Title: **Monday, February 8, 1999** Freedom of Information Review committee

Date: 99/02/08

1:13 p.m.
[Mr. Friedel in the chair]

THE CHAIRMAN: We have a quorum plus one now, so we may as well call the meeting to order.

The first item on the agenda is Approval of Agenda. Do we have a mover?

MR. DICKSON: Mr. Chairman . . .

THE CHAIRMAN: A question or to move the motion?

MR. DICKSON: Well, both. I'm happy to move the approval of the agenda with one addition. Maybe this can be tucked in with the final report. I had a meeting with some people from the University of Calgary. They had just faxed to me a further proposal, and this relates to access to information for research purposes. There's at least one other item dealing with postsecondary. We can roll it into that, or if we don't cover it some other way, we can deal with it after the other items that we had left open at our last meeting.

THE CHAIRMAN: Okay; we'll just build it in. We don't have to actually change the agenda to incorporate it.

MR. DICKSON: Terrific. Well, I'll move the adoption of the agenda in the form circulated then.

THE CHAIRMAN: Any discussion? All in favour? The motion is carried.

May I have someone move the approval of the minutes of the February 1 committee meeting? Moved by Mike Cardinal. Discussion on that? All in favour? That is carried.

Okay. We can then move to the draft of the final report. As part of that, we have asked the technical people to come up with some observations and options, where appropriate, for several of the recommendations that we had received feedback on and couldn't deal with without some additional insight. So you have with your agenda a package called -- it isn't really called anything. It's just a header with a series of recommendations on it.

MR. DICKSON: Is that the one starting with recommendation 17?

THE CHAIRMAN: Starting with recommendation 17.

I think that if we go through them first, those would be considered the outstanding issues, and then we can move to the final report in general.

The first recommendation talks about section 4(1)(e) of the act, and there is a suggestion on the bottom of that page that might address the concerns of the submission. The recommendation would extend it not just to the employee of the institution or the institution itself but, the way I read it, would also deal with those things that are covered in a partnership or that would have joint ownership as well. Is there more to it than that, Sue, or does that kind of cover the intent?

MS KESSLER: It's also applied to the institution for the teaching materials but not for the research information. It was viewed that was broadening it too much and would actually take out a lot of information that was really intended to be covered -- is that correct, Diana? -- and that there are other exceptions to disclosure in the act that could be used for the protection of that research information but that that wasn't really the intent.

THE CHAIRMAN: Okay. I missed that, I guess, when I read through the backgrounder, but there are other ways in the existing act that application can be made to protect particularly sensitive or otherwise proprietary information. Is that correct, John?

MR. ENNIS: Yes. In areas like product testing for a third party, for example, there's a section in the act that allows a public body to refuse to disclose information that it did; for example, under contract to a manufacturer for the testing of a product, a safety test or something. Similarly any research done under contract would bring the contractor in perhaps as an affected party in that disclosure. So there would be a chance to see whether or not the public body should have to disclose that information as part of its accountability, or it would be in a position to use some of the exceptions that are available in the act.

One of the exceptions is in section 24, the exception for economic interests of the body. There have been cases in the past where public bodies have argued that around issues of research, and the commissioner has one order in particular that found that an argument of that nature didn't hold up because the public body wasn't able to show how the research pertained to its economic interests in a satisfactory way. So there are some exceptions that do work and some that don't.

MR. DICKSON: *Hansard* has been produced now from last week. I haven't had a chance to read it yet, but my recollection was that we also addressed an issue raised by the Calgary board of education. We talked about the fact that some of the larger school boards, Mr. Chairman, also undertake research, carry on research work, and I'd understood that we were going to hear further on that element as well. I assumed that there was going to be some further discussion with either the Department of Ed or the big city school boards to find the status of that, because the concern that had been expressed is that -- well, with the Calgary board of education, for example, there is research undertaken there not a lot different, except perhaps in volume and frequency, from the kinds of research that are undertaken at a university.

The Calgary board of education had raised a concern that they may have been omitted simply because we weren't familiar with that kind of research work being done. My recollection is that we hadn't resolved that last time other than clearly it was flagged. I thought we would have seen that addressed in the response, and I don't see it here.

