that at least one school board -- and I suspect potentially there could be four school boards, the four biggest, that are big enough where they

do some ongoing research. So I'd turn the thing around and say that if in fact we have some new information that wasn't in front of us -- and I for one learned something from my meeting with the IPC that I didn't know before -- if in fact there's some evidence that's going on, should we not at least address it?

I'm always reluctant to expand section 4 because I think, arguably, section 4 is one of the most dangerous parts of the act, but I also want to be responsive to that concern. If other schools aren't doing research, then the section 4 exception is of no consequence to them. But for those that are, why would we want to penalize or impair something that they're doing to improve the delivery of their education services?

THE CHAIRMAN: I'm also going to suggest that this amendment, or this part of it anyway, was simply to extend the exclusion that already existed to an employee of the postsecondary institution, to extend that to the employer institution as well.

We dealt with another issue about research and incomplete research and how that would be handled. Would that possibly -- and I'm particularly looking at John and Lisa from the IPC office in terms of interpretation -- cover the case where an individual or a school could ask for an exclusion and, with the right justification, be given that from the IPC office?

MR. ENNIS: Well, there they would be seeking an exception under section 23 perhaps, if it's in a draft form, or under section 24 if it's something they view as intellectual property that they might have an investment in and make money on in the future. But both of those of are discretionary exceptions under the act, and reasonably they might choose not to exercise those but actually give the information out if it's of value to other citizens in the province. Section 4 would actually boot it right out of the act, and the commissioner would not be in a position to comment if it met conditions of section 4. So I think that's the distinction here as to whether to go to exclusion on that kind of information, particularly research done by an institution, as opposed to an employee. The exclusion of an employee's research information met some of the needs of recognizing intellectual property of that employee, but once it's research of an institution, it's a little bit different.

There are provisions in the act where the institution can act in its own self-interest under the exception portion, so there is some ability for the institution using the act to shield that information and not have to deal with it as an excluded piece of information. They can take it under the act or put it there.

THE CHAIRMAN: I mentioned at the beginning that, you know, if we do get new information, you may want to have a little bit of outside background research from our technical advisory people. This might be one of those things that should be put in that category, because we could probably debate this thing for half an hour and not really come up with a solution. Maybe we could have someone look at this, whether that is a valid request, and bring it back to our next meeting with just a wee little bit of background. Right now I'm not persuaded that there is a significant difference from what we originally heard, but I wouldn't want that to be just an assumption based on my feelings for just what we heard this morning. Could we do that?

MR. DICKSON: Agreed.

THE CHAIRMAN: Okay. Going on from page 5.

MR. DICKSON: If . . .

THE CHAIRMAN: You've got to jump in quick, Gary, or we'll miss you.

MR. DICKSON: Thanks, Mr. Chairman. Number 19. I raise this again because also from the same meeting with the Calgary board of education the question came up. If a school trustee receives a letter from a constituent and then takes that to a board meeting and references the letter, there was a question in terms of whether the letter continues to be outside the scope of the act. In other words, are there some circumstances under which the section 4 exclusion ceases, when a document from a constituent then ends up being something discussed and something translated into a policy of the board?

My initial reaction was that it's either in or it's out, and if it's out under section 4, it stays out for all purposes. You know what they say about free legal advice, Mr. Chairman, so I wanted to raise it. It's a concern raised by the Calgary board of education.

9:36

THE CHAIRMAN: Well, I can't give you legal advice because I'm not a lawyer, so my comments wouldn't be considered that way. I would assume from not only just the way this was written but from the intent that if it becomes part of the records of the business of the local public body, then it becomes public information by virtue of the fact that that public body could divulge it.

What we're talking about, at least in my opinion, is that information which a school board member or a councillor or a member of a local public body had in their possession that may have been their own private notes or may have been private correspondence between them and a constituent but never made it as a record of the body itself. So that would give them some discreet opportunities. But as soon as it was tabled, it would automatically become a document of the board or the body.

Now it may be time for some paid legal advice.

MR. ENNIS: Mr. Chairman, this is not at all legal advice. It can't be. Just on the observation that you've made, that is precisely the breakpoint that a number of local public bodies have arrived at, that when an elected official, for example a school trustee, sends something to the filing system of the public body, basically the exclusion that might be found in this section of the act falls away, and the public body having access to the information has it in its custody. Some of those local public bodies have policies that direct trustees or council members or whatever to file things quickly and thoroughly into that filing system, so the time that an elected official can rely upon the excluded status of that document is relatively short, just basically the time they have it in their active possession before they send it off to the filing system.

MS MOLZAN: Mr. Chairman, I think that according to the way that section has been applied in regard to MLA records and constituency records and so forth, Mr. Dickson's first gut instinct is the one that is correct, that in fact its character doesn't change. There are lots of documents that are in the custody or control of a public body that still fall within section 4. Ministers, MLAs may rely on a public body to provide information in order to respond to a constituency letter. That doesn't mean the letter then becomes a record of that body. It may be that they have it to respond to, but its character of where it came from and what it is hasn't really changed.

So I guess if Mr. Dickson is saying that if the councillor refers to a letter and that then changes the policy, perhaps what's indicated in the minutes is that a reference was made to a suggestion or something of a constituent or a parent or something. Then that would all become part of the record and should be given out. But

generally the original constituency record should still remain out. It hasn't changed; it's still a record from a constituent or a parent.

I guess there may be a line between -- as you were saying, if it's actually entered, it becomes part of the minutes. Then I suppose you've got that issue again: have you changed the character of it into something else? Generally, I would say probably not. It still falls under 4 even though the board has custody of it. But all the information about the policy now that has come out of it is not excluded, you know, just because the original letter was. I guess it depends on where you draw the line. But simply because it goes into a filing system -- a lot of the public bodies have custody of records but still fall under 4. Registries may have records that are excluded under 4. They're held by Municipal Affairs, let's say, but they're still excluded under 4.

So I think Mr. Dickson was correct. What it is, it is; it doesn't change. If the information is recopied and used in other formats, then that's a different type of record, but the original record itself probably retains its character throughout.

THE CHAIRMAN: Well, this might be something again that might need a little bit more background. I think I would debate that simply bringing it in and filing it someplace -- if the trustee had an office in the central office and had a personal filing cabinet, putting it in that filing cabinet wouldn't make it a public record, but tabling it with the school board, it seems to me, would. You know, it would be similar to a telephone call. If you made notes during a telephone conversation, that could be privileged information, but as soon as you brought that information to a discussion at the school board table, it certainly becomes a matter of public record. I certainly realize there's a fine line here.

MR. DICKSON: We're talking records though, not information, Mr. Chairman.

THE CHAIRMAN: Okay. I'm going to suggest that maybe we get a little bit of feedback on it, because certainly the intent wasn't to make this more complicated than it already is. That might be something that would have to be dealt with in the drafting stage anyway.

MR. STEVENS: I think what we're discussing, quite frankly, is a specific situation and the application of general words to the specific situation. We can spend the rest of our lives coming up with specific situations to debate. I don't personally see that it's that helpful in trying to address the policy issue here. The policy issue I think is pretty straightforward. My own view is that it was an interesting discussion, but I don't know that we're going to have a different policy as a result of the answer, whichever way it falls.

THE CHAIRMAN: That's probably the best observation that's been made in the last five minutes.

MR. DICKSON: I'd just counter by saying that what I find helpful when you sit down with somebody who actually is in the process of administering a request for information -- all of that theory and all of those general recommendations are fine, but you then are confronted with having to test those principles to see if they really work. I mean, I understand the sentiment of Ron Stevens, and I'm not sure I disagree with that, but I wouldn't think it's in any way inappropriate to use specific examples if that helps to test the recommendations we're making. You'll see that I've got some other specific kinds of fact situations, and I think there is still value in doing it. We're not counting angels on the head of a pin here. What we're doing is trying to find out if our report is workmanlike and if at the end of the day it can be used by the people who have to process applications.

MR. STEVENS: If I can make this observation. I don't think there's any doubt that the letter from the constituent to the local public official, while in the possession of the local public official, is going to be protected. But my own personal view is that if I took such a letter and tabled it in the Legislature, I am changing the nature of that document and the information contained in that document as it relates to the document as tabled in the Legislature.

Now, people can disagree with me on that particular point if they want, but it seems to me that each public official is going to have to exercise some judgment relative to the document which they receive. They receive it in confidence, and if they are concerned relative to the use of the information or the document itself and the confidence that goes along with it, they're going to have to measure the specific circumstances. I can understand that each and every public official is going to have this dilemma from time to time, but it's going to be ultimately resolved on a case-by-case basis.

9:46

THE CHAIRMAN: Okay. Anything else on page 5?

MR. DICKSON: I've got one other one, Mr. Chairman. Also, if you look at the same letter referencing CBE issues . . .

THE CHAIRMAN: The number?

MR. DICKSON: Number 21. Actually, it looks like I've misnoted it in my letter. I've referred to number 23, but 23 is something completely different.

I see we received some other comment from other bodies as well. We were at pains to deal with critical review committee work in the hospital context, in the health care context. What's been pointed out to me -- and this is at least new information to me, Mr. Chairman, if not to other members of the committee -- is that if there's an allegation in the school that a teacher has, for example, abused a child and there's an investigation and so on, the argument that's been made to me and the contention is: why wouldn't you have some similar treatment?

Now, the issue that I'm describing in my letter is a little different than being withheld. If the ATA comes in to do an investigation, as I think they're mandated and obligated to do, there's a question of what student records they can access for purposes of their investigation.

There's been a suggestion that we should look at some paramountcy of those provisions in the Alberta Teaching Profession Act that allow that sort of -- it's sort of equivalent to a critical care review in the education sector. It's something I hadn't thought of before my meeting with the CBE, and some of our experts may have some thought on that.

I notice that in the analysis there's a suggestion that quality assurance related risk management programs in other contexts should also have this kind of protection. I see that submission came from the Alberta School Boards Association, the U of A, the University of Calgary. I don't recall this being discussed as an issue. When we did the initial analysis, we were focused, largely at my urging, probably on section 9 of the Alberta Evidence Act in a medical context, but I want to put on the table this concern in an educational context.

THE CHAIRMAN: Okay. Before I ask Lisa to comment, in a number of these responses I interpret them to be from a public body that has seen where another type of public body has all of a sudden

achieved recognition for a particular uniqueness through our committee, and they're jumping on the bandwagon to look for similar kinds of concessions, the earlier one coming from the school board, saying: "Well, universities get special attention for their research work. We'd like that too." The first feedback on this one would appear to be similar. I'm not playing down the fact that some of these institutions and bodies do have work that's along the same vein, but I think we looked at that medical issue as being something very critical. The results of not dealing with it could be life threatening or at least taking away the ability to deal with those kinds of issues, which would have very dire consequences.

I'm not convinced that the kinds of critical review or whatever they call it, critical incident to review -- that these other bodies would fall into that category but will certainly listen to arguments if that's the case. I'd like to suggest that we don't get sidetracked simply because of a little bit of one-upmanship between types of public bodies.

MR. DICKSON: Mr. Chairman, with respect, I think that comment is out of line. I think there's no reason to assume such a cynical motive. I thought what we were about was trying to make an act that worked. I'd want to disassociate myself completely from any suggestion that people are simply asking for a remedy because somebody else has got it. I'm going to ascribe to these people the motive that they're trying to do a job for Alberta children. I think it's completely unreasonable and unfair to make the assertion you just did.

THE CHAIRMAN: I should make it clear, Gary, that I wasn't commenting specifically on your presentation but generally on some observations that were in the comments and responses, because this isn't the only place it shows up. There are other areas where, if you read it, you might interpret it that way. I'm not saying that in every case it's invalid, but certainly in my opinion there were some issues where the public body is requesting a similar exception simply because it existed for somebody else. Let's leave it at that. I apologize if you interpreted that to be your presentation. That wasn't intended to be.

Lisa, you had a comment?

MS WILDE: Yes. I have a few points, actually, to make. The first one is that I believe a recommendation has been drafted which states that the definition of law enforcement will be extended to include administrative investigations. So while these quality assurance activities within, let's say, the universities or within the schools would not be excluded from the act, they very well may be protected under, let's say, a section 19 application. That's just my first observation.

Secondly, I would say that medical quality assurance documents and records were historically excluded because the consequences of disclosing that information were arguably greater, perhaps, than if they were disclosed in an educational review or quality assurance review. There is an argument for excluding these documents within the educational system or within the postsecondary institutions, but at this point I don't believe the need is as great as it is for the medical community.

I believe the commissioner would also be of the opinion that if critical incident or quality assurance activities were shielded from disclosure, perhaps a separate act should be enacted that would cover those activities and clearly define what a quality assurance activity or what a critical incident activity is within these different bodies. We know what that is within the medical context, but we don't clearly know what that would entail in, let's say, the postsecondary institutions or within the educational sphere.

MR. STEVENS: A couple of comments. First of all, I don't remember discussion on this particular point outside of the health sector. So I share Gary's comment there: this is news. Quite frankly I have no personal knowledge of what there is outside of the health area in the way of parallel quality assurance or peer review process and the impact that it may have. Intellectually it seems to me that if public institutions do such a thing, they may well do it for similar reasons to why the health sector does, and it may well be that from a policy perspective it makes sense to extend it. But I don't have enough information at this point in time to do more than make that general intellectual argument.

The other point I'd make is that in looking at the letter from Gary, reference is made to "occasions when the ATA comes in to investigate allegations that a teacher has done something improper." I don't know anything about that either, but my opening comment would be: is the ATA a body to which this act applies? In the first place, I don't think so, so that particular reference may be inappropriate. But I do think it underscores perhaps a process that is applicable in institutions, other than those in the health sector, that is worth at least canvassing, because I don't think we have looked at it at all.

9:56

MS MOLZAN: If I could just offer some information to the committee that historically section 9 of the Evidence Act has existed since the 1960s and really only relates to the final decision of that body that's reviewed it. It really was meant to be an ability to research after the fact to see what could be done to reduce mortality, morbidity rates when there's been a death or something like that in a hospital. It doesn't exclude the original records. Someone can bring a lawsuit and still obtain all the records. It's not that it stops that. All it does is that the recommendation and the final decision of the committee itself can't be compelled to be used as evidence.

So the committee has looked at this. Their intention is not to do peer review but really to decide what happened in the hospital. How did we break down that this death occurred? Was there something that we could have changed? Their intention is researching it to improve it for the next time so that hopefully it doesn't happen, doesn't occur because of those same circumstances.

In the example that's been given, I don't know if it really is an equivalent situation, because the original records even under section 9 are still quite accessible. There is a kind of balance between the right of potentially a plaintiff or a litigant to see the original records but also the ability for a facility to say candidly: how can we change it and fix it in the future?

It may not really apply in the school situation because the original records are always going to be out there and available, and if there's an investigation or review, it seems like it's taking it into a different character. It seems to me to be a little bit difficult to perhaps envision reviewing a particular teacher in a way where you're saying, "Well, how can we avoid these things happening," you know, not looking for blame or fault in that person. That's really what section 9 is about. It's not looking at anyone's particular activities or what they did wrong; it's supposed to look at the overall process to improve it. As I said, the original records would still be accessible. It's just that the committee's final decision and what they do is not. So it may not really fit.

I don't know all the details of this either and certainly don't claim to know, but that's what I do know about section 9. That has existed for a long time and only for medical records because of seeing that, I guess, as sort of a public good in trying to look at the overall actions of a facility to see if something could be changed rather than trying to find blame, which is usually what litigation is about: trying to find who was negligent and then making that person responsible

for their actions. So, you know, it may not really be all that equivalent in this situation, though I'm unable to completely be sure of that just based on the little information we have.

MR. DICKSON: Mr. Chairman, is this one of those things that we could ask somebody to look at further? I mean, I don't know the details of the process either. I listened to Lisa's comments. I'd respectfully suggest there's still a part of me that says that it's worth pursuing further and finding out. It may well be that Lisa's and Donna's advice and sort of instinct is absolutely bang on, but I'd like to see it at least pursued by somebody looking at the relevant legislation or maybe talking to somebody who's in the know and finding out if it warrants some special treatment, as we've provided here in the health care context.

THE CHAIRMAN: Okay. We can do that. I'd ask that the background information that we get would relate to the degree of risk if it wasn't applied to other institutions or public bodies, I guess, and maybe some examples of where that might be the case. We will do that.

Okay. That's the last one on page 5, so I'm presuming that we can move on to page 6.