THE CHAIRMAN: Okay. It's not in the information that we just received, but that issue was raised earlier in our discussions about the recommendations, and there is an earlier report that deals with it. We did discuss it, and it may have been raised again by the Calgary board, but the earlier discussion I think was fairly definitive in that it was felt that the kinds of research that a school board would do were not of the same nature as postsecondary institutions. The contracts of instructors in universities often have research and that sort of development as part of their contract and the ability to do it as part of or even parallel to their teaching duties. There was little likelihood that a teacher working for a school board would have the same proprietary interests in research, and the concern wasn't felt to be extended to that level. I thought we had cleared that up fairly firmly unless someone else from the committee feels otherwise. I will recognize that the Calgary board raised it once more, maybe as a final attempt to get us to reconsider, but it didn't seem to me there was any doubt as to what our decision was.

MR. DICKSON: Mr. Chairman, with respect, we've got different recollections. I remember in fact speaking to the issue, and I'm going to be so bold as to suggest that we made an assumption, at least the committee, that there was not similar research being undertaken within the K to 12 school system, and that's why we left it out. I'm going to suggest that we did not have in front of us representations or information that led us to believe as a committee that this was something that's under way in the bigger school districts. So I'm not sure, in fact, that we've disposed of the issue with that information.

THE CHAIRMAN: Okay. Well, if it's a concern, we can certainly rehash it if necessary.

MR. STEVENS: I remember Gary raising it last meeting, and presumably if it wasn't before us, it's because the public education boards didn't raise it in their submissions but did in their conversation of recent times with Gary. I would like to know if the support staff gave any further consideration to that.

1:23

MS SALONEN: We did touch base with the Department of Education, and they couldn't see how the research that would be done in the school boards would be at all comparable to the university sector. We weren't able to make contact with the Calgary board to see what particular issues they had a concern about.

THE CHAIRMAN: Let's pose another hypothetical question: if a particular school board or a staff member on the school board was conducting some form of research, are there other tests that could deal with an isolated incident of that nature, or would it have to be included in the act so it could be dealt with? I'm particularly looking at John for maybe an ad hoc interpretation of the kind of concern that might fall under what Gary has raised.

MR. ENNIS: In terms of technical research of an employee of a public body?

THE CHAIRMAN: Or something that the educational public body might be working on. It would have to be with an employee, because otherwise the institution itself wouldn't have any wherewithal to do it.

MR. ENNIS: I have to rely on my imagination here in terms of it would be likely that an employee would be analyzing how well some kind of educational program is working and perhaps doing that for an academic paper or some learned society. I'm sorry, Mr. Chairman; I would have to take another look through the act to see if there's any place in the act where a public body that had custody of or had control of that information would be able to shield it from disclosure if someone asked for it. I will undertake to look at that in the next few minutes here.

THE CHAIRMAN: Okay.

MR. GILLIS: Other jurisdictions have chosen to put that type of information under section 24, economic interests of a public body. So a contract, the production of something that makes money for the board in this case, could be argued to be protected by section 24. Whether it'll be successful, I don't know, but other jurisdictions have been.

MS MOLZAN: Mr. Chairman, 24(1)(d),

> scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or public body of priority of publication,

is one of the subsections that falls under there. So I guess it would depend upon what situation we're talking about. The situation Mr. Ennis referred to is just a question of the person being able to publish their paper before others see their work. That seems to be caught under (d).

Then (b) talks about "financial, commercial, scientific, technical" where there's a proprietary interest. That might be some kind of patent, or maybe there's even some kind of copyright issue there. Also (c) even just talks about something that might result in loss or "prejudice the competitive position" or whatever.

So I think section 24 is fairly broad, and as far as the hypotheticals we've been talking about, it looks like they would likely fit into that.

MR. DICKSON: I can think of a very large research project that was done at Forest Lawn high school, where Dr. David Watt, an education prof at the University of Calgary, was involved in checking ESL programs, English as a Second Language programs, dropout rates and issues. This was a huge paper.

Now, I am not sure whether it was done necessarily under the auspices or a contract of the Calgary board of education. It was done in a particular CBE managed, governed school. I'm not sure there was any sort of economic component to that sort of research. It was a question of identifying a particular problem, a high dropout rate of ESL students at the high school stage. There are other kinds of research that go on and, you know, maybe economic benefit. It's a school district that's anxious to see this sort of work go on to identify problems, shortcomings, deficiencies in their coverage, in their programs, and that sort of thing.

You know, technically I don't know the answer, Mr. Chairman. I'm raising it because a very large school district said: we see this as being a problem. I guess we've raised and flagged the problem. To some extent I'm dependent on our research people to tell me whether it's a problem that warrants remedial action or not, so I don't know what further I can add. I noticed it wasn't addressed in the recommendations. We've got some additional information now that we didn't have before.

THE CHAIRMAN: Just on the example. This strikes me that while it certainly would be considered research of a sort, it would be more an administrative issue of the school board. The fact that they hired someone to do this research, probably more along the lines of an analytical survey -- it would be much different than the kind of research that we're talking about in a postsecondary institution, where an employee does private research often either under contract or by arrangement with the postsecondary institution employer, where there are significant proprietary interests involved. I realize you're just picking one example, Gary, but I would have a little difficulty in assuming that that would be the kind of information that should be shielded. But it's still available for some argument. I still feel that the earlier discussion would indicate that for lack of further compelling evidence, the school board research would be significantly different, of a different nature.

MR. STEVENS: I just wanted to say that it's interesting to sit around speculating. If the party who raises the issue puts material before us to articulate the reality that they have on a particular point, then we would be able to deal with concrete rather than speculating, but I would note that there isn't such material in front of us. There was a discussion that Gary had, but this particular group didn't bother putting more material in front of us.

There has been some further work done. The Education ministry says that they don't think that this would be a significant amount. The experts around the table have indicated that certainly for some

kinds of research there would be general protection afforded by their sections.

So from my point of view I think what we can do is say that we've had a discussion. If the matter is of more import, somebody can raise it at a later time, but let's move on, because we really don't have anything in front of us to deal with. Some effort has been made to try and track it down.

THE CHAIRMAN: That would be my sense.

MR. DICKSON: Mr. Chairman, there was a letter, I think, that I distributed. I could be corrected on this, but I thought there had been a letter at our last meeting from the Calgary board of education.

THE CHAIRMAN: Well, I recall seeing a letter. I'm not sure if I'm referring to the same one you are, but it was also hypothetical.

MR. DICKSON: Oh, quite. I mean, clearly it didn't have the kind of detail that Ron says is missing. I agree with that. I just want it clear on the record that there had been a communication from them.

THE CHAIRMAN: I think that is what's missing, some form of evidence that would indicate that there might be research of the same nature that the postsecondary institutions are being shielded from revealing. I would suggest that if something like that came up and it couldn't be covered under the test of section 24, it could still be revisited as a last-minute issue. I'm going to recommend that we follow Ron's suggestion and move on, and if such evidence comes up, we could pick it up at the last minute.

All of that notwithstanding, the suggestion from our technical people is that recommendation 17 be modified slightly. I'm not going to read it. You all have it at the bottom of the page which is titled recommendation 17. It doesn't significantly change the original intent; it probably clarifies it.

Any suggestions or motions or whatever?

1:33

MR. DUCHARME: I'd like to move that

> the working committee recommendation be accepted as presented.

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

The next page is recommendation 21. Again, this goes to the essence of earlier discussions and deals with the requests from schools and postsecondary educational bodies to extend the similar privilege, I guess we'd call it, for protecting critical incident and quality assurance process evaluations.

The evidence seems to suggest that while there certainly is that kind of process being followed, it doesn't really fall under the same critical category that we had expected might apply if there wasn't a protection for the health community. There is background information that talks about section 9 of the Alberta Evidence Act and the fact that it was considered necessary to even enhance that over the summer to make sure there was some protection for the medical community.

The committee has recommended a slightly modified version of the old recommendation 21, which changes the term "medical community" to use the term "health care bodies." I think it's a little bit clearer and more definable. Essentially the recommendation would remain unchanged.

MR. DICKSON: Mr. Chairman, this is another one of these where I haven't reviewed *Hansard*. My recollection is that we had discussed, again, whether this ought to be applied to schools. We've got the one sentence that refers to it, and then the rest of the analysis sort of ignores that. Remember we talked about the situation in terms of a child being abused in the school and what would happen in that sort of situation. I find I'm in an odd position. I'd like to see section 4 eliminated. I mean, section 4 is, I think, a dangerous section in the act, so I'm not the guy who should be advocating it should be getting longer.