Page 7. I've made a note on mine that this was discussed. We rather bogged down, I think, on coming up with some clarification on what "discretionary benefit" means. I apologize. I asked everybody else to start out by listing the recommendation number; it's 28.

I'm looking at the query from the IPC office that there is some lack of clarity there. That was the committee's first reaction and certainly my own. I had no idea what a discretionary benefit really was. My original recommendation was that we delete the reference, until I found out it appeared in the act several times. I guess I'm somewhat in doubt that there is a clear definition, but my question may be rhetorical: is there a way of defining it that would resolve the problem?

MS MOLZAN: Sir, I did review the cases on this already. The federal courts have looked at the term "discretionary benefit" of a financial nature in regard to the federal Privacy Act. Generally, it seemed to me that there were some good indications through those cases as to how you'd apply it. It's very specific to the situation that arises. They've dealt with rental properties and certain job descriptions in regard to band members and certain things like that. What they've kind of arrived at -- and this sort of follows the general principle of how you interpret statutes -- is that if there's no definition, you apply the dictionary definition of it. So they've defined "discretionary" as having some element of: you don't have to give it, you're not required to give it, but you may provide it to an applicant or to another individual. They defined "benefit" as having just the ordinary dictionary meaning of some advantage or a gift or something that the person has obtained.

So it is a fairly broad term, but I think when they've looked at it in specific situations -- and I think it's been referred to this morning already that when you try to deal with a term in a hypothetical situation, it's very difficult to maybe interpret something. But when you actually deal with a particular instance and look at some of these other cases and how the judges have arrived at it, looking at the particular circumstances of the case it becomes a lot clearer.

I don't believe there is a way to define it, other than the dictionary definition that's used right now, that is going to help clarify it, except to possibly list what is or what is not a discretionary benefit. That likely is going to be not really effective either because you may miss things that are intended to be caught or over time things will change, and it's very difficult to ensure that everything is covered off. So I think it really is a matter of looking at the particular circumstances and, as the cases have done, basically applying the dictionary meaning to that term.

THE CHAIRMAN: A lot of what you said just enhances the contention that there is misunderstanding on how it might be interpreted. I'm going to maybe suggest that if there is a recommendation from the IPC office as to how it might be defined, that would resolve the problem.

Denis had his hand up first, so I'm going to get his comment first, and maybe that might address that as well.

MR. DUCHARME: Thank you, Mr. Chairman. First of all I must apologize. I received a letter from a constituent that I'd like to share with you.

THE CHAIRMAN: Is that on this same issue?

MR. DUCHARME: Well, dealing with section 28.

THE CHAIRMAN: Okay.

MR. DUCHARME: I apologize for the lateness when I received this. I didn't have an opportunity to go back and really review the discussions that took place previously. It pertains to an event, basically, that the commissioner has just made a recommendation on.

If you could just bear with me for a couple of minutes, I thought we could clarify down the line if we actually looked into it deep enough. Basically I'll just quote part of it here.

> I . . . wish to formally protest the release of personal information with regards to the disclosure of names of grizzly bear hunting permit holders during the 1998 hunting season, mine being one of those names.
>
> I believe that this is a definite invasion of my personal privacy and wish to express the following concerns:
>
> (1) question use and motive of information by applicants
> (2) opens the door to personal vendettas against hunters by anti-hunting and/or environmental groups and/or individuals
> (3) could affect livelihood of individuals owning businesses if they become targets of demonstration groups on or near their premises
> (4) could lead to targetting of individuals engaged in a legal activity (grizzly bear hunting in Alberta)
> (5) could lead to undue physical and/or mental harassment of individuals and their families
> (6) could lead to possible damage of an individual's property.
>
> I honestly believe the disclosure of these names threatens my rights to engage in a legal activity in the province of Alberta. Some provinces and states have enacted legislation to deal with extremist groups and/or individuals when it comes to this issue. Are the laws in the province strong and/or effective enough to protect me as an individual? Does the commissioner or the province have the right to endanger myself, my family, my property and my business by disclosing these names?

If I recall, when we came to this section, as far as wanting to add on besides the names, let's say, the addresses, et cetera -- I'm just wondering if the people checking out all the research for us had envisioned these types of situations. I'm just wondering if I can get a comment on that.

10:06

THE CHAIRMAN: Okay. It's actually a different issue, part of the same section we were talking about. But let's leave the definition thing for a minute and continue with Denis' thing since we're sort of

into the intensity of the argument. Then we'll come back to the definitions after.

MS WILDE: I just have a comment to make on that. The way the section is written right now, it says under (g) that if

> the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body,

it does not fall under section 16. Now, if the Legislature should decide that perhaps hunting licences and other licences should not be disclosed, then that is an amendment that has to be made. The commissioner went through the law and looked at the section, and that's the interpretation he came up with, that a hunting licence is a hunting licence. So that's something that has to be dealt with within this committee, if they decide to do that.

In terms of defining how discretionary benefits should be defined, I would agree with Donna. I don't know that there is a way that we can define it, unless you perhaps list all the benefits that are perhaps discretionary or not. There might not be a good way to do that. One thing, though, that the commissioner had looked at and had some concerns regarding was that the recommendation states that the disclosure of information would be limited to the recipient's name, address, and phone number. He took a look at that and thought that perhaps that might not be appropriate in all circumstances, that it might limit his ability to decide what is appropriate in one situation and what's appropriate in another. If it's a commercial licence, maybe more information should be disclosed. If it's a private licence, maybe less should be disclosed.

Those are my comments.

THE CHAIRMAN: I recall a fair amount of debate on this issue, and probably much of that debate took place I think during a meeting where I was discussing with some of the staff members what the problems are. An early recommendation did suggest that there might be differentiation between personal licences and benefits and commercial ones. The further we got into that, the more we realized that it was virtually impossible to sort out what is truly personal and what might be business, particularly when you get into the area of sole proprietorship. The individual's name is personal and the reporting from it is essentially personal, but it's being used for business purposes. I think we simply came to the conclusion that it wasn't possible, unless you listed each and every licence and permit and discretionary benefit, that you would ever be able to deal with this.

So the general consensus at that time was: let's put some limiting factors on it. But for fear of making this even a worse nightmare than it already is, let's leave well enough alone, even though it's not the best solution. Then it does capture the concern that Denis raised, that the reason why you may want to keep certain things private is because certain things are certainly subject to extremist and obstructionist retaliation. But how do you really sort that out? Is grizzly bear hunting notably different than deer hunting or fishing or whatever? It's the concerns of an individual or group that might be out there at the time that determines whether it's going to be a problem, not the act itself. So I don't know how you would really get into enough of a definition or put enough fences around it to deal with it generally. I'm back where I was originally. I'm not sure there is a good solution.

MR. ENNIS: Mr. Chairman, I think the complicating element in these cases, these licence, permit, and discretionary benefit cases, isn't only how the licence is being used or what it's being used for but the manner in which it's generated and granted. Of course the commissioner and commissioner's office can't talk about orders the commissioner has made; they have to speak for themselves.

In the case that Mr. Ducharme just raised and in other cases like that, an element that is very active in the case is the issue of: how is the licence granted or generated? I guess the issue that comes up is: how discretionary is that discretion? In that particular case the applicants had a concern around the integrity of the system that was producing the licences. It was more a curiosity about it, I suppose. Their search wasn't really for a list of names for the use of a list of names but a list of names to verify other inputs to that process and to see whether what came out of the sausage machine was a valid product. They wanted to see what went on inside that process.

So I think that's just another element to bring to this. It's not only the ultimate use of the licence but how a public body interacts with the issuing of that licence that was one of the issues of concern in that case and in other cases that we've seen.

THE CHAIRMAN: You didn't have a recommendation on how we fix it though.

MR. ENNIS: No. I think the sense is that the longer we think about this from an operating point of view the more the balance might have been there from the beginning; that is, the existing wording might be better than any direction that we're heading in at this point. We've had it tested recently in that case, the case of grizzly bear hunters. It has similarly come up in a few other cases around whether or not it is a proper balance, and it seems to work, to some people's satisfaction anyway. There are people upset with certain orders that have come out though.

MS MOLZAN: I was just going to comment, in regards to the direct letter that was read, that one of the sections as well of the act that may apply would be section 17, which is: disclosure harmful to individual or public health or safety. Generally, the difficulty that a public body would have is not knowing whether that exists, as has been indicated by the commissioner's office.

In this case I don't even know the exact facts, because I don't know who the applicant was, whether it was a newspaper just looking to see whether the licences were all going out to friends of someone in the department as opposed to being given out sort of indiscriminately -- in other words, the process of giving out the licence -- versus an environmental group or some group that is thinking of trying to discourage people from grizzly bear hunting. We are aware of situations in the papers and other places where red paint or whatever is thrown at people's doors and so forth. Someone who is going to potentially harass a person is not necessarily known to a public body, but generally an applicant is notified of hearings. I believe in this case it was actually an individual who had a licence that brought the case before the commissioner, so they have that right. Section 17 would allow them to bring forward evidence to show that it would be a threat to their health or safety.

It has been used successfully in cases in British Columbia that deal with such things. In one case a doctor had referred some concerns about a patient who was elderly and had had a number of accidents, and he wondered if this person should still have a licence to drive. The department independently asked that person for a medical and pursued it, and they did various testing and determined this person was no longer able to drive and removed their licence. The individual applicant wanted at the end of the day to see who had originally sort of let the department know that they should maybe look at this person, and they determined that they wouldn't give out the name of the doctor and his other information. He could even just get harassing phone calls; it doesn't have to be where you think you're going to be shot or stalked or something like that. I mean, it can be mental harassment. So this section could apply.

As well, with various abortion or women's clinics this section has

been used to say: no, we shouldn't give out the names of staff and shouldn't give out various other things. So for hunters who believe that they are going to be harassed, that section could be applied in that case. It's not that the legislation sort of says that in all cases it always has to go out. You know, 16 is only one section that would possibly allow it to go out. There are other parts of the act to consider in particular circumstances of each case.

10:16

MR. STEVENS: On this particular issue I'd just appreciate some understanding of how the act works right now. Because the licence is in 16(4), which says that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy,do I understand that if a request is made for the details of a licence, it's automatically given?

MS WILDE: Well, again, I would just comment on what Donna said. Number one, the word "details" would have to be interpreted: what is appropriate in this situation? In this situation, in the grizzly bear hunter case, it was thought that the name of a grizzly bear hunter could be released to the applicant. But as Donna said, there are other sections that come into play as well. Section 16 doesn't prevent the disclosure of that information; 17 may if the commissioner finds that there may be harm in releasing that information. I guess the proper way to say it is that he may support the public body in withholding that information.

MR. STEVENS: Let's assume details or whatever it means so that we don't get hung up on that. The way I read section 16 is that if you fall under (4), the assumption is that it will be released unless you can find some provision outside of 16 to not release it.

MS WILDE: That's correct.

MS MOLZAN: Except insofar as 15 and 16 are mandatory, section 29 gives them special protection. So under 29, if you think that it may be an unreasonable invasion -- as you said, it may be that some of the details would fall under (4) and suggest it go out but not necessarily the entire licence, and some of the other personal information may not go out -- you have to give notice to the person. Basically, 29(1)(b) talks about if disclosure "may be an unreasonable invasion," then you have to give the person notice.

I believe that's what occurred in these cases, where the hunters actually got notice that this is going on. Then it gives them an opportunity to go to the commissioner, because they themselves have a right under the act to go and say: hold it; I don't think any of this should go out. The commissioner can then review it and consider what to do. So even if none of the other sections apply, 16 gives you a chance to go to the commissioner's office, really, and it has that extra added protection.

Generally they are mandatory. There's a recognition that these are very important. When you're dealing with someone else's personal information or business information where they could be harmed, it's put on a higher scale. That's why section 29 kicks you into this: you have to give them notice; they have to have a chance. It's got timing. They have 20 days to go to the commissioner and say, "I don't like it," and so forth. So it's not that you'd automatically go into 16(4) and necessarily have it go out.

THE CHAIRMAN: Peter, you're addressing the question here on this issue?

MR. GILLIS: Yeah. Just to add to that. You deal with it inside the act, but say, for argument's sake, that all you release is the name. If I'm going to do ill to that constituent of Denis, then all I've got to do is go home with that name, run it up on the Internet against the telephone book, and I have the address. So you've got to start right back with the name and work forward as to what you're going to release.

THE CHAIRMAN: Ron, you wanted to get back on it?

MR. STEVENS: Yeah. I'd just like to follow this through so that I understand the logic, because it seems to me that it is an issue for some people, and certainly for me it will be useful to understand what currently is happening when this kind of issue comes up.

All right. Under 29(1)(b) we have a reference to section 16, "an unreasonable invasion of a third party's personal privacy," but when I read 16(4) and I go to the harms section, which is (3), it doesn't reference (4). So I'm assuming that any information that falls under subsection (4) is not reviewed in light of the harms issues that are listed in subsection (3), because it specifically says that it does not apply to subsection (4) information.

MR. ENNIS: No. The harms issues in section 17 would be the issues that would be looked at.

MR. STEVENS: Okay.

Now, when I look at section 17, these are, in my view, fairly extreme situations which are outlined: "threaten anyone else's safety or mental or physical health" or "interfere with public safety." I think those words are used in other pieces of legislation and denote something that is extreme, very harmful, and may fall short of someone with a picket group outside their house or people embarking upon some kind of letter-writing campaign or something else that may go along with the harassment that Denis was talking about that accompanies the disclosure of bear licences, for example.

So the point I want to make is that while you referenced section 17, it seems to me the kind of problem that Denis has raised for us today may not be dealt with under the current structure of the act, because from where I sit, that kind of consideration would probably be better dealt with under the subsection (3) considerations of 16.

THE CHAIRMAN: Or is it possible, as we're dealing with this, that section 16 should not be used for the interpretation but maybe 17 or 29? One has to assume that if an individual comes in and asks for information, either the individual at the public body office or maybe in some cases the licencee applicant would have to be suspicious at the very least that this is going to be used for purposes other than the simple gathering of information. How do you put that kind of a test on any applicant? It may be possible that there needs to be strengthening of the exclusion.

I didn't put it through, but I heard you make reference, John, to section 17, and also we're talking about 29. Maybe that's the area where there might need to be some strengthening in the event that there's reasonable expectation of something to be harmful, whether it's harassment or anything else, to make provisions that you could exclude it under that rather than muddy up section 16.

MS MOLZAN: Sir, I think as well, as was referred to by the commissioner's office, by Lisa, that what is the detail of a licence is also a starting point. If you say that the detail of the licence is merely that you can take one grizzly bear -- you know, you're allotted one bear or something like that -- as opposed to all the facts that go into the name and so forth, you can sort of cut a line to determine what you'd give up and what you wouldn't. So an environmental group may know that 10 grizzlies may be taken and that three are licences in Edmonton and four in Calgary or something like that. That may be all the detail that you would have to give out

under 16(4). It depends on how you define that line and that term.

10:26

I think it is correct that it may be that 16 doesn't completely cover off the situation, but when the act was being drafted, it certainly was again that balance between transparency of government and the right of others to know who has a permit to build a building in a certain place or take trees, you know, a lumber mill or whatever, who holds that permit, and then also the right of that individual in certain private circumstances to be able to keep that information out of the public forum. Again, it's that really delicate balance between disclosure and transparency and privacy, and it certainly is not an easy one in any way. It may be that it is extremely difficult certainly to clarify it so that balance is apparent, because every time you get a new set of facts, you find that it maybe doesn't completely fit into the act as nicely as you'd like it to. If you took out a licence or a permit, then you'd have situations where people may agree that something should be more transparent, yet now it's taken out, so you don't have to give it out.

The cases as far as 17 is concerned have set a high standard. You have to show that there's an actual reasonable likelihood of the harm, but they certainly haven't been insurmountable. They have applied with harassment issues and so forth. It may be that that's a place to clarify it. Again, the more words you add, the more you try and clarify for one situation, you may be closing the door on others, and it becomes very difficult.

THE CHAIRMAN: I understand though, Donna, that the question of the details of the licence is not one we're dealing with. That is something that's available now. It was just a matter of putting a fence around limits on the details of the individual licensee applicant that we're talking about. Am I correct?

MR. ENNIS: The personal information that's held on the licence.

THE CHAIRMAN: Yeah. The details of the licence are unquestionably available.

MR. ENNIS: Yes.

MS MOLZAN: Where I was referring to that would be: is that personal information a detail of the licence, or is it something else? Is it fenced off to be different, you know, to be taken out of that, so that when you have a big licence that talks about someone being able to build a certain building in a certain location, perhaps all the details of the location and what type of building they're building and all sorts can go out, but the fact that it was a particular individual who asked for the licence and their name maybe would not go out. So is that personal information part of the whole licence or is that something different?

THE CHAIRMAN: Now you're getting into splitting hairs. I could give you many reasons.

Let's go to a different issue. Let's say the building permit issue that we balanced on for a while. The track record of an individual builder or contractor would be as important information to the neighbour who is potentially subject to the development as the licence itself. So I don't think you can get hung up on whether one time the name is an appropriate thing to release or at another time it is not. I think that's the essence of the question that Denis raised, where we bogged down the last time.

There isn't a one-size-fits-all solution to this. As a matter of fact, I would doubt that we're even close to one size fits all. There has to be a lot of discretionary authority available here. That's why I suggested that maybe the solution would be dealing with the exception, the test of a potential harm, in which case the onus would be on the licensee applicant, not on the applicant for the information, and then possibly, if there was reason to believe that there were nefarious motives, on the person in the public body who is releasing it. But, I mean, you are now at the point of asking someone to be aware, almost like having a crystal ball. So it would have to be based on historical problems, most likely the most onus placed on the licensee applicant to make application to except or exempt.

MS MOLZAN: I think 16(3)(e) does, at least the way it's been interpreted in other areas, apply to that type of harm. Again, if we're looking at (4), of course it would take it out of (3). But if you're looking at (3), it does talk about the third party being "exposed unfairly to financial or other harm." We've certainly interpreted "other harm" to be harassment or whatever as one of the balancing factors under l6.

THE CHAIRMAN: Could I ask, because we're going to start going in circles here, that for the next meeting we might have a recommendation on how those exemptions or exception sections might be strengthened a little bit, which could allow an individual to apply for some reliefs in advance if they were expecting harassment or whatever, whether in fact there might be sufficient strength in those sections right now or whether they might be improved. I'm certainly not convinced we're any further ahead in dealing with section 16 than we were a couple of months ago when it first came up.

MR. DUCHARME: Mr. Chairman, I'd just like to make one comment if they're going to go back and review it. We know by what's happened in the past few months that what we've got in place now certainly is not protecting the privacy of these individuals. It's very clear with the decision that's come down. So I think it's important to basically look in terms of setting up, let's say, where our legislation is failing.

THE CHAIRMAN: Okay, and I agree with you a hundred percent, Denis, except I think we have to take into consideration that when an individual applies for a licence or a discretionary benefit, there may be certain things that come with it. I'm sympathetic to the cause, but it only is triggered when you apply for a licence.

Getting back to my question, can we maybe get some suggestions as to how there might be some relief built in?

MS WILDE: I'd also like to make a comment. If section 17 was expanded to include a phrase like "there will be unfair exposure to financial or other harm," the onus would still be on the third party to show, to bring evidence before the commissioner, that there is that unfair financial or other harm. In this case, I don't believe there was any such evidence brought forward. I guess that's all the comments I wanted to make.

THE CHAIRMAN: Enough of an idea where we're going with this to come back with some interpretation or solution or alternative?

MR. DICKSON: I hadn't entered the debate, but I'll just make an observation while the experts are going to draft it. There are two comments. Section 17 was designed in the act to deal with applicants being denied information, and it was structured more broadly. The purpose, you'll recall, Mr. Chairman, was for a case where you had somebody who had some serious mental health issues and getting access could create some other problems and so on. That's really the purpose of that. To expand section 17 is hugely

problematic because it can be used to deny an individual access to their own file. So I think, with respect, that we're missing the point if we're trying to build into section 17 a way of covering this case, because then what we do is potentially deny a citizen access to their own information for broader grounds, and I think that's very problematic.

The other thing I'd just say is that whatever solution we come up with, you cannot get into questioning the motives of an applicant. It's an application, and you treat all applicants the same. There's just no way we can fairly police what we think their motives are. I mean, there are a lot of people that might like to deny a Liberal MLA access to information and think they have good reason for doing that.

I'd just make those observations, Mr. Chairman.

THE CHAIRMAN: I'm not absolutely familiar enough with section 17 from memory that I could comment. John raised it a little bit earlier. That's why I mentioned it. I was thinking more along section 29, where the third party could make a case for it, but the complications of how you do that are there. One would have to assume, when you're applying for the licence, that you might also at the same time suggest that from historical data or whatever there's reason this activity may be subject to harassment. So it would be throwing the onus on the applicant, the licensee applicant I'm talking about, to flag for the public body that there might be a problem. That's the area I was suggesting maybe some solution for.

You're right. It would be very difficult for us to get into legislation that questions motive. One would need crystal balls much better than politicians' and people who work for them, I think, to sort out that type of problem. Okay?

10:36

MR. ENNIS: Mr. Chairman, I really hate to do this. We're on page 7 here, and you're dealing with recommendation 28. I did have a question, and this is a technical question on recommendation 25, because I'm looking at this as a section that would be on the commissioner's plate fairly quickly. This is the recommendation around allowing for the declaration of extensions, for the commissioner to approve extensions where people are working in association. There's very little we know about the people we work with at times, and sometimes we put together the fact that they are in league with one another, but they certainly often work in the same association and don't know what one another is doing. We've had that experience as well. So you have these coincidences. For example, let's say, from a large environmental group that's loosely knit you might have two people in that group doing something that might be seen as working in close association when they don't know what one another is doing.

Now, I was looking at that section, wondering if the committee wanted to go with something like a consideration of cases where people make access requests in concert rather than "work in association." Again, I'm looking at the practical problem of trying to factor through what people's associations are and running headlong into considerations of Charter rights and all the rest as to how people are associated. I was wondering if this was a good time for the committee to think about what they were intending by "association" and the test that would be involved there, what "work in association" means, and whether the committee wanted to look at the recommendation to see whether they wanted to tighten that to something like a conditional thing, like making access requests in concert, or leave it as open as this and then place the commissioner in a position where he would probably have to come down with a more restrictive test on so general a condition.

THE CHAIRMAN: I think the word "association" was probably one that just showed up in the drafting. I don't expect that there was any deliberate definition of that word. I know when we discussed it, we were talking about that same kind of insight and crystal ball that the commissioner would have to have as when we were talking about the reasons for which an applicant may request information. So it definitely is vague. I have no problems changing the wording if that would clean it up a little bit, because in many cases it's going to be extremely difficult. This is just allowing the commissioner the opportunity to use that, and I'm assuming that the commissioner would have to be reasonably satisfied that that is the case before they would exercise that option.

MR. DICKSON: Just to remind committee members, if we're looking at this again: section 2(d) of the Charter means we've got our freedom of association. I think that, frankly, this section offends the Charter protection. I think that we've got to go back. To be fair, we've had this debate before, but I just say that on reflection I find this recommendation more palatable than it was when we discussed it before. I think that you can deal with the volume of requests, you can deal with mechanical problems, but you can't get into a position of trying to determine who's associating with whom, that because they happen to work for the same employer, that triggers some prejudicial action, prejudicial from your perspective.

Now that the thing has been raised again, I just want to go back and point out that difficulty. We didn't talk about a Charter challenge before, but I've thought about it before, and that's in my little answer to the preliminary report. I think it's a real problem.

THE CHAIRMAN: You're correct, Gary, but my observation here is that this was a case where the commissioner was given some discretionary authority to deal with applications that simply overpowered the ability of the public body to provide the information, notwithstanding any best intentions and anything like that.

If you're going to rule on the amount of activity that the public body or the employee of the public body can deal with, you would start by eliminating those things which might obviously be created by, you know, concurrent requests, which certainly would cause problems for other individuals who were innocently caught in the network of being able to get their information, and expanding it to the point where the commissioner has reasonable grounds to be sure that this was more than one person working in concert or in association doing the same thing. It just gave some discretionary power to look at what might be abuse or overuse of the system. I interpreted that as nothing more than that, not as in any way preventing one or more individuals from being associated in any way, in reflection to the Charter. If someone sees something other than that, I would like to know, but this was just allowing the commissioner the discretion to provide relief.

Now, I have no hang-up with the words "association" or "in concert," but again, we weren't getting so hung up as to describe the legal terminology as we were going through this. You know, unless there's a major reason, maybe we should just leave it at that. Once the drafting of an amendment, assuming that it's accepted -- we could leave it there. Would that be satisfactory?

MR. ENNIS: I think your comments this morning, Mr. Chairman, together with this recommendation will be very helpful to draft something.

THE CHAIRMAN: Does anyone feel the need for a quick stretch? The chairman does, so I'm going to adjourn the meeting.

[The committee adjourned from 10:42 a.m. to 10:48 a.m.]

THE CHAIRMAN: Most of us are back. We'll come back to order here.

We've moved on to page 8. I have a note; these are just my own checkmarks. Recommendation 33: I'm reading the comment from the IPC office about the overly broad definition of "aboriginal authority." Actually taking from the letter, not from the one-liner here, I'm inclined to believe that there might be a problem there. I raised it when we originally discussed it and in fact asked that the word "recognized" be added in here.

I'm inclined to believe the notation from the IPC office, and even that might not be strong enough, because with the way we deal with a lot of aboriginal groups, even with "recognized," the question I guess remains: recognized by whom? It may be better to extend that using the recommendation from the IPC office that it might be strengthened a little bit just to make sure that it is intended to be used by legally recognized organizations. I think there's a reference to the Métis Association, which requires some legal status. It's certainly required for all other public bodies that there is a legal status attached to it.

MR. DICKSON: In fact I'd so move, Mr. Chairman. I support some more specificity, some more detail in terms of what kind of aboriginal authority would qualify. We're talking about an exception, so I think we should do it narrowly. It seems to me that what the IPC office has recommended still does justice to the original intent, which is that in terms of an aboriginal self-governed group, it's there with a mandate to negotiate with the province or whatever, that that's appropriate. We didn't intend it to be the Calgary Native Friendship Centre or a host of other organizations that exist for purposes unrelated to negotiating government land deals and treaty claims.

MS KESSLER: We recognized the commissioner's concerns and had some discussions with Intergovernmental and Aboriginal Affairs as well as Family and Social Services, that had recommended part of the government submission in the first place. In the comment field that was sort of the draft suggestion that they provided to us in the way of clarification. I think it's a little more specific than what we had before, but I'm not sure whether it meets your intent or not.

THE CHAIRMAN: I have to admit that what I was working from was the draft before this. Until now I hadn't even read what was in the comments. As long as it's strengthened. Gary made the point of recognizing self-governance as an issue with aboriginal groups, and we didn't want to get anything that might otherwise define that. In relation to this section of the act we have to be careful what we put in. The wording there, now that I read it, seems appropriate. Does that satisfy the IPC office?

MS WILDE: Well, the wording that has been suggested in the Labour document may still be a little bit vague: "an aboriginal organization exercising government functions, including the council of a band." An "organization exercising government functions": well, there are a lot of organizations that might claim they're exercising government functions, but are they really? Is there some sort of legal status attached to them? That might be an issue. Also, "an organization established to negotiate or implement, on behalf of Aboriginal people": well, any group of people can attempt to negotiate or attempt to implement some sort of agreement. That doesn't give them legal status. I guess the IPC commissioner would prefer stronger wording, perhaps as recommended in his letter to the committee.

THE CHAIRMAN: Okay. Lisa, I'm very inclined to agree with you now that I read it with my glasses on. It talks about exercising functions. That doesn't necessarily mean that they're legally entitled to exercise those functions. The word "including" simply expands it; it doesn't define it.

MR. STEVENS: If I may offer this suggestion. I think everybody is saying the same thing, and ultimately it will be for the drafters to work on the legality of the definition. But I think we're all saying that we want to focus in on a particular group or groups and that this is moving us in the right direction, albeit it still needs further work.

THE CHAIRMAN: I would suggest that somewhere or other the words "legal status" be built in, without trying to do the legal drafting here. That seems to be what's missing. I would expect with this discussion that there's a consensus that it needs to be tightened up. Do you folks have enough information from this discussion to do that?

MR. DICKSON: If that's the case, Mr. Chairman, I'd ask for unanimous consent to withdraw the motion I'd made and that we simply leave it on the more open-ended and more flexible approach as suggested by our friend from Calgary-Glenmore.

THE CHAIRMAN: I think we want to change the recommendation though. The wording would be reflected in the recommendation. Okay? A consensus? Agreed?

HON. MEMBERS: Agreed.

THE CHAIRMAN: Okay. Anything else on page 8?

MR. DICKSON: Well, Mr. Chairman, I see other people as well as the Calgary board of education -- FOIP people have raised concerns about the reduction of 15 years to five years. Now, I raise it simply because I undertook to do it, but I told them quite frankly that there are lots of mandatory and discretionary exceptions that will still apply after five years or 15 years and that I would not be prepared to champion their cause in terms of extending the five years. I think we made that decision for good reason. I simply raise it to be consistent with what I undertook to do.

THE CHAIRMAN: I'm going to suggest that when we dealt with the five years, it was a fairly arbitrary choice. It was less than 15 years. I'm not sure we came up with very scientific evidence that five years was the best choice. If this is a major problem in the MASH sector, I personally am not going to lose a lot of sleep if we change that to 10 years, for example. I'm just throwing that out as a compromise, the basis of which is no stronger than why we chose the five years.

MS MOLZAN: Sir, the new limitations act that has recently been proclaimed does contain a long stop of 10 years, and I notice at the top of page 9 that was raised by the city of Edmonton, that a 10-year period may be more consistent with the limitations that create this new, as I said, long stop of 10 years. It changes the actions to generally two years, and then in certain circumstances -- in any event, nothing can go further than 10. So it may be consistent with that, to sort of set 10 years as a long stop, consistent with that legislation.

THE CHAIRMAN: I had a question mark beside the reference to the limitations act anyway, so that answers that question.

MR. DICKSON: Well, it's interesting, the limitations act. It does

have the 10-year drop-dead provision, but that ought not, with respect, to influence our decision. The reality is that we have 13 exceptions in the act. They were generous exceptions. We fine-tuned some of them. We expanded some of them modestly. We went through this exercise of asking before. What would you need absolutely blanketed that couldn't be brought under one of those 13-odd exceptions? I think we ended up concluding as a committee that we had really good coverage. So regardless of what the limitation period is, I think that five years or four is ample time to take everything, to take all of that stuff out from review, and then after that, you're still left with the exceptions.

The other thing to balance is that the Association of Alberta Taxpayers and a host of other groups are arguing not to expand to five years but to take that five-year rule and also apply it to government departments and provincial public bodies. So I think we don't want to get into rearguing that thing. We recognize that there are some people who'd like us to do more and make it five years across the board. Some people would like it longer. In a case like this, this is the classic time to stick with what we decided last time after due deliberation and full consideration.

10:58

THE CHAIRMAN: We just did this because you brought it on behalf of the Calgary school board.

MR. DICKSON: I understand. I hoped I'd made it clear. I wasn't pushing for a change, Mr. Chairman, unless you were going to make it five years across the board.

THE CHAIRMAN: I just couldn't resist the opportunity to rub it in.

MR. DICKSON: I know.

THE CHAIRMAN: The ones you really want, we ignore, and the ones you aren't championing, we jump on the bandwagon there.

MR. DICKSON: I've noticed that, Mr. Chairman. I've noticed that.

THE CHAIRMAN: Any other observations on that? Leave it? Okay.

By default does that move us on to page 9, or are we still on page 8?

MR. DICKSON: Well, just before we leave page 9, I want to query whether there had been other concerns about protecting the Minister of Justice when he was giving legal advice. I just thought maybe there had been thoughtful Albertans writing and protesting our recommendation. I just wanted to canvass whether that was the case. Number 39, Mr. Chairman. I take it not.

MS KESSLER: No response.

THE CHAIRMAN: I think it appeared in your memo.

MR. DICKSON: Yeah.

THE CHAIRMAN: I don't recall why, but I put a question mark beside the notation on recommendation 38, the comment from the Provincial Mental Health Advisory Board about the number of standardized tests in clinical practice. Is that one of those? For lack of wanting to brand it as an organization, as I suggested earlier, that might want equal status, is there some basis to that request, or is it a weaker argument than we had dealt with in section 38 earlier?