But I do want this committee to at least fully respond on the merits to bona fide requests that come forward from people who would like that protection. I'm hopeful that there's been some further investigation done in terms of quality assurance issues, critical incident issues, in the example we'd used last time of schools, beyond what we see and what really is missing from the written material in front of us, Mr. Chairman.

THE CHAIRMAN: Other comments? I realize the position you're in. You're kind of advocating tongue in cheek on behalf of a constituent, but the view may not be entirely your own. We can appreciate that.

My observation was that we extended a particular privilege because it was felt that errors in the medical community could produce consequences that were beyond anything that we would accept as reasonable. Similar errors in maybe the educational community, while they might not be pleasant, wouldn't be as drastic as losing a life or something near to that. I think that's where we did the saw-off.

MR. DICKSON: Well, Mr. Chairman, tell that to the parents who discovered there's a pedophile that somehow managed to get teaching certification in their elementary school.

Clearly there will be some medical situations which involve life and death. There will be others that will be able to benefit from the section 4 inclusion that don't involve death. I'm no expert on critical reviews, but I'm not sure they're restricted to life-and-death situations. It doesn't take very much imagination to think of some issues that would come up in other contexts, like a school, for example, which would be just as serious to people who would be involved.

I don't have the answer, Mr. Chairman, but I'd hoped that there would have been some further investigation done subsequent to this coming up at our last meeting. I guess I'm hoping we can get some information around that.

THE CHAIRMAN: Well, you've raised an example that certainly got my attention. If it's as dramatic as that, it may warrant a last-minute look. Maybe we could do the same thing as we've just left recommendation 17. If there is some compelling evidence that could be raised before this thing is actually put to print, we might be able to deal with it, but I would like to see that there is a serious lack in the present provisions before we jump into it and start making greater exceptions.

MS WILDE: Gary mentioned that there might be a case where there's perhaps a pedophile who has obtained a teaching certificate and the parents would probably be interested in knowing what has happened with that situation. That's my understanding. By excluding critical incidents and quality assurance activities that occur in the school, what you're doing is basically excluding that information from the act, which means that a parent could not obtain that information under this act. Therefore, it's important to leave it in the act and thereby use these other exceptions to ensure that information that might be harmful to law enforcement investigation or personal information perhaps of the child is not disclosed. I don't know if that helps clarify anything.

MR. DICKSON: I once again probably put my concern too clumsily.

I think my point was simply this. I mentioned the interest of parents because I'm suggesting it would be no lower level a matter of concern than if a child at the Alberta Children's hospital died on the operating table or, you know, had gone in to be treated for flu symptoms and ended up dying in a hospital bed. People are going to say: what happened? There is a protocol and a process in the Children's hospital, that we know a little bit about, that's going to get to the bottom of it, make sure that there isn't some real problem in terms of their processes or whatever.

I was just suggesting in the same way -- and I picked the most extreme example I could imagine -- the same sort of situation. One couldn't imagine somebody saying in the school context: "Well, gee, I'm not coming forward. I'm a bit suspicious about the teacher down the hall, but I don't want my name associated with raising some concerns."

The whole thesis of the medical community, as I understood it, was that there are some times when it's more important to get answers and fix a problem than virtually anything else. Because of that, we would consider sort of an anonymity with an investigation, because the end justifies that irregular process.

All I'm trying to say is that it may be my overactive imagination, but I can see some situations in other contexts, and I used the one example I thought of where it would be the same measure of concern. You'd also want to get to the bottom of something, and you wouldn't want people to clam up and refuse to be part of an investigation because they'd be afraid that they'd be ratting on a colleague or whatever.

I don't know what the answer is, Mr. Chairman. I'm just saying that this concern has been raised, once again, by the Calgary board of education. My concern was that it just didn't seem to have been investigated.

1:43

THE CHAIRMAN: As I said before, your example certainly raised the attention of myself and other committee members. I mean, if there's anything that's happening that would allow a deviant such as a pedophile to come into the system without any reasonable cautions being built in to make sure that this doesn't happen, I think we'd want to have to look at it. If this is in fact how it would be interpreted, I think we'd want to know.