MS SALONEN: No, it seems to be a reasonable request. I think the amendment was a clarification anyway that the original thought was that standardized tests would be included in section 25, and schools thought maybe they wouldn't, so that would be clear. If it's clear for them, it would follow to other public bodies as well.

THE CHAIRMAN: Okay. So there's enough information in the recommendation that theirs is accommodated?

MS SALONEN: Yeah.

THE CHAIRMAN: Okay.

Moving on then. Page 10.

MS WILDE: I would have just one comment regarding recommendation 44. The commissioner has stated in his letter that again he is opposed to permitting the postsecondary institutions to indirectly collect personal information from published or other public sources. I would just like to state that again for the record on behalf of the commissioner. He believes that doing this transforms individual pieces of information into a powerful profiling tool. So he would definitely be opposed to that.

THE CHAIRMAN: Okay. I think we took that suggestion into consideration when we made the recommendation.

MR. STEVENS: If we're finished with that particular number, I just wanted clarification on recommendation 43 and the comment by the University of Calgary that requests an expansion to include candidates for membership on governing bodies, et cetera.

MS WILDE: From the commissioner's office I would like to say that I think he would not be opposed to that with perhaps one limit placed on that recommendation, that it be done for specific recommended positions and that it not enable postsecondary institutions to gather dossiers on individuals that they feel may be potential candidates for a position, such as a board of director's position or another position. If it were limited to just a specific position that is available at the moment or will be available in the near future, that would be all right.

MR. DICKSON: Mr. Chairman, I don't know mechanically how you do that. It seems to me either you're in or you're not. I understand the remediation, but with respect, I'm not sure it's a workable limitation we can reduce to a statutory amendment.

MS MOLZAN: Mr. Chairman, one of the options with the candidate situation that they've referred to might be just to get the person to consent. If they're putting their name as a candidate and if they give their consent, then you don't need to amend 33 at all. It's already in there. I'd sort of assume that if someone wants to be considered, they may be then willing to say: fine; I consent. You know, it's like when applying for a job. You allow them to do certain reference checks on you because you want that position. It may be that nothing is really needed. It's just a matter of how you apply the act.

THE CHAIRMAN: I'd also caution that this is one which would certainly open the doors for any individual nominated to sit on a public body board. There's very little difference, I think, in this case between a postsecondary institution, a regional health authority, or any one of a multitude of public boards that exist now. This is not a case where the postsecondary institution by virtue of appointment has a different status.

MS SALONEN: Just a clarification of why they've raised that and why that might not work. I think the current practice is that there aren't always applications first, that people show interest first. Often a university will determine who they would like to invite to apply. So they build a dossier, and then they say: yes, these people are really class 1 candidates; we'd like to ask them to apply if they're interested. They haven't got consent yet when they're doing that.

MR. ENNIS: Mr. Chairman, I think it's important from the act's point of view, in terms of the access rights of those individuals to see their own files, that they know what the information was collected in contemplation of. So going back to the issue of can it be built into the statute that there be a limitation that the information is collected in contemplation of a tangible vacancy, I think that condition could be put in the act so that when a person saw their dossier, if we call it that, or the file about them, they would know that information was collected in contemplation of appointing them to the board of governors or some other organization and that it wasn't collected in contemplation of any other unspoken purpose.

It appears doable to talk about intended vacancies or contemplated vacancies in general so that people in public bodies know that when they're collecting that information, they'd better pin it against something tangible, like an upcoming vacancy, rather than just having the file lying around and used for other purposes.

THE CHAIRMAN: Well, if this would have the ability to be fairly simple without getting into all the other areas where board members might be screened for appointment, I wouldn't mind having a look at it. But it strikes me that this could be a little bit complicated, you know, bringing in an issue that goes far broader than postsecondary institutions.

MR. DICKSON: The difficulty with an anticipated vacancy is that, to the best of my knowledge, there are no life memberships on the board of governors of any university in Alberta. So, yes, we're collecting a dossier, and in 20 years' time or 10 years' time we may have a vacancy. I appreciate the effort to make this thing manageable, but the minute you start saying "a prospective vacancy," well, where do you draw the line? There are going to be vacancies, we know, on every board. I guess what I'm saying is that it doesn't import to me enough narrowing of what otherwise is an awfully expansive power to do something that I think as a committee we've not been keen on supporting or promoting.

THE CHAIRMAN: I have some doubts about this. Particularly, my impression is that a lot of this process that's going on right now is not really to view the suitability of the candidate but the potential unsuitability of the candidate. I'm not so sure that it's always being used in the right way. Maybe that's where my bias builds in.

11:08

MR. STEVENS: Well I think I got lots of information to my question, and I don't see any reason to change our recommendation.

Thank you.

THE CHAIRMAN: Okay. Have we finished with page 10? Can we move on to page 11?

MR. DICKSON: I'm sorry; I thought we were on 11.

I saw another problem. Somebody was talking about the one-year limit before destruction of personal information that I thought one of the universities had raised. Have I got the wrong section?

THE CHAIRMAN: I don't know if it's in this section, but the universities did raise it. I think we did discuss that earlier and suggested that the B.C. practice of returning the exams to the student if they didn't want to hold them in storage was a simple way around it without creating a particular exclusion in the act.

MR. STEVENS: What number are we on?

MR. DICKSON: I'm sorry; 47 was the one I was looking at.

MR. STEVENS: Well, this appears again actually on page 18, which is, I think, where Gary may have seen the comment. If you look on page 18, at number 17.

THE CHAIRMAN: Right. Number 47 is a different recommendation.

MR. DICKSON: That's the one I'm speaking to. Thanks, Ron.

MR. STEVENS: There's a reference there by SAIT, which says:

> Not allowing disposal of exams until a year has passed is inconsistent with historical practice that has worked well.

Mount Royal College has a similar comment.

THE CHAIRMAN: Nothing else, then, on page 11?

MR. DICKSON: Hang on one second before we leave it, please. I'm just trying to understand my notes.

On number 50, when I talked to the CBE again, their suggestion was that rather than using as the threshold that the test requirements of section 16 have been applied, what they asked for was that all of part 1 of the act be applied, and I'm trying to remember why. There were some other exceptions, they said, that would apply that wouldn't be captured, obviously, in section 16. I'm sorry, Mr. Chairman; maybe one of our experts here, Diane or somebody, may know or have heard something from the school boards around that issue.

MS SALONEN: No, it wasn't from the school boards. It was in discussions with our legal drafters that, yes, maybe 16 doesn't apply. But what about some other exceptions? What if it was a cabinet confidence document or especially one of the mandatories? So we may want to look at all of the exceptions in part 1 rather than just at 16.

MR. ENNIS: Part of the confusion here is that this section is not a compelling section. People tend to read it that way however. They think that if the condition allowing for disclosure is present, then somehow they're compelled to present the information. It may be hard to keep them from reading it that way, so the idea of building in more reference points, more things for them to think about as they're trying to make this disclosure decision on their own seems to be the theme of those recommendations.

MR. DICKSON: Can I ask: what would be the downside if we were to expand it from section 16 to incorporate all of part 1 of the act?

THE CHAIRMAN: Well, my first observation would be that we did this to simplify a process of otherwise fairly innocuous information, and if you get too broad, I think we're going to just be right back to where we were. In defining this thing so precisely that there would be no flaws in it, you may as well go back to the written application and the documentation and everything that we had prior to this recommendation. That is my personal observation.

I realize that there is a little bit of concern from the IPC office about the practical application of this, and they've expressed that. I gather from the letter that, tongue in cheek, they accept this as an improvement, you know, getting out of the bureaucratic mentality.

They gave us fair warning that there may be some problems with this, but there is a tracking device built into it, and our attempt to make this thing a little bit simpler is noted. I think we were all kind of doing it with the idea: let's see if it works. If there are problems, we may have to fence it in, but right now let's run with it and see what happens. Is that a good interpretation?

MR. ENNIS: That's a very good interpretation. There's some risk here of putting these decisions in the hands of institutions who've been making the same decisions for many, many years and seem to have gotten it right in most cases.

THE CHAIRMAN: Okay. Can we move on to page 12?

MR. DICKSON: I'm just going to make an observation -- and I'm speaking generally, I guess -- about 51, although it spills over a little bit into 50. It seems that the one group that has sort of uniformly raised the most concerns around what we're doing and the act seems to be the school community. I'm really anxious that we sort of nail the concerns that schools have to the extent it's possible. If it means that we take a little more time to go through the feedback we've gotten from the School Boards Association and individual schools, I hope, Mr. Chairman, we'll be able to do that. I really want this act to be not only workable but understandable to school councils and school principals. It seems we're getting closer, but I'm not sure we've sort of addressed all of their concerns yet in the preliminary report.

THE CHAIRMAN: Have you got a specific recommendation?

MR. DICKSON: Well, I haven't seen or I don't remember what the IPC said about section 38 in particular, and I don't remember what the Alberta School Boards Association said.

THE CHAIRMAN: There are actually observations right in here. The IPC office had suggested that this recommendation 51 wasn't necessary, that the previous one covered it. I think we went through that debate at the time and agreed to disagree on that observation.

The School Boards Association asked for clarification. They support parts of it but wanted to know if this included releases of class lists and such. They also suggested that the term "public function" may be hard to define. I think in both cases there was some question about definition, but this is another one of those where, for the sake of taking historical practice and making it easier to administer, we may build in some minor flaws. This is a case where, since I was a strong proponent of 51, you would probably expect me to defend it, which I am going to do. I think my recommendation was built strongly on the fact that there may be some flaws in it, but of the number of requests we got along these lines, this is one where we have to take a chance and see if it works. If there are some flaws that develop or some very obvious ones that potentially develop between now and the time it should be drafted into legislation, that should be considered. I think the idea of some commonsense openness is necessary.

MR. ENNIS: Mr. Chairman, I note that the letter dated January 26 that arrived from the hon. Mr. Mar goes into some length on recommendation 51 and provides some interesting detailed considerations and break points that the committee might want to look at in structuring a more refined solution to some of the problems that the Alberta School Boards Association is pointing out. For example, he does raise the possibility that the kind of test to be used might be a test of the kind of information that would be disclosed at a public function about a student. It's on page 2 of Mr. Mar's letter.

11:18

THE CHAIRMAN: In all fairness this letter was one of the two that was just dumped on our table this morning. It was only received on Friday afternoon. So unless you had an opportunity -- I certainly didn't have an opportunity to read this before the meeting.

MR. DICKSON: Mr. Chairman, if I can make a suggestion. I think it's so important we get this right for the purpose of schools. I don't know whether we have the time now, but we've got some different pieces of information that have come in, and I suppose we can spend some time, maybe not so productively, trying to work our way through it. The alternative would be to ask Sue Kessler in conjunction with our other experts to try and take this material, put it together, and come back with a specific recommendation they could even fax out to us in terms of what, if any, changes would be required to these key recommendations around the schools. I'm repeating myself, but I'm concerned we get it right, that we address these concerns. It looks to me like we've got some different suggestions on how to do it, and most of us have not had much time to sort of consider all of this material in advance of this meeting.

THE CHAIRMAN: Okay. I'm willing to take the recommendation that perhaps the information that came not only from the Minister of Education but from the Deputy Minister of Advanced Education be brought back at the next meeting with some notes as to its relevance to the recommendations.

MR. CARDINAL: Just a comment on that particular one. We have a lot of students, especially in northern Alberta, that are working in a lot of technical trades and a lot prior to completing grade 12. One program, Careers: the Next Generation, is a good example, where students can start working towards an apprenticeship program at quite an early age, probably at the grade 10 level. If a student, for example, goes and applies for a job in private industry and the employer wants, you know, attendance records and school marks and stuff, would that institution be able to provide that information under this at the request of the private industry?

THE CHAIRMAN: With the endorsement of the applicant, which is generally the case now. If you want a transcript of your school records or anything like that, when you're applying, you would sign a waiver or give permission in the appropriate form.

MR. CARDINAL: It can be done now?

THE CHAIRMAN: Yes.

Okay. With the earlier discussion on section 51 we'll obviously defer that.

Anything else on page 12?

MS WILDE: Yes. Actually I have a comment regarding recommendation 53. Now, I believe this was discussed in some form earlier in the committee meetings, but again I would just refer to the commissioner's submission that he would be opposed to permitting two public bodies to disclose information between themselves without consent or the appropriate authorization under an act. Arguably there are not that many common programs at this time, and if there were common programs that were being entered into, it may not be too much of a problem for consent to be obtained or perhaps for the appropriate authorization to be included in an act.

THE CHAIRMAN: Okay. I think that point was made when we

considered the recommendation. I'm not sure whether there was still some area of doubt as to what the definition of a common program might be. I don't have any trouble understanding it, but there were a couple of notes, I believe, in there that one might want to make sure that "common program" meant one that two public bodies were actively working on in some fashion, but I'm not attempting to define it.

Your note about the opposition, which was there when we made the decision, I guess. I think this is one of those cases: do we go back and revisit the opposition? Maybe not. I'll leave that up to committee members to decide.

MR. DICKSON: I'd just bring it down to sort of a real life example, one of the things that is happening that is of some concern. This is the case of the new mother who gives answers to questions by her attending physician to fill out the notice of live birth form. The form is taken by vital statistics from the attending physician. Vital statistics then has a whole range of people they can share this with. They send it to Alberta Health, that says they don't do other things with it.

I've heard from a lot of people. There's a *National Post* story, Mr. Chairman, you may have read about. Subsequently, I got a lot of calls from people sort of questioning why we're doing it: just because it's been done since 1950 or whenever, whether it still ought to be done. I think that even though we had looked at this, the notion of "common program," unless it's defined very narrowly, it can lead to an offensive degree of sharing of information far beyond what Albertans may think or recognize when they give information to one public body. That's new, I mean, since we initially dealt with this. We have some indication, I think, that Albertans don't always view all government departments as benign entities when it comes to taking their information and moving it around.

The example I'm using is where the new mother answers questions about drug and alcohol use, about how many times she attended prenatal classes, that kind of material, which then is the sort of thing that becomes available to other departments, police forces, and that sort of thing. Someone might argue that those are sort of common programs, if you took a really expansive view of that phrase.

I'm not sure I've got a concrete recommendation, but I wanted to underscore the importance of this issue and perhaps reconsider the decision that we had made before.

THE CHAIRMAN: In our earlier discussion -- and I'm subject to correction on this -- we did modify the wording to include "where it is necessary to deliver a common program." I believe the earlier version was more along the lines: for the purposes of delivering a common program. That may have been interpreted that any information on the individual's file might be transferable simply because part of it was needed to deliver the program. I think the last rewording would imply that only that information that was necessary to make that common program operable should be the interpretation. We legally may not have gone far enough in making that clear.

I'm thinking more along the lines of a high school deciding to take some kind of a career program and work with a neighbouring college in delivering that. This makes it possible to transfer information one way or another that is essential for that program, not information that might have been in that student's file 15, 20 years earlier -- hopefully they didn't go to school for 20 years -- whatever it takes to deal with that, and likewise between, say, social services and children's services, maybe various health authorities that are delivering common programs, but only to the extent that it's necessary to deliver the program.

If we need to be more explicit, I can see that, but I would hate to retract the decision that would make it relatively easy to do this kind of work. I throw that out for comment.

11:28

MS KESSLER: I just wanted to mention that we are working with the drafters on this, and we've been discussing ways of narrowing this. That certainly is our drafting instructions to them in two aspects: looking at jointly supported programs or services -- again, that concept still has to be defined, but it's joint programs -- and clearly conveying the need-to-know basis in the provisions. The instruction definitely is to narrow it; it's not to have it broad.

THE CHAIRMAN: Okay, if the message can get through that the need to know is a critical issue. Would that be of some consolation to the IPC office?

MS WILDE: Well, in our view it's not the best solution, but it is definitely some consolation.

THE CHAIRMAN: Considering we disregarded your opposition to it originally.

Okay. More on page 12?

By the way, I did read the letter thoroughly and noticed the areas where there was still some opposition from the office, so if we chose to disagree earlier, that's probably what we'll continue to do, unless we get a better argument.

Incidentally, lunch will be here in about 15 minutes, as it has been previously.

Okay. Moving on to page 13.

MR. DICKSON: Number 58. I do remember the University of Alberta going on and talking about a long history of using the 25-year cutoff. I would ask what the prejudice would be to go from a 30-year threshold to a 25-year threshold, partly because we'd always as a committee, I think, been animated by trying to respect sort of historical practices. We would move away or disrupt those only when there was some good and compelling reason. I guess I'm asking whether such good and compelling reason exists with 30 years rather than 25 years?

MS KESSLER: I had a discussion with the provincial archivist about this particular section -- because they do have the largest archival collection in the province -- about what their thinking was about 30 years versus 25. Their preference was to stay with 30 because it's an acceptable practice in the United States and in Britain. In this first round of changing the provisions they have more comfort with 30 rather than 25. That was the direction that I received from them.

THE CHAIRMAN: Sort of like saying that it was a nice round number.

MS KESSLER: Well, it's a little bit longer protection.

MR. DICKSON: If I could just respond. I appreciate the clarification, but it seems to me that we have to do what makes sense here, and I guess I'm still not clear what the prejudice would be if we reflected -- the University of Alberta, short of the archives, presumably would be the next largest depository of archival information. If it creates problems for those folks, then I'm more concerned about that than the fact that we may be using a threshold that's somewhat different than U.S. or British jurisdictions. I guess what I'm saying is that I hear the argument from the Alberta archivist, but it seems to me to be a less compelling argument than trying to respond to a problem or at least an issue identified by the U of A.

MR. GILLIS: I guess I was the Solomon that came up with 30 years, and I'll tell you why I did it. The University of Alberta is the only jurisdiction in the country that has a 25-year rule. It doesn't cause it a great deal of problems because it doesn't have to deal that much interjurisdictionally. I chose 30 because of the provincial records and some other types of records, health records and so forth, that may well be exchanged interjurisdictionally. Perhaps it should be the comparability, not the exchange, of the information. Similar records should be opened in similar jurisdictions. That was it.

Basically, there won't be a move to a 25-year rule at sort of the international archives level until the States moves. If it were to move to a 25-year rule, then everybody would move. So that's sort of where it's locked. That was my rationale. Good or bad that's where it came from. The U of A archivist is one of my best friends, and we go back a long time. We argued about it. He didn't convince me, and I've known him 30 years.

THE CHAIRMAN: This is an argument not too different from what we did earlier about the constituency records of local public bodies: is five years the right term; is 10 years? I guess it depends a lot on whether you happen to be a fan of a particular number.

MR. DICKSON: I think you're talking about confidences.

THE CHAIRMAN: One and the same.

MR. DICKSON: You're talking about constituency records. I think we talked about the confidences.

THE CHAIRMAN: I guess one takes the risk of being equally wrong or equally right, whichever one you choose. We can get into a discussion here on this, but it's going to be kind of an arbitrary decision, no matter what happens.

MR. ENNIS: Mr. Chairman, you can't be wrong either way you go on this one, because of course if you stay at 30 years, you're protecting the privacy of people who are around us today whose information happens to be in archives for 30 years. I'm sure I have records in archives at this point. You are protecting the privacy of people with the 30-year mark. So 25 years gives researchers a little bit newer information to work with, but 30 does have the advantage of protecting people's privacy.

THE CHAIRMAN: It looks like we're probably not going to do anything except talk about it, so we'll just leave it sit.

I have a question about 57. The two notes that came in. Both the ASBA and the staff association of the University of Alberta asked for clearer definitions or more explanations. I also see that we are talking -- if you look at the recommendation itself, the italics show that there needs to be established policies to "ensure this is done in a responsible manner." I'm assuming that in the application of this there is going to be sufficient information that would recognize the concern of definition or explanation.

Is that correct, Sue or whoever is working on this? Or can we make sure that it is? [interjection] Yeah. Like others, simply having seen the recommendation in its raw state without any background information would certainly have been inviting some concern about definition. If we can make it a little clearer what this is used for and that it's fenced in accordingly.

MS SALONEN: We can also rephrase it. I think the response from the deputy of advanced ed showed that there was some misreading of it. When it talks about in the last phrase "by students," somebody might interpret that to say that we are condoning that course evaluations be released by the students rather than by the public body, and that certainly wasn't the intent. It's the evaluations that are completed by students but released by the public body.

THE CHAIRMAN: Okay. Just as long as there's assurance that we've addressed those two concerns.

The lunch is at the door. Maybe just quickly we can finish this page, if there are any remaining concerns, and then we would adjourn for lunch. It looks like we've just done that, so I'll call adjournment. Before we actually leave, though, our traditional practice was to take about 15 or 20 minutes to eat and then get right back at it so that if there was time left over, we could adjourn earlier. I don't know if that's pipe dream thinking. Can we continue with that and start again, say, as close to 12 o'clock as possible?

11:38

MR. DICKSON: I'm not disagreeing with your plan, Mr. Chairman. I just want to reserve the right to come back and ask a question about the School Boards Association presentation on number 16.

THE CHAIRMAN: Okay. We'll come back to number 16.

With that, I think I'd already declared us adjourned.

[The committee adjourned from 11:39 a.m. to 12:06 p.m.]

THE CHAIRMAN: Okay. We'll call the meeting back to order then. We're on the question on recommendation 60, I gather.

MR. DICKSON: Actually I had a question, but I think it's already been answered informally. I've got some information in terms of what the concern was of the School Boards Association, and it seems to me their concerns have effectively been addressed already.

THE CHAIRMAN: Good. Can we move on to page 14? Page 15?

MR. DICKSON: Can we just hesitate a moment longer on 14 before we put it away? Great. Thanks.

THE CHAIRMAN: Page 15 is okay?

MR. DICKSON: If we're on page 15, one of the things -- I think there's a memo that was part of the package I'd sent, Mr. Chairman. We had an experience recently where we, the Liberal caucus, tried to get some information from the Premier's office. It turned out that the search hadn't been done adequately because the initial response was: we don't have such records. Then the Premier in a news conference was waving around the documents his officers said before that they didn't have. It caused us to think there's been an investigation -- and in fact it may still be ongoing -- by the IPC.

One of the suggestions that my colleagues wanted to make was to consider putting some teeth in section 9. Section 9 now is the "duty to assist." The argument is that if it simply sort of sits there without some enforcement mechanism, does it really send the appropriate kind of message to FOIP co-ordinators, government staff, and so on? So the suggestion is that we consider making it an offence to not discharge the duty imposed on a public body in section 9. I think this would be precedent setting. To be fair, I don't think it's in any of the other statutes. Certainly it's not in B.C. and Ontario; those would be the most comparable ones. So I'm not aware of another jurisdiction that has it. On the other hand, maybe we've had some experience where the section 9 duty isn't being taken adequately or taken seriously by people in the public body. I wanted to make that suggestion.

THE CHAIRMAN: The observation is made. I would think that the

concerns you had raised, by adding to the offence that altering, falsifying, or concealing with the intent to evade a request for access -- I'm not sure how hard you can drive, through legislation, the intensity of the activity involved. I just raise the question.

MS MOLZAN: Mr. Chairman, I might provide some information, that 51(1)(b), which is the general powers of the commissioner, allows him to "make an order . . . whether or not a review is requested" under 68(3), and 68(3) talks about when "a duty imposed by this Act or the regulations" is not performed and so forth. It also talks about ordering a refund of fees in "appropriate circumstances" and so on. It gives the commissioner some fairly broad powers, and if you fail to comply with an order, that takes you into 86(1)(d), because failing to comply with an order is a penalty under the penalty section.

So I think you could get there right now. The only thing is that you'd have to have the commissioner make the order, and he could do that even in the absence of a review. He can make an order, potentially, that you didn't comply with the duty to assist, that you have to do this, and maybe even saying: I'm going to order a refund of all fees. Then it becomes an order, and if the public body fails to comply under 86(1)(d), they're in the same boat. It's an offence.

MR. DICKSON: Actually, Mr. Chairman, everything Donna Molzan says is absolutely correct except in terms of the educational value. When Sue Kessler goes around doing her excellent workshops in terms of orienting people on the act and so on, it's far more impactful to be able to say: look at section 9(b), which says that if you don't discharge the duty to assist, there are some consequences that flow. That's maybe going to have a lot more impact than saying: well, if you don't comply, then somebody can go into the commissioner's general section 51 power and may do an investigation and then an inquiry and may issue an order, which then brings you back under the existing penalty section. Even though you end up sort of at the same place, just from the view of trying to make it abundantly clear to people who read the act that this is really a serious matter, that would be the reason for having a stand-alone offence section.

THE CHAIRMAN: Well, I take your point in terms of frustration at times, Gary, but I still think it's awfully hard to legislate the amount of diligence that one has to undertake. You can create the offence, and you can be taken accountable if you essentially don't do what you're required to do or do something you're not allowed to do. But as to the amount of diligence involved and the amount of insight that one would maybe expect from a relatively new employee versus someone who's been around for a long time and would know that certain records exist, do you drop everything else to make this your sole purpose in life for a short period of time? Do you consider other duties that you have? I really would find it difficult to try and put into legislation that kind of thing.

The way it's set up right now, it may be a little bit vague and may not be strong enough to suit the purpose you're talking about. Essentially it says: okay; here are the things that constitute an offence under the act, and the commissioner can take that individual to task if they feel they haven't done it. But to get much beyond that, recognizing your concern and frustration -- I mean, I can appreciate that an opposition member would like access to certain things simply because, you know, it's a somewhat difficult direction you're coming from. But strictly from the commonsense point of view, I don't know how you legislate it.

MR. ENNIS: Mr. Chairman, I think it's important to know that we haven't had a case yet in which a fine has been levied under the act. We had a few investigations which have almost taken us to that point or at least taken us to the point where the question has had to be asked as to whether there was willful activity towards violating the act. I note that in the phrasing that's here, to "alter, falsify or conceal" are all willful things, and directing another person -- these are all willful things where a person quite deliberately does something. Charging someone with an offence for failing to do something which should be in their job description or should be something they knew they were supposed to do is a more difficult thing from an investigative point of view, leading to that point, because you never really get to the point of challenging someone's intent. You're just basically looking at some deficiency in their administration.

We find that with the duty-to-assist section now, it has a great deal of power because public servants by and large don't like to be embarrassed. So that section we tend to use as sort of a curative section, where we look at a file and if we're seeing a failure of the duty to assist, we can point the public servants back to that file and say: "You haven't done a good enough job in this area. Rather than make a deal about this publicly, let's just finish the job and get it done for the applicant." We find a really good response to that approach of being driven back into the processing activity to get it right and get it done quickly. It doesn't always get done as quickly as the applicant wants, but the duty-to-assist section has a slightly different purpose, it seems to us.

Speaking for my colleagues who operate in the act, the duty-to-assist section has a different and very useful purpose of getting the thing back on the rails if it's fallen off the rails, but we haven't viewed it as a source of violations of the act, the kinds of violations that would attract penalties.

12:16

MR. DICKSON: I'm just going to talk in terms of willful blindness. Just to use the example again, this is a question where the act has been in force for over three years, the application is made, and it turns out that it was either the Premier's office or Executive Council -- not an awful lot of people work in there. You would think that the people working in the office would have some familiarity with the act, some understanding of section 9, their obligation. It turned out, apparently, that they didn't have the understanding at all. I've seen a number of documents around; I'm not sure where it was, but there was some acknowledgment for people in one of those two offices that they needed some more training, for example. I think you can have offences that deal with willful blindness that fall of short of deceit and fraud and trying to destroy documents or deny access that way.

Mr. Chairman, in terms of your concerns about being too vague, judges and courts have lots of experience giving definition to phrases and developing tests when the Legislature doesn't spell it out in great detail. So I think the reasons you mentioned would not be reasons why you couldn't legislate. I acknowledge that it's not as clear as some other offences, but I think it would help to bring home the gravity, the significance of the obligation that we try to impose under section 9.

THE CHAIRMAN: Other observations?

MR. DICKSON: I'd move a motion, but I'm sort of reading the temperature of the room, and it's pretty cool. Pretty cool, Mr. Chairman. So I may save my breath and the space in the minutes.

THE CHAIRMAN: Okay. Anything more on page 15? Page 16?

MR. STEVENS: I'd appreciate a comment from someone relating

to the city of Edmonton's point under recommendation 72.

MS SALONEN: I guess the recommendation deals with combining sections 80 and 89. One deals with how provincial public bodies can delegate and the other with how local public bodies set the head and then set their delegation order in bylaw. We haven't specified in 72 whether in a combination we're going to allow local public bodies to delegate apart from in bylaw. The city of Edmonton is raising the issue, and we have heard it from others, that they would like, when you put those together, to allow the council to set the head. The head can then set a delegation order similar to provincial bodies but without the power to delegate so that the city does not have to go back to council each time they want to change a delegation instrument for a new bylaw, but they trust that decision in the hands of the head.

THE CHAIRMAN: Okay. Just a question: would it not be possible for the city to establish that process in its bylaw? Thereby the power of delegation would be built in. This sounds fairly specific, you know, incident by incident of delegation.

MS SALONEN: They're suggesting that if we don't have this section in the act that says that the delegation must be only in bylaw, then it would follow through, the way they do things, that the head or whoever is in charge of a given function can then set the delegation as appropriate. The way it is right now, they can't. They have to put their delegation in bylaw.

THE CHAIRMAN: They have to which? I'm sorry.

MS SALONEN: Right now they have to set the delegation instrument in bylaw.

THE CHAIRMAN: But my question is: would it be possible for them to do a general bylaw relating to delegation if that's part of their administrative structure?

MS SALONEN: It should be.

THE CHAIRMAN: It almost looks now like they would like to be able to do it on an ad hoc basis and be covered under the act rather than in a general way, unless I'm reading that submission incorrectly.

MS SALONEN: I think what they wanted to do was do it similar to the way they deal with their other delegations. So if they have one general delegation bylaw, then FOIP would be covered in that as well. They don't want FOIP to be a totally different process than what they normally use.

MR. STEVENS: Is there a policy reason we wouldn't recommend that?

MS SALONEN: No.

MR. ENNIS: Passing a bylaw has the practical advantage of reminding everyone who does what, but I don't see a policy reason to make them do it that way.

MR. STEVENS: Well, if I understood the answer, they don't have to go through the current bylaw process for delegation in other areas. Is that correct?

MS SALONEN: Correct.

MR. STEVENS: So if we complied with their recommendation, we'd bring FOIP delegation in line with the way they otherwise do business.

MS SALONEN: That's my understanding.

MR. STEVENS: And we don't have a policy reason not to do that.

MS SALONEN: That's correct.

MR. STEVENS: It seems to me that it would make sense to recognize this request and put it into the recommendation.

MR. ENNIS: There is one area that is allied to this. In the making of a bylaw, they also set fees. Now, provincial public bodies are stuck with the fee schedule that's at the back of the act that is, I guess, moved by the minister responsible for the act.

MS KESSLER: So are locals.

MR. ENNIS: And they're bound to that as well?

MS KESSLER: Absolutely.

MR. ENNIS: Okay. I'm sorry for that. So there is no fee requirement then. They recognize the fees in bylaw.

MS KESSLER: The fees are maximum standards, so they may choose to have lower fees.

MR. ENNIS: And they would set those in bylaw?

MS KESSLER: They would set those in bylaw.

THE CHAIRMAN: Gary, you had a comment?

MR. DICKSON: Well, just a bit of a query. I can't remember what we did when we were talking about sections 37, 38, 32 in part 2 of the act, dealing with local public bodies being able to collect personal information and use it and so on. Remember when we got into that thing about an enactment, a regulation order? How did we deal with municipalities? Was it by bylaw? Did we stipulate that?

THE CHAIRMAN: I don't think a municipality can pass a bylaw that enables them to collect information -- am I correct on that? -- that it has to be by or under an enactment.

MR. DICKSON: Okay. So there's no capacity for a municipality, for example, to collect personal information, absent an authorizing regulation or a statute.

MS KESSLER: Well, "enactment" is a broad term which encompasses bylaws.

THE CHAIRMAN: So it does include bylaws then?

MS KESSLER: That's correct. So the authority to collect could then be done through a bylaw.

MR. ENNIS: There's also the provision of section 32(c) which would allow a public body to declare the collection as being necessary for an operating program or activity, but that's easily subject to challenge at the commissioner's office.

MR. DICKSON: My question, then, is: given that, what sorts of risks or exposure is there in terms of going with the city of Edmonton's request? How would it impact on that ability to, by enactment, collect personal information?

12:26

MS KESSLER: I would assume that that would be under a bylaw that establishes a certain program within the city where they would then define the types of information that would be collected, as opposed to a general bylaw that would talk about the delegation instrument under FOIP, which could be subject to change based on a reorganization of the city or whatever. So I think they would have to go back to city council more often to change a delegation bylaw than they would a program that authorizes collection.