The other thing is that at the eleventh hour, where we're at now in this report, there may be certain issues that need a little bit more research. My suggestion is that if we have a few loose ends, rather than the committee continuing to go through them and trying to do our own research, neither the Department of Labour nor the Legislature needs a recommendation from the committee to make changes. We could leave this with the odd flag and say: if there is reason to be concerned that we have missed significantly a point on an issue, it could be dealt with at that time in any event, because the department could propose a change to the legislation without going to a review committee.

Certainly if it got to the Legislature, the same thing could be debated. I guess I'm less concerned about missing a point if we perhaps raise a flag and say: this is something that may want to be considered, and if there is reason to believe that there is a significant gap in the proposal, it could be picked up before it's actually drafted into legislation. I don't know if that's a satisfactory solution, but it may get us moving on.

Donna, you were trying to get my attention earlier.

MS MOLZAN: Yes. Thank you, Mr. Chairman. I just wanted to clarify because I think there may be a little confusion here. The way section 9 of the Evidence Act works, it doesn't protect, for example, the medical situation. It only applies to physicians. It doesn't protect the actual patient records. It only protects the committee that investigates from being compelled to give evidence or from having to give their recommendation or finding. If you had the example that was given where, let's say, a child dies in a hospital, anybody dies, any patient dies, all the patient records, all the charts and everything would still be compellable, as they always are. It's actually not taking all of the records out. It's just saying that the group of doctors then looks through those records and says: well, at this point you should have noticed that this reading created danger to this patient, and they were going to possibly die, and you didn't notice that. So they pick things out. It's only that recommendation or that decision that is protected.

With your pedophile example it's not simply a question of someone saying: well, I thought something was a little strange about him, but I didn't want to talk to anyone else about it. I don't think that would fall into the same situation as this medical situation. The original records would always have to be accessible. It would just be the committee that's investigating. It's not really analogous to other situations that arise in other areas. The only situation might be where the student flunked and another teacher is saying: you weren't teaching properly; you didn't meet that child's needs. That might be the situation it could arise in, and then it probably doesn't meet that high standard you were talking about.

I think it's also important to note that if there's a crime involved, it changes character. You've got legal proceedings going on. You've got other issues that arise. Justice has a protocol in regard to section 31 for giving out information on dangerous offenders or people that could pose a danger. It has been used for pedophiles in B.C. to warn communities that there is a pedophile in their area. As we've discovered from some of the cases, pedophiles, just like everyone else, have personal information, so you've got to deal with section 16 and other things as well. But it doesn't actually remove all the records from the scope of the act. So it may not really be analogous with anything that could occur in a school. It would be hard to see how that extension would keep all those records out.

THE CHAIRMAN: Getting back to my comments about what I called raising some flags. Is that an awkward situation when it comes to actually drafting the legislation around our recommendations, or does it raise its own problems? I don't know if you were going to answer that, John, but you had your hand up.

MR. ENNIS: Well, actually I was thinking of a comment just before that question, Mr. Chairman, but from discussions I recall in the office of the Information and Privacy Commissioner, the commissioner was supportive of an approach around the problem of peer review within hospitals. Because that had been extended a sense of public interest privilege by the Legislature through the Evidence Act, there was a sense that was a special process, that the doctors in that sense were a very special kind of a court in the sense that they looked at incidents and tried to determine what exactly had happened, and that there was a mix between practice issues and technology and science that you don't find in any other environment. Given that that was the thinking that went on then, I think the example of any kind of parallel that would go on in a school or in some other kind of a public body would have a lot of difficulty holding up to that high standard of special circumstances.

THE CHAIRMAN: I guess that was the sense of my opening remarks, where we had drawn the line.

With that in mind and, as I said, leaving the door open to some last- minute pickup of significant items in the drafting, the recommendation on the paper is relatively minor, but it, I think, clears up something that might otherwise be a little bit of a definition

issue, changing the words "in the medical community" to read "records of health care bodies." Are there any objections to making that change?

MR. STEVENS: Do you want a motion?

THE CHAIRMAN: Well, a motion or just a consensus. All in favour? Opposed? None. Okay; it's carried.

Recommendation 28. This was an issue that we wrangled with several times, and it was raised by Denis at the last meeting. It was the issue of attempting to determine a commercial licence, a business-type licence, versus a recreation or truly personal licence. The reason it was originally set aside was that we felt it was extremely complicated to try and differentiate between those two, particularly since an individual could apply for a licence whether it was as a sole proprietor of a business or as an individual just carrying out some kind of a commercial activity, and writing it might be extremely complicated.