MR. DICKSON: So what we're saying is that would be a substantive bylaw as opposed to sort of a process bylaw, which is really what's contemplated in the recommendation here.

MS KESSLER: Yes.

MR. DICKSON: Okay.

THE CHAIRMAN: So maybe for the next meeting we'll come back with something and look at addressing Ron's concern.

MS KESSLER: Yeah.

THE CHAIRMAN: Okay. Anything else on page 16?

MR. DICKSON: Well, perhaps an old issue, but if you look at number 78, it seems to me there are two different recommendations talking about the three-year review. You'll recall that some of us have been anxious to recognize that the review may have to happen sooner than three years. This is also consistent with some advice that's been reiterated by the IPC.

Number 78. If you read it on its face, because we reference pending federal legislation, you'll recall, Mr. Chairman, my argument has always been that we should be moving sooner on that rather than later. The three-year review works fine for the extension to the MASH sector, but it may not work at all in terms of allowing Albertans to be engaged in and involved in the debate around the federal law. So the last time I looked at the interim report, we've got the two different sections in the report that talk about three-year review, and one mentions doing it potentially sooner. This one does not.

THE CHAIRMAN: Go ahead, Mike.

MR. CARDINAL: On that point, Mr. Chairman, if you change the word "approximately" to "within three years," you'll probably cover Gary's point. Really at this time we don't know when it's going to be done, when it should be done, but if it's within three years . . .

THE CHAIRMAN: Well, the one thing that I would want to point out as well, though, is that Gary made the assertion that it would not permit or enable -- whatever the word you were using -- the province to become involved in commenting on the federal legislation. I don't think that's accurate. Unless we continue as a committee, it would not have the direct input of this committee. But certainly the province, through whatever vehicles it has available to it, can make representation, whether that's through the administering department, through the IPC office, or any other it chooses. It just would not be a considered or a deliberate involvement by this special committee.

MR. DICKSON: Well, I'm just going back to page 4 of the preliminary report. I don't know where that is in the new draft, but if you look at bullet 14, it says what I think it should say. The second sentence says:

> In light of the pending Federal privacy in the private sector legislation, the Committee recommended that this issue should be considered in the next review of the FOIP Act in approximately 3 years, or earlier if circumstances should make that necessary.

So I'm saying: why wouldn't we just carry that wording into here?

THE CHAIRMAN: Okay. I'm not suggesting that it couldn't absolutely be in the recommendation, but I'm still making the point that it doesn't require a committee study or a recommendation to change this or any other act. If the time occurs when there needs to be an amendment -- and there was in fact one since the incorporation of the original act -- if it comes about, an amendment could be made by an initiative of the minister or however these things happen. It doesn't have to be a committee review that drives it.

MR. DICKSON: It doesn't have to be, but why would we be so passive as to sit back and simply leave it to fall wherever? We've got an impassioned plea by the IPC on at least a couple of occasions and in their latest note here again. In the IPC letter of January 14 did I not see a thing on the bottom of page 2 where the commissioner is again talking about early action by the Legislature? So the minister is going to do whatever he's going to do, but we've had the benefit as a committee of getting a lot of information around this. We've had the benefit of looking at it, considering some of the implications, and it just seems to me to be consistent with what we've learned to share that message with the Assembly. The way we could do that is to simply use the wording that we've already adopted in the preliminary report on item 14.

THE CHAIRMAN: What's the reference page on that?

MR. DICKSON: It's number 4. This is the preliminary report. I haven't gone through the draft final report.

THE CHAIRMAN: It would be in the recommendation anyway; would it not?

MR. DICKSON: I don't know what's in here. It was in 14, and all I'm saying is that my recollection is that there are two different times in the preliminary report where we talked about the review. One was 14, and the other one was near the end.

MR. STEVENS: Number 78.

MR. DICKSON: So I'm saying: why wouldn't we use the same wording? My concern is that somebody is going to pick up the one at 78 or whatever and not understand what we thought was important at number 14. Just make them consistent, Mr. Chairman.

MR. STEVENS: If I might say something. It seems to me that it appears twice because there are two different contexts. One is the scope of the legislation, which is number 14, talking about the private sector, and the other is a general provision which deals with the general provision of review of the act. Having said that, I think the wording should be consistent between the two as it relates to the issue of privacy, and I don't have any problem in harmonizing those two points. It may be worth while saying it twice because of the context. But I don't have a problem.

THE CHAIRMAN: So the suggestion is that where it says "approximately 3 years, or earlier," it be incorporated into number 78. Is that what you're suggesting?

MR. DICKSON: Yes. "Or earlier if circumstances should make that necessary."

THE CHAIRMAN: I can live with that.

MR. DICKSON: Just before we move on to issues considered and then no change, I saw a letter from MacKimmie Matthews dated January 15 indicating that they're counsel of the independent assessment team appointed under the Electric Utilities Act. They wanted to know if they could make some comments outside the time period. I guess I haven't seen anything further from MacKimmie Matthews, and that firm is under constant change too. Was there some follow-up, and how did we respond to their request for more time? I got that, I think, from Diane probably in the middle of the month, with a bunch of other submissions responding to the preliminary report.

MRS. SHUMYLA: Basically, to anybody who's called me and asked for more time I've said that the committee is still accepting late submissions, but I'm asking them if they can get them in as soon as they can.

MR. DICKSON: We haven't seen anything more from this law firm with respect to their submission?

THE CHAIRMAN: I haven't.

MRS. SHUMYLA: I don't recall.

THE CHAIRMAN: Some of these came in while I was on vacation and were directed to Diane's office.

MRS. SHUMYLA: I could always call them and ask where they are with their response.

MR. DICKSON: Well, I'd appreciate that. I mean, I think we're trying to do the best job we can, and if there is some other important insight or analysis we haven't had the benefit of, I'd sooner have it before we sign off on the final report.

THE CHAIRMAN: Well, I think we made the point back in September that even initial input kept straggling in through the entire process. I think as a committee we unofficially or maybe even officially, because we talked about it here, said that for submissions that came in, as long as it was before the ink was dry on the recommendation and as long it was in a timely fashion so that we could reasonably consider it, then anything we knew at that time we would take into consideration. But we're not going to stop or slow down the process simply because somebody feels they can't make the deadline. So every reasonable effort would be made, but there would be no assurance that when they came in late, they would absolutely be considered.

Anything else, Gary, before we move on to the next thing?

12:36

MR. DICKSON: No, no. That was the one outstanding item I had.

THE CHAIRMAN: Okay. Then we go on to page 17, which is the issues that resulted in recommendations for no change.

MR. DICKSON: Well, just before we leave page 17, I'd just query whether there's any interest in reviewing recommendation 4, given the strong opposition advanced by the St. Paul regional school board, the Alberta School Boards Association, SAIT, Mount Royal College.

THE CHAIRMAN: You would like them taken out of the FOIP Act?

MR. DICKSON: You're a real jokester, Mr. Chairman.

THE CHAIRMAN: Okay. Page 18. I think there's an obvious one that we have to deal with, and that's number 16. I'm not sure if internally it's resolved, but there seems to be a difference of interpretation of what the section -- I don't know if it's section 38 or 33 -- actually means between what I'm hearing from the department and from the commissioner's office in terms of present interpretation. My understanding from the information received is that information is not allowed to be transferred between public bodies, that in our discussion it was determined that an employee of any department of the provincial government or an agency directly controlled was actually an employee of -- what is the office that hires?

MR. ENNIS: Personnel administration office.

THE CHAIRMAN: PAO. So, essentially, within the provincial government itself that information was available but wasn't freely exchangeable between other public bodies; in other words, between, say, a health authority and a municipal authority.

My understanding was that the request was: would we consider expanding the act to allow that? In our deliberations I think we made it very clear that that was not the intent, that it was okay within the government, but it's quite conceivable that two public bodies with different functions may not have essentially the same duties. An individual transferring from employment in a health authority to, say, a municipality should go through the same process as though they were two separate employers. That, to me, was the essence of the discussion and the recommendation.

Now, however the present act is interpreted, the wording in the recommendation should be such to make it clear that that was the recommendation. If you look at recommendation 16, it says "should be amended to prevent" the exchange of such information. Now, if the word "amended" isn't accurate, it may want to read "spelled out to ensure" or something along those lines to make sure that it's very clear. My understanding from conversations is that there might be some confusion as to what was actually intended here.

I see some looks that you probably don't understand what I'm saying here, so we're even.

MS SALONEN: Oh, I understand very well. We've been around this a long time.

It hinges around the little word "a," and we have had interpretations. It's very clear that when it has "personnel of the Government of Alberta," this information will get exchanged between government departments, and employees are part of the government of Alberta. But when you have "for the purpose of . . . administering personnel of . . . a public body," it could be implied that they can share, as opposed to "the public body," which would be only within the public body. That little word "a" has caused a lot of legal interpretations for us, and the local public bodies are concerned. So if the policy is clearly that it's not intended they share between themselves, that RHAs don't share between each other without the consent of the individual, then we should make it clear.

THE CHAIRMAN: Can we word this recommendation so it simply

confirms that within local public bodies it is not allowed to be exchanged without the consent of the applicant, that regardless of how it's interpreted now, we come up with a new section or sections that make that clear? I understand that was the recommendation of the committee.

MR. ENNIS: Mr. Chairman, there are a number of provincial public bodies that don't fit under the government of Alberta umbrella. Now, the government of Alberta umbrella would be either the Public Service Act universe or a very similar universe. The Financial Administration Act universe of organizations would be seen as the government of Alberta, but things like the Cancer Board, AADAC, and a number of other provincial bodies are not within the government of Alberta. They would be shut out by that provision as well, which is a good thing. They're seen as independent or separate employers from the government, and they operate that way.

So going back to the suggestion you were making, it would have to be more than just local public bodies. It would also be provincial public bodies outside the government of Alberta.

THE CHAIRMAN: I think that would be consistent with what we were talking about, because if that public body has its own administering board and hires and dismisses staff not under the PAO, then it should be treated as a different employer. That would be my interpretation of what I thought I was voting on.

MS KESSLER: I was just going to say that we'd have to move this recommendation out of the recommendations for no change part of the report and move it into recommended amendments to the act because there would be amendments required.

THE CHAIRMAN: Okay. We could do that if it needs to be made clearer.

Now, that was my interpretation. I mean, I should throw it out to the committee. Did you think you were talking about something different?

MR. DICKSON: You nailed it, Mr. Chairman.

THE CHAIRMAN: Okay. Anything else on page 18?

We can move on to page 19.

MR. DICKSON: Mr. Chairman, just before we leave page 18. When we talked about the IPC office being stand-alone or status quo, I don't remember us specifically addressing the combination, you know, with the two. I think I saw an E-mail from Harley Johnson where he said, in effect, that there was a particular issue around having the Ethics Commissioner also as the IPC. I'm just flagging it. I mean, you know my position: I think it should be a stand-alone position. If there was any interest in discussing that, I just wanted to flag the fact that I don't think it's specifically been discussed before when we went around the office.

THE CHAIRMAN: Okay. I don't have a lot of interest in discussing it, but others might. I don't think the discussion was whether or not it should be specifically attached to one other legislative office. The only place the reference is made is in the feedback from Harley Johnson. But I think our discussion was simply that it need not be a full-time position and that it could be affiliated with other duties.

12:46

Okay. Page 19. There are a series of bullets that come in as Other Issues. Because they're new, it would be appropriate to go through them one at a time. So we'll just go through them in the order that they appear on the page, and I'll ask, if someone has concerns, whether you want to incorporate or make changes based on what you see here. The first one is Elk Island public schools.

MR. DICKSON: Mr. Chairman, I'd just make the observation that one of the things I discovered in looking at how the CBE is dealing with this is that, to my surprise, they don't have a systemwide consent form. What happens is that every school in the system basically decides what consents they're going to require. In some cases, depending on the range of activities, you could have five, six, 10 different consent forms, depending on what kinds of activities your children were in. It was a surprise to me. Maybe everybody else knew that, but I sort of thought at least the Calgary board had a single consent.

I don't necessarily have a change I'm proposing, and maybe this just gets caught up with what we decided to do before. We were going to have our experts go and take another look at sort of the school information policies generally and factor in the input they've got.

THE CHAIRMAN: Well, my observation when I saw this one was that the act tells you what you may or may not release. I don't think that in any place does it go into the mechanics of individual public body administration directives as to how you may get consents or many other things that a public body would have to do. While this might be something that the Department of Education might consider or some other department vehicle, I question whether the freedom of information act is the appropriate legislative place for this kind of a document or this kind of a consent.

MS KESSLER: I just wanted to make a general comment. Gary's comment that there isn't a consistent practice within the Calgary board of education, really, for consent is commonplace across the whole school system. FOIP is the responsibility of the head, and the head can make the rules in accordance with the legislation.

What we have found is that among the school jurisdictions sector there seems to be a lot of confusion as to what is a normal part of an educational program, and therefore the school board would just have to notify the parents about how the information is going to be used versus what isn't and what they need to get consent for. So we've seen school boards taking much different types of views of how that's going to be interpreted over the course of the last year, and we've been working towards providing them with guidelines for this coming registration process in an attempt to make it a little bit more standardized. But, again, they ultimately have the authority to determine their own registration process and how they view what is notification and what is consent. So on a continuing basis we're trying to achieve more uniformity, I guess, within the whole school jurisdiction sector.

When it comes to this specific recommendation, I don't believe we can incorporate any time frames within the legislation. I don't think a one-size-fits-all solution would work in putting that kind of thing into the legislation. I think it really is going to be them having to look at the way they deal with consents and determining what is appropriate.

MR. ENNIS: I would echo Sue's comments. We've been working with I and P on this issue along with the Department of Education and some of the school representatives. It seems to have been a year of experimentation. Some of that has worked; some hasn't. But there is now room, perhaps, for suggesting a standard approach and the pros and cons of that approach, and that progress is being made. It isn't an issue that comes up in the act. There's a bit on consents in the regulations. There's really very little in the act itself on any

framework for the consent process, so it looks like more a matter of practice and efficient management than it does legislative changes.

THE CHAIRMAN: Okay; then bullet 2. I have a question mark beside that one. I don't remember exactly what I was thinking when I read this originally; probably the fact that they made the case: are there governing bodies distinct enough from each other that they should be handled as separate entities under the act? That's just a question to whomever may be able to answer that.

MR. ENNIS: Mr. Chairman, I'm somewhat familiar with this issue. A university like the University of Calgary, the University of Alberta has several different operating governing bodies depending on the situation. So the issue is that at some times and for some instances the general faculties council might be the governing body; in other cases the senate might be the governing body; in other cases the board of governors might be the governing body. I think this is peculiar to universities, perhaps to universities in Alberta, that they would have so many governing bodies.

But going back to one of the previous amendments in the act, what's being suggested through this process is that only the governing body has the privilege of having its deliberative processes protected. I think it's under section 22. I think the university is reminding us that for them there isn't "the" governing body. It depends on which governing body is in play at any given time. Possibly the amendment contemplates that quite well, since they could always make the argument of whatever body is the governing body for this situation and have that accepted, but there is a reminder here that they have more than one governing body. Yet one of the amendments being pursued by the committee here would limit the shielding over deliberative processes to simply "the governing body" of the institution.

Now, as I say that, I look at 22(1)(b), which is the section they're concerned about, and I'm not sure that -- oh, yes, it does apply in their case. I'm sorry, Mr. Chairman; I'm thinking out loud here. That's the best of my knowledge about this situation.

THE CHAIRMAN: Okay. I guess the next question then: would it be valid to consider their request to have the amendment made to add the words "or bodies"? Would it be helpful or would it cause problems?

MS SALONEN: I think we'd have to look at that carefully. There is one governing body, the board of governors, which is over those other governing bodies, but the other governing bodies are not a subset of the board of governors. The original thought was that these other bodies might fit into committees of the governing body, but because they're not a subset, they don't exactly fit there. Not all universities in Alberta have this structure. The U of A and the U of C do, but, for example, I think it's Athabasca that's quite different, and not other colleges or other postsecondaries. But all of these bodies are set in legislation, so we could look at expanding it to include other governing bodies that are set in legislation to make it clear that other locals wouldn't then filter into other committees or organizations that aren't the same kind of governance.