The technical people have come up with a couple of options, and on the second page, if you look, there's a number 2 at the top, and I guess the little dotted 3 means it's continued on page 3. So the second page has a recommendation which goes to some extent to maybe alleviating the concern about differentiating between a commercial and a private licence.

There's a second option on the following page 3 which, on my reading, seemed to make it either fuzzier or more complicated. I had a little trouble understanding, even though I knew what the intent was, how the second option would work out, but given the concern that was raised, it may be worth while to pursue the first option, just depending on what the committee wants to do.

I have a couple of comments. Now, the preamble doesn't carry the weight of any recommendation, but in the second paragraph on page 2 the second line uses the word "impacts." If that preamble is going to be in any part of the report, it should read "may impact" because not everyone would. So it has to be rather optional.

1:53

I'm also picking up on the third last paragraph where it indicates: there are no cases where the courts have defined the term 'commercial nature.' In the recommendation itself, about three paragraphs up in the document, it uses the words "a commercial nature" underlined. If there is a concern about the definition, it might want to be amended to read something like striking off the words "of a commercial nature" and substituting "relating to a commercial activity" in which there is a definition.

Then I have a second question. At the very end of that paragraph it talks about a permit "granted to the third party by a public body." A recent phenomenon is that certain DAOs issue licences and permits. Do we have enough protection to ensure that a licence issued by an authorized agency, for example, as a DAO would come under the definition of public body if we used that suggestion?

So two questions to our technical people, and then I'll open it up for debate.

MS SALONEN: There wouldn't be any trouble in changing it to "for a commercial activity" from "a commercial . . ."

THE CHAIRMAN: I'm sorry; I can't hear you.

MS SALONEN: That would be fine if you preferred "related to a commercial activity" from "a commercial nature." That would work, I think.

THE CHAIRMAN: I just picked up on the caution that was further down on the paper.

What about the issue of a DAO?

MS SALONEN: We will verify it, but if the DAO is operating under contract on behalf of the public body, then it should be captured that the public body has control of the records that the DAO is holding.

THE CHAIRMAN: I have Gary and then Mike on the speaking list.

MR. DICKSON: You know, when we first started talking about this way back when we were going through the review of different issues, I think I probably said and my belief at the time was just to draw a clear distinction between commercial and noncommercial kinds of permits, which would have put me supporting the first option. But I've been thinking more about it, and we get into this sort of tension between trying to make it clear by express wording in the act and giving the commissioner more discretion.

If you read the decision in the case in terms of the bear hunting licence, the commissioner's order, I read the commissioner saying that he felt he had no choice because of the way the act was structured and that he was applying the law as it was. My thinking now is that you can never sort of conceive of every situation, and it always seems that when we go with the sort of specific wording, then we end up often creating another problem that we hadn't foreseen. We've discovered lots of things here, Mr. Chairman, that you and I probably didn't foresee back in the original FOIP committee in 1993.

So I end up preferring the second option, the one that the commissioner puts forward, because it doesn't sort of categorically say that for all cases noncommercial kinds of discretionary benefits can never be disclosed, because there may be some where it's important. They may not fall within the definition of a commercial activity or a commercial aspect, but there may be some other good and compelling reasons why they should be made available.

I think that if we were to go with the second option, we probably would have had a very different outcome in the case that Denis Ducharme brought to our attention last time, something he's been hearing a lot about. It may be more satisfactory because it creates more flexibility. I think part of the reason we're making these gazillion number of recommendations is that you just can't foresee every situation. Sometimes things that look pretty reasonable in a statute end up leading to some pretty ridiculous results. Maybe the best balance or check we have on that is ensuring that we've got a capable person occupying the IPC office and then some fairly broad discretion. That was the spirit that I think we tried to invest in the initial FOIP Act, and I think maybe we should sort of go back and rediscover that.

So I guess I'm saying that when I consider the experience we've seen with this case, the second option remedies that but affords us more discretion for future application of the same section to very different fact situations.

THE CHAIRMAN: Okay. I have Mike Cardinal and then Ron.