MR. ENNIS: Mr. Chairman, I'm not sure that the information I've had on this is the same as Diana has in terms of the relationship of the general faculties council to the board of governors on a matter of academic freedom. I think the general faculties council is then in the driver's seat for the governing body, so there's not a reporting relationship on a matter of academic freedom. I think that's worth at least a look, but it does appear there's a chance here of plural governing bodies.

THE CHAIRMAN: Okay. Maybe for the next meeting, then, we could have a look at this.

I also notice -- and I apologize for this. My work over the weekend and before that was from a rough draft which I had the privilege of seeing from the departments with two comments, and you'll see one further down. It probably showed up when I asked a person for clarification. It does, in a sense, touch this, but we could look at whether that's a legitimate request or not.

Okay; bullet 3. I'm not sure if it was raised. I know it came up in the context of one discussion. Does anybody feel brave enough to turn on that water? This is a new request. It didn't appear in the original submissions, as far as I know.

12:56

MR. DICKSON: Mr. Chairman, in fact this had been the subject of an amendment I'd put forward in the spring of 1994, that didn't find favour with the Assembly then. The argument in the comment thing is that it's covered implicitly. The suggestion's been made before. We heard from respondent 168 that it be specifically set out in section 16(2), and that still makes sense to me.

THE CHAIRMAN: Anybody else feel the urgent need to deal with it here?

MS WILDE: Well, just looking at 16(2)(g)(i). It appears that it very likely would be covered under 16(2)(g)(i), but I guess it's a question of whether the committee wants to set it out specifically.

THE CHAIRMAN: Well, I think that's kind of the acceptance right now, that it's implied along with other issues. Do we want to specifically spell it out? I'm not so inclined, but it will depend on what the committee's views are.

MR. DICKSON: Mr. Chairman, as one member of the committee, it seems to me that in sub (h) where we've gone and set out "racial or ethnic origin, or religious or political beliefs or associations," we could also have left those out and simply treated those as being subsumed somewhere in 16(2)(g)(i). We chose not to do that, and I can tell you, as human rights critic for the opposition, that there actually is the scenario where there are forms in which sexual orientation is noted, which become hugely prejudicial to the individuals involved.

So I'd suggest that it doesn't take very much imagination on the part of any of us in the committee to recognize that some things have a tendency to be more prejudicial than other things. Sexual orientation is, frankly, one of those things that in 1999 we know can be hugely prejudicial to an individual. I couldn't imagine what the reason would be why we wouldn't spell that out. That's arguably more important to some people than employment or educational history or their tax return or their eligibility for income assistance or medical or psychiatric diagnosis and certainly maybe more so than their political beliefs or associations or religious beliefs.

THE CHAIRMAN: I think it's probably sufficient to say that all of us at one time or another have debated this topic a number of times. I think we all know where it sort of ends up. I'm not particularly inclined to drag it on here further because I think I know where it would end up. Unless there's strong feeling that we want to pursue it, I'd suggest we pass it on and accept history as the teacher of policy of the present day.

MR. DICKSON: Well, there's strong feeling, Mr. Chairman. It may not be shared, but there are strong feelings from some members of the committee.

THE CHAIRMAN: Well, I didn't see a lot of hands flying up.

The next bullet, American Society for Industrial Security. Any comments on that?

MR. DICKSON: Well, Mr. Chairman, I'm opposed to that. Now, I voted against the expanded definition of law enforcement in the other portion of the act because I think it gets into that whole business of administrative investigations and so on. I can't see why we'd want to compound what I respectfully suggest was their first error by then replicating it again in section 16(2)(b).

THE CHAIRMAN: Any observations from the technical people?

This is a new request, I understand; it wasn't submitted originally. Maybe have a look at it, and if there's a compelling reason why it should be changed, bring it back. I'm interested in those areas where we may have missed something from a presenter or someone who'd commented on the original thing, if we had missed their point. I'm less inclined to expand to a lot of new areas unless there's a good reason for it: you know, something we may have missed or hadn't heard about. If you can have a look at it and maybe bring it back next time.

The next bullet: from the Canadian Association of Journalists. I discussed this, I believe, with Sue, and that's also the reason for the comment on there. When I read the letter from the association, it implied that we hadn't considered their request to give right of access to records in the form in which they exist. Now, since that time I've also had a telephone discussion with Matt McClure, and he felt that we hadn't discussed that at all. I said: well, I had but subsequent to this coming up with the committee.

We did discuss the issue of whether sensory impaired people should have the right to translate any documents into a format which would assist them, and we went through all that process and said: well, they have the right to the information, and hopefully outside of the freedom of information act good government administrative policy would permit that where it was reasonable. This would seem a little bit the converse.

Now, in my understanding of it I didn't quite catch the differences of opinion from what they are making as a request to what I see as being interpreted. If a document -- and I'm going to use this as an example -- existed electronically, unless there was a reason to have to screen it, you know, for name and personal information that might exist on it, is there any reason why it couldn't simply be extracted on a disk and given to the applicant versus printing it out and giving them a hard copy? My understanding from him on the telephone was that that's exactly what they were asking about. We did get into a little bit of a debate on: is it reasonable, if necessary, to edit the information that's on it? Can that be done simply in an electronic form and such? That's one of the considerations that would have to be made. But simply saying that we only give it out in written form, if there's no other reason not to do it, would seem to be inconsistent with our other recommendation.

The other thing is the point that I had heard that in some cases the request is simply access to a data bank, you know, which would be very risky at least. To me that's not really debatable. I think if we took a stand on the issue of sensory impaired and having to translate, this may have some allied rationale. I wanted to toss that out, you know, for just a short debate if nothing else.

Gary.

1:06

MR. DICKSON: Yeah. Well, I'd be happy to join issue with you, Mr. Chairman. With respect, I think the two issues really are severable. The issue of somebody with sensory impairment is different. We're then talking about the extent to which the public body should take information and put it in a nontraditional medium to be able to share it.

One of the concerns that the Canadian Association of Journalists has is time, the timeliness of responding to an access request. I think, at least from talking to Mr. McClure and others, that part of the concern is that if you're involved with television and radio, you have deadlines to meet. You're anxious to get information as quickly as possible, and I think there's a sense that there are times when either a video or an audiotape or a disk could be provided with the information or that they'd be able to access it. So it isn't converting it into some unusual form. It already exists that way, and the public body insists, "No, we're going to put this on hard copy," with a consequential delay. I think that's a concern.

What you're proposing here, or at least the author of the comment, is that if you can't get the agreement -- and clearly we're talking about cases where a public body isn't disposed to acceding to this kind of request -- then you're looking at a request for a review and all the consequential time involved with that. I think it's got nothing to do with the sensory impairment issue, and it has everything to do with the timeliness of the response to a request for information.

THE CHAIRMAN: The only connection I made, Gary, was not that it was the same issue but that, on one hand, we are suggesting that the act should not dictate that there be a translation, and in the other area we insist that there be. So there's an inconsistency in the interpretation of the policy, not because they deal with the same contextual information or policy.

I guess as we're moving into the 21st century, we have to recognize that more and more paper may soon be the exception to the usual information data, and if it isn't the policy now, where it's reasonable, to do so, maybe it should be. I'd like to see this as one of the issues that we bring back. Realize that I say that in the context of the ability to edit, if necessary, to censor those things that are legitimately private and certainly not to open this to free-for-all access to data banks. That was an issue that wasn't raised earlier, and I think it's a fair one.

The other issues that they raised in the letter: I think we dealt with every one of them. Even though we didn't generally agree with their concerns, they came up as part of concerns that were issued by other proponents, and I discussed that with Matt. I said that I didn't agree with them earlier, you know, making the changes, and I guess I don't now. He went on also that they were making a strong plea for a hearing, that they could make a verbal presentation. We hadn't afforded that opportunity to any organization other than the IPC office and government administration branches, but I did tell him that I would bring this to the committee without recommendation one way or another as to whether we were willing to listen to a presentation by their organization. So I will do that now without making further editorial comment.

MR. DICKSON: Well, Mr. Chairman, you say that we haven't heard in-person submissions from other groups except IPC and then some government bodies. We've heard actually extensive input on behalf of and from different government bodies, different departments and so on.

I think one of the limitations with our process is that it looks like there is a whole lot more attention being paid to those people processing access requests than those people giving them, and to give an opportunity to the Canadian Association of Journalists through their individual members, one of the key users of access requests, might be a way to help mitigate the appearance that the committee is tilted towards the information managers rather than the information requesters.

THE CHAIRMAN: Other committee members?

MR. STEVENS: I think we established the approach that we were going to take relating to seeking input from the public at the outset. We've followed that to date. We have indicated that we wish people to respond in writing. People have responded in writing, and people have done that in relation to our preliminary recommendations. The process has worked in the sense that we have been able to get people's concerns in writing. They have been for the most part clear, and where they haven't been, we've asked for additional information.

From my perspective, this is an exceptional request being put forward. We made the rules clear at the outset, and I'm concerned, quite frankly, that if you make an exception for somebody who happens to have this particular perspective, you likely are going to start receiving complaint from others who were not accorded the same consideration. From my point of view, the point being made by this particular organization is clear. It's not a matter of not understanding their point of view. It's a matter that for the most part we have chosen to disagree with them in our recommendation, and hearing the argument again in person doesn't add much when I already understand what the point is.

THE CHAIRMAN: Any other comments? Okay. I think what we'll do: just a simple show of hands who would endorse asking them to make a personal submission and then, after that, who would be opposed to that. Okay. In favour? Opposed? It is opposed.

MR. STEVENS: Could I make a comment relating to the bullet that we were discussing on page 19?

THE CHAIRMAN: Okay. That was the fifth to last one?

MR. STEVENS: Right. The access "in the form in which they exist rather than in paper copy." I'm not completely clear as to what procedures are currently in place relating to that, and I'd appreciate some comment on that. I must say that it seems to me that to the extent information that is being sought is available in more than one format and it is reasonable to provide it in more than one format, we develop an approach that allows for choice.

THE CHAIRMAN: Sue?

MS KESSLER: Yeah. Sections 6 and 7 of the act, which really govern the access process, contain no information at all about media. They only talk about "a right of access" to records, and that right enables you to ask "for a copy of the record" or "to examine the record." So that's all that the act really states; it doesn't talk about paper, microfilm, or anything. So it really is a matter of the applicant and the department working out which is the most appropriate and likely the cheapest method of obtaining access. I mean, there's nothing preventing it from going out in electronic form right now at all.

THE CHAIRMAN: Maybe that's all this is going to take, some discussion on policy, because as we're talking about it now, it just occurred to me that we talk about charges for photocopying pages. Let's assume this may be a document that's 30 or 40 pages -- and again, I'm going to certainly clarify that. I'm talking about something that is relatively easy to manage. If it needs screening or anything like that, it may cause difficulty. Nevertheless, let's assume it's one that's fairly straightforward. It would certainly be easier to produce a diskette with all the information than charge the photocopying charge, if we're talking about economics and such.

1:16

While I'm not taking a hard stand one way or another, I think we have to recognize that we are moving into an era where the electronic media is definitely a consideration. Even if we don't specify in the act and with all due respect to the fact that it's a different issue -- we chose that the act was not the place to spell out policy procedures for the sensory impaired -- there might be another place where we look at policy that says that this should be considered. If it's more convenient, if it's more appropriate, maybe we should be starting to look at that media as being an opportune dissemination method. It's possible that before too long we might even be considering E-mail and Internet kinds of things. I'm not sure how that would work at this point, but it's certainly in the realm of today's high-priority media, and we would want to look at it and keep up to date.

I think right now the interpretation is simply, no matter how it exists, that we translate it onto paper and that this would be a concern.

MR. ENNIS: Mr. Chairman, we see a number of examples where that isn't the case, where public bodies would gladly move it by diskette, and that sometimes is the key to serving people who have some kind of sensory impairment. If they can get it into some kind of digital format, then they can move it through various printers or audio equipment or whatever and have it reproduced in whatever medium they need. It's not unusual for us to encounter diskettes as a medium for disclosure of information, so I wouldn't say that it is a hard-and-fast rule.

Another concern along the way is that if the record material is complex, people have to review it during the FOIP process, and sometimes it's a necessary thing to get it down on paper simply because the people delegated under the freedom of information act to handle it on behalf of the head have to see the information. They may not have all the equipment.

Just another point too. We've had cases that we've seen where databases are being backed up to other databases and off-loaded. That does happen on occasion. It takes a great deal of care and attention, but we've had applicants basically, figuratively anyway, park their database next to the department and off-load information, and that seems to work in cases as well. But in all cases we try to encourage the medium to be one that the FOIP co-ordinator in the department can take a look at to make sure that nobody's privacy is being breached in the process.

THE CHAIRMAN: I guess the point I'm making is that in the era we're in, flexibility, as long as it's not creating an undue risk or hardship for the administering public body -- we should look at that. I don't know whether we even want to bring this back and revisit it as a recommendation or simply a comment that policies be expanded as the need arises to look at these as options.

MS SALONEN: Mr. Chairman, the FOIP regulation also supports it because the fee schedule is not just per page. It's a very long fee schedule. It's so much per diskette and computer processing time and every medium that we could think of that's used in government at the time, and we're looking at expanding it to include media that are used in health care bodies. So we've certainly endorsed it and promoted it in policy to date, so we can beef that up.

THE CHAIRMAN: Are we done with that one now?

We can move on to the next bullet also from the Canadian Association of Journalists. These issues on times and fee estimates and actually even the bullet following where we talked about fees as such were in fact debated, so this is a revisiting of issues that we've already dealt with. Do we feel we want to bring those up and deal

with them again?

MR. STEVENS: No.

THE CHAIRMAN: Okay.

With that let's move on to the last two bullets, and, Gary, you will have some expounding, so we'll let you do that.

MR. DICKSON: Mr. Chairman, I thought about putting them in either anonymously or under a pseudonym but thought they might have no more prospect of success.

The first one in terms of section 9 we've dealt with already.

The second one came up on a file I'd been involved with. Actually I was helping one of my colleagues. There's a coil-bound book now put out by the Department of Labour, and it's, I think, the policies and procedures of Sue Kessler's section. What we discovered was that some of the advice there in fact isn't consistent with positions taken by the Information Commissioner's office. This isn't something that lends itself to statutory interpretation, but while we're dealing with FOIP, I wanted to raise the concern and I guess question whether there's a way that we can ensure that the policies and practices manual that's used not just by provincial government public bodies but by all of these new local public bodies who have a desperate need for information is sending forward information that accurately reflects positions taken by the IPC.

I'm trying to remember now what the issue was. It may have been around section 9. There were two issues. One was I think around section 9, the duty to assist. When we looked at that coil-bound policies and procedures book, we found some inconsistencies between what was put forward as the appropriate practice and the position taken by the IPC. That may be too vague for Sue to deal with, but that's the general concern I was after.

MS KESSLER: Well, perhaps I could just speak to the process. We clearly have reviewed that, the commissioner's orders and investigation reports and the various documents coming out of the commissioner's office. We have endeavoured to make our thinking and their thinking the same where they have ruled on it. In other instances, of course, they haven't had orders yet. I guess it's fair to say that it's our best guess as to the way the policy should be in relation to maybe interpretations from other jurisdictions and some of the research that we've done on how these acts work. So we've established the policy based on our best guess until the commissioner rules on it.

It's certainly our intent to keep the policy and practices manual up to date to reflect the commissioner's orders. We're in the process of putting it onto the Internet as we speak, and we're hoping that once that's done, we'll be able to update it a little more frequently at least in electronic form rather than in paper form, because the paper ones are expensive.

We also did have the commissioner's office review the publication before we printed it. They reviewed it and said that it was fine, although -- I'm trying to think of the standard line that's used -- they reserve the right to change their mind when a specific case comes up.

MR. ENNIS: To speak their mind. And it's not their mind; it's the commissioner's mind.

If I could just add to the process, because it is one that I think has been respected by IMP and the commissioner's office in trying to establish some policies or guidelines for departments and other public bodies to work with. We do receive drafts of what Sue is intending to publish under her minister's name, and I think we generally say that we acknowledge having received them, that they look pretty sensible to us, but we can't endorse them because, of course, the commissioner can't be held accountable to them. He's got to make up his own mind.

I think there have been a couple of cases where the commissioner has gone into some detail on an order where the policy manual hasn't even gone into that much detail, and he sort of expanded the way. The issue you may be thinking of, Gary, is the issue of continuing requests and the charging of threshold fees on continuing requests. There was a case where the manual went as far as it could in stretching people's imaginations as to: how do you collect money in anticipation of records you don't even yet have? So you can't even yet develop. I mean, it gets a little speculative, to say the least.

We actually hit a case where the commissioner had to work it through and figure out a formula for picking up the 50 percent estimated cost prior to acting on a two-year continuing request. The issue was: at what point does a person cross that $150 threshold, and do they only cross it once or do they cross it in each installment? You can imagine what this order looks like. It's a long read, and you don't remember much at the end of things unless you've taken notes as you've gone through it because it's complex. But there would be a case where perhaps Sue's branch would go back, look at the request, and try to integrate that wisdom into the manual to make it work for administrators.

1:26

MR. DICKSON: I appreciate the explanation. Actually it's an excellent publication. I use it all the time, and I think it's helpful. I appreciate the clarification in terms of how Sue's office tries to integrate what decisions are made by the commissioner.

THE CHAIRMAN: Okay. Well, that's the last item on that document.

The second one that was circulated is the draft of the final report. It, I think we'll recognize, takes the recommendations that came out in the preliminary report and surrounds those recommendations with some of the rationale or dialogue that went on, explaining how we arrived at those particular conclusions. The final report, as I had suggested earlier, will still consist of an executive summary, which would simply spell out the recommendations in chronological order, essentially as the preliminary report did, subject to any changes that we have discussed here today or will discuss at the next meeting and then following that with the detail.

This is a fairly long read. I found that it took me just about three hours to go through it and read it with the amount of diligence that it would take, and that wasn't even with a mind to edit words and things like that. I found a few things that I had suggested, and they've actually been incorporated in here, so this is a slightly cleaned up version.

I'm not sure there would be a purpose in going through this page by page. I'm also not sure to what depth any other committee members would have had the opportunity to read this. I know it was completed for distribution on late Thursday afternoon. It was delivered to your Legislature offices late that afternoon, so the earliest your staff could have gotten it out to you would have been likely sometime Friday morning or whenever. Depending on how diligently that may have happened, I gather that not all of you had a chance to read it in detail. If that's the case, there's not even a lot of point in going through it with that intensity here today.

If there are issues that anyone wants to raise, if there's something you've read that you either take exception to or feel is missing the point or is inaccurate, we could deal with it now, you know, get as much done as we can. But I am going to suggest that even at the next meeting I would hate to see us go through this page by page. I'm hoping that everybody will have a chance to go through it, flag those areas that you have concerns about, and then we would go through them that way. The debate on this, I guess, would be more

along the lines of whether the background information that's provided is an accurate reflection of how we came up with the decisions, but I'm hoping that we don't either expand these to include a verbatim transcript of *Hansard* or water them down to where nobody would understand what we did, to either extreme, but more or less reflect the accuracy of what is included in here.

MR. DICKSON: I appreciate your comments, being one of the people that hasn't had time to go through this. Just two things. Firstly, a query with respect to page 2 and then a query in terms of how something is being handled.

The first one. I'm much troubled by reference to "substantial public input." You know, I think I've attended every meeting of this committee. I think I've read all the submissions that we've got. Unless somebody is redefining "public" in new and interesting ways, I think that the most disappointing part of our process has been how little public input we got.

I'm troubled to see us start off by boasting "substantial public input" when in fact -- what do we have? Initially 16 of the 120-odd submissions were from sort of members of the public, and we received over 80 submissions from people involved in processing requests. To me in my own little simplified view of the world, we've got access requesters and we've got access processors. Our whole consultation has largely been driven by the needs and the issues of access processors in the province. I can't change what the committee has decided and I can't change our process, but I sure as heck would like to see, when we're talking about the process, that we fairly represent what we did and didn't do. So I've got a big problem with the reference to "substantial public input," because in my view of things we have never had substantial public input.

The second thing. I'll just run them together. We had talked last time -- in fact Sue and I had a phone conversation, and I faxed to her a list of the things that I thought were unanimous. I don't know how we've dealt with it here. We just said that some were unanimous and some were not?

MS KESSLER: That's correct. Where they were unanimous, we clearly said that they were, and where there were dissenting views, I think we tried to incorporate the dissenting views in here.

MR. DICKSON: Okay. Well, I'll have to go through. I was just interested in the process.

But the first point I raised stands. Mr. Chairman, I think we have to address that before this final report is done, either today or at the next meeting.

THE CHAIRMAN: Well, I'm going to disagree with you, Gary, on whether or not 120 submissions is substantial or otherwise. Many of the documents reflect the views of more than one party even though an individual organization may have submitted it. I think it reflects what I would call substantial. I don't think it says "overpowering," nor does it make reference to the number of personal references. We didn't imply that there were personal representations. But in my view what we have still accurately reflects "substantial."

I agree with you that it wasn't handled in the same way as the original review of proposing an act was. I think that was a whole different ball game. The province didn't have an act at that time. We were borrowing concepts from other provinces and the federal government. Since this was an entirely new concept in the province of Alberta at the time, the intensity and the type of representation was different. We went through this debate. I know you didn't agree with it, but we went through the process of how we might get feedback. I made the point that we're not rebuilding or reinventing the concept of freedom of information. We were looking at our act and finding out where it had inequities and, you know, where it needed to be fine-tuned or whatever it was. Based on that, we chose the method we did.

I know you disagreed on the amount of advertising we did and the process for input. I'm inclined to agree with the comment that Ron made earlier, that all of the written feedback that came in was quite understandable. I recognize that some groups may have felt miffed that they weren't able to come in and say the words personally and out loud and look in our eyes to see whether we either understood or what part of the words we may not have grasped. I do recognize that sometimes making the point in person may have more of an impact. We had originally looked at a much condensed time frame, which unfortunately eluded us all the way through. Had we known that we were going to have this much time, maybe we'd have made different decisions at the beginning.

Nevertheless, I don't think we missed the point significantly. I feel that all the submissions that came in were clearly understandable. I even debated with Matt McClure the other day whether it would have made a significant difference if they were here making a verbal presentation. I think not. I think I understood the letter quite well. I would stand by the comments and probably to the extent that I had a hand in writing some of the preamble. The staff presented some, but if you looked at the original version, they probably don't recognize their words in it anymore. So I'll take the blame for most of the words that are in the preamble.

1:36

MR. DICKSON: Mr. Chairman, I may not have been clear. We can't change the decisions we made about not holding public hearings, not doing more advertising. I accept that. The issue now is how we represent to Albertans and anybody who's interested in our process what we've done. Obviously, when you use the words "substantial public input," your view is that when you hear from the University of Alberta, the Alberta School Boards Association, et cetera, et cetera, that's substantial public input. The point I was trying to make is not that we should be holding public hearings now, but can we not at least tell Albertans that the people we've heard from almost overwhelmingly have been people who are in the business of processing access requests, responding to access requests, managing and collecting personal information?

We've heard so few voices that I can name them, I think, by heart, people who are in the business of making access requests. Whether it's the Canadian Association of Journalists, whether it's the Canadian Taxpayers' Federation, whether it's Martha Kostuch and a couple of environmental groups -- I mean, that's what I'm weighing. I'm simply saying: do we not have to be fair to people who read the report? Don't we have to acknowledge that this is not a balanced scale? What we've been hearing almost exclusively -- almost exclusively -- mitigated a little bit by the IPC involvement in the thing, has been from people who are in the business of responding to access requests, not making them. That's my point.

I respectfully suggest we're perpetuating a myth when we talk about substantial public input. I think we have to be more descriptive in terms of the kind of input we've got. It's been from people on one side of the fence and almost no input from people on the other side of the fence.

THE CHAIRMAN: The observations about who made the comments or made the recommendations are spelled out statistically. I can appreciate that there probably were more bodies than there were individuals, but how do you go out there and say, "Well, the act is up for review; we're going to force you to make submissions"? Certainly you can debate that it could have been advertised more

extensively. I have a stack of news releases from dailies and weeklies that came in through the process of the review. We didn't cut off input. As a matter of fact, we're receiving some so late that it has to be distributed here at the meetings.

Your opinion as to: did we solicit this sufficiently, or did we as a result of that get enough feedback? I think it would translate more into the disappointment that there wasn't that kind of feedback as opposed to: was the process flawed in how we solicited it? It's a subjective opinion, and I'm going to disagree with you on it. I think that this reasonably, accurately, including the charts and such, reflects what happens. That's my opinion.

MR. STEVENS: If I could just embellish a bit upon what you said. The draft that we have is likely in large measure similar to what we'll end up with, and at this point we have a section called Report and Recommendations, Public Consultation. It's a two-page document, and it outlines in some detail the process that we've followed. I would note that it doesn't indicate anything about the fact that we advertised in addition to sending out some 3,000 guides to individuals, public bodies, and other organizations. It doesn't indicate that this was on the Internet. It doesn't go into those aspects, which quite frankly expand beyond what is apparent from the 3,000 people that received the guide. It doesn't indicate that MLAs individually, such as myself, advertised this through community newsletters. Notwithstanding that, it does not appear that anybody in my constituency on an individual basis saw fit to participate directly in this process.

The fact is that there was a process, and it's outlined in here. It's available for people to read, and when we get around to talking about pages 13 and 14 in the draft, I'll be asking for a little more elaboration on the process so that it is extremely clear as to what we went through to solicit the responses we did get.

Then, of course, we have appendix A, which is a list of the names and organizations that in fact did make submissions either to the review committee initially or in response to the preliminary report.

So for those who want to know what is meant by the term "substantial public," they have all of the information available here, and they can draw their own judgment. But it really is, in my view, very much a situation of looking at a half-full glass and deciding whether you approach it from the half-full or the half-empty side. I think what's important to note for the purpose of the discussion is that we have contained in the draft report that we're looking at and likely in the final the information upon which someone who reads this report will be able to draw their own conclusion as to whether or not those words reflect what they think about the level of public involvement.

MR. CARDINAL: I really don't have any further comments because you both, the chair and yourself, covered what I was going to say other than I haven't had any phone calls from my region of the province since the act was introduced, and I probably will not get any phone calls in the future. People realize that it's an ongoing process and that it'll be there for a long time, no doubt, and if changes are required that really impact the constituents out there, they'll come forward. In the meantime, I think the process that's in place is reasonable at this time.

THE CHAIRMAN: Okay. Enough debate on that?

Recognizing that going through this document entirely today might not accomplish a lot, I did suggest that if anyone has, by virtue of what they're read so far, any observations that might suggest that this is inaccurate, the copy and such in here, we would deal with that so that we get into corrections as quickly as possible. I'll leave it at that. As I say, there's no point in going through it sort of page by page, and I maybe should serve notice that at the present time I'm not expecting that's how we would deal with it at a subsequent meeting. I'm hoping that everybody will go through it, make note of those things that they take exception to or feel should be changed, and we'll deal with them as they're raised but not with the intent of either a line-by-line or a page-by-page review. We'd be here until next year at this time.

1:46

MR. DICKSON: Just a comment. When we come back to finish this thing off, I think, frankly, when you go through it page by page, it's not going to take three days. There are a number of recommendations -- in fact, for Sue, I went and identified the number of recommendations that were unanimous. I think there were about 40 percent of the recommendations that were unanimous, somewhere in that area. I think it's the cleanest way of getting through this thing. If we simply say that we're limited to identifying things that are just plain inaccurate or something that's being omitted, it needn't take us as long as we've spent today to go through the final report. We also will have the benefit of being able to read the thing well in advance, assuming that the next meeting isn't tomorrow. I think that's the better process. Then you're sure that you haven't missed anything.

THE CHAIRMAN: Well, I'm not suggesting, simply because I wouldn't read off the page numbers, that wouldn't be the way that you would present them. Using today's exercise, at least half the time I was having to wait a few seconds, and then having no responses, I'd suggest we move to the next page, and we got called back anyway. That was okay with a short document. We'd just play around, shuffling pages.

I'm expecting that you would have made notes and that if you had an issue on page 2, for example, you would raise it before you would raise an issue on page 36, but if necessary, jump back and forth a little bit. It just seems a long, drawn-out exercise to call page by page by page when there may be no concerns on it. If everybody feels that that's what you want to do, I'll certainly do it, but I was just trying to see if there was a little bit more expeditious way to move through it.

I realize that today you had to read some of the documents in front of you because you didn't have enough time to preread it. I had no problem. I had a check mark on each issue that I wanted to read, and as we fanned through it, it was there. I'm just hoping we can make this happen quickly and not for the sake of avoiding discussion on any issue but only discussing those which need to be discussed.

MR. DICKSON: Well, I'll accept responsibility for the meeting being longer because I simply hadn't read the draft before. My point was that if we come back and we follow the same process, having had a week or whatever to read the thing, we should be able to compress the time by at least half.

THE CHAIRMAN: There are a few issues that will come up from today's discussion which we'll have to spend a little time on. I'm going to suggest that we deal with those first because they may have to be incorporated into the recommendations, in which case the body of the background may change slightly as well.

In producing the feedback from this, Sue, can I ask that if there is a positive recommendation, there might also be a recommendation alongside of it as to what the body would look like if it needs amendment so that it's clean.

I'm anticipating the outside possibility -- it may be dreaming -- that the next one could be the last meeting, but I wouldn't be so presumptuous as to promise you that.

MR. STEVENS: Just a couple of points. I'm not clear. Will we be receiving any additional information or rewrites of the draft for our next meeting, or will the rewrites occur after the next meeting?

MS KESSLER: They likely should come up after the next meeting. I don't believe there's a lot substantive that we could make at this point.

MR. STEVENS: Okay. That's fine. I just wanted to know what I was supposed to expect. Just sort of going forward, to the extent that we do rewrites, can we have them black-lined or something of that nature so that when we take a look at draft 2, if you will, we can emphasize principally those changes rather than trying to figure out where they may be, if technologically that's possible?

The next point I'd like to raise for the members of the committee is that sometimes, as we go through these, we find grammatical and punctuation changes, changes of that nature, that we would like to share. I'd like to suggest that we make notes of that on our individual copies and simply provide them, at least the appropriate pages, to our support staff rather than take up the time of this meeting to talk about such things. So if people just go forward in reading it with that in mind, I think we can save some time and still provide the benefit of our opinion on that.

THE CHAIRMAN: Okay. That latter part is a good suggestion. Grammatical, spelling, or anything like that: you could get that to Sue, or you could get it to Diane or myself, and we'll see to it that she gets it.

Is there anything else that we would want to deal with today then? Last call.

MR. DUCHARME: Could I move for adjournment?

THE CHAIRMAN: You sure could. The meeting's adjourned.

MR. DUCHARME: Discussion? No.

THE CHAIRMAN: I didn't want to have a debate.

MS KESSLER: What about the next meeting?

THE CHAIRMAN: It's on the agenda; isn't it? We have been working on Mondays, and I unfortunately have a commitment -- I believe two of us have a commitment -- for 10:45 on Monday the 8th. Now, Monday still wouldn't be a bad day. We could go after lunch if you wish. The alternate is the day before session starts, the 15th.

AN HON. MEMBER: That's a holiday.

THE CHAIRMAN: What's a holiday?

I don't want to make it look like I'm pushing this, but by the same token I don't want to get into a situation where anybody would say that we didn't have enough time to read this. Ideally, I'd still like to get it done next week, if we could, so that once we're in session, those people that have House leader duties or things like that wouldn't be distracted by such an innocuous thing like a freedom of information act. Failing that, we're looking at a session morning, which is not the best because everybody is restricted.

MR. DUCHARME: Thursday?

THE CHAIRMAN: Thursday of next week? I can't. I've got Treasury Board. Actually, the only two days that I have next week are Monday and Tuesday.

MR. DICKSON: I can't do it Tuesday. If we could do it for part of Monday, Monday afternoon.

THE CHAIRMAN: What time does your meeting end on Monday?

MR. DUCHARME: At 3 o'clock.

THE CHAIRMAN: Could you sneak out early?

MR. DUCHARME: I could try.

THE CHAIRMAN: How about you, Ron?

MR. STEVENS: Which Monday?

THE CHAIRMAN: The 8th.

MR. STEVENS: I could be here.

MR. DUCHARME: I'll make an effort.

THE CHAIRMAN: Okay. Well, what I wouldn't mind doing is if we could start at 1, and even if you'd just join us as we get into it. If we do it too tight, we might not get through it. From 1 till 5 maybe? Diane will let us know whether we're in this room or in another.

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