MR. CARDINAL: Yes. Just briefly. I had a little concern, and section 15 may cover this: the area of commercial hunting and fishing lodges. We have to make sure that their information on their clients is not available to the public, because if it is, then what happens is that I could get my competitors' clientele through this process. That shouldn't be allowed, because once that happens, then I could go solicit those same clients to come to my lodge. If section 15 doesn't protect that, we should make sure it's in here somewhere.

Denis, you were more concerned about the individual. This is one step further. This goes to the commercial operators. The way the system is set up, I believe, is if you had, for example, a hunting

lodge and you had, say, 20 hunters coming from the States, they'd each have to apply for a licence under your allocation. So their names would be available to the government, and if we don't protect them, another individual can access those names.

MR. DICKSON: Section 16 does that.

MR. CARDINAL: I don't know if 16 does it; it's borderline. It could. It's the government that issues these licences. That's the downside, you see. If they're available through the government department, then they're not protected.

MS MOLZAN: It depends, you know, exactly what type of information we're talking about. If it's like a client list, somehow it might be protected under 15 as business information of that lodge. Under 16, then, it maybe takes it into the situation we're talking about now, which is if it's personal, then the proposed amendments, where you differentiate between business and personal, would likely protect it. Currently the door would be open. It would be the same as the decision the commissioner has already made on it. Any hunting licence: the way the legislation reads now, I believe.

MR. STEVENS: The section, as it currently reads, obviously was intended to provide a lot of information relative to the issue of permits and licences. So we started this process by saying: let's narrow it down. The recommendation on page 2 of the current material in proposing 16(5) I think deals with the part that we had prior to the bear issue coming up.

The advantage of the commercial nature amendment, from my perspective, is that it still maintains that at least on the commercial side of permits and licences and discretionary benefits the presumption will be that that information is available. I think that from my perspective, from a public policy point of view, that is a good thing. I think that is something we want out there. We want to see who is receiving commercial permits and things of that nature from public bodies. It also protects the individual permit or licence holder in that, as I understand the recommendation, the presumption of invasion of privacy would be applicable to those individual or, I should say, noncommercial situations. So the information may be available, but there will be an application of the harms test to the individual. There will be a greater sense of protection, but there may also be the availability of the information if there isn't harm.

So I think that this, from where I sit, is a good compromise, because I don't think we heard, with the exception perhaps of the commissioner, that the whole section should be scrapped. We have addressed a lot of the issues that have been put forward by this option 1 proposal.

2:03

MR. ENNIS: Mr. Chairman, just in terms of the commissioner's views on this, I think the initial lead out from the commissioner was to consider scrapping the section, but if you recall Mr. Work's presentation in a subsequent meeting, that was withdrawn as a notion with the idea that the status quo is perhaps even better than that option and that maybe we should start again from the status quo and look for options. Although it's presented here as the commissioner's suggestion, it was a suggestion that was made and then peeled back at a later point. I believe those letters were about one day apart, so as you can imagine, there was a flurry of thinking on that point.

Just going to the issue that Mr. Cardinal raised, which is a very interesting one, and contrasting it to some extent to the issue of the grizzly bear hunters' licences, without commenting really too much on that order, it's important to remember that that order was for a whole class of persons without any specific test of some part of their personal activity. For example, no one said: I want the hunters who had been out hunting on Saturday, April 7, or whatever, something that was quite an element of their personal privacy. So asking for hunters who had frequented a particular lodge would require that the public body go into their personal information to discern who they are before determining what licences would be given to the requester, and to do that would require an invasion of privacy.

We've had a number of cases where we have advised public bodies not to go into a person's privacy if they have to do that in order to find out something about that person that leads back to an access request. That's very important when we're dealing, for example, in a corporate situation with section 15. We have had people ask us for all of the holdings of a particular individual or particular individuals in terms of their ownership of various commercial enterprises, and we have said, of course, that to do that, we have to go to the personal portfolio of the individual, understand that portfolio, and then move out to outline which companies that might have involvement with. We've advised public bodies not to do that because it does involve an invasion of their privacy in the first instance.

So just on that case, I don't think there would be a case in which a public body would be inspecting the personal activities of individuals to determine whether or not they fit within a class of licence holders to be given out to an applicant.

THE CHAIRMAN: I was also going to comment -- and this was triggered a little bit by Gary Dickson's comments -- about deleting the section of the act and allowing the office of the commissioner to put invasion of a third party's privacy to some kind of a test. I had thought that there was a reconsideration of the IPC office's position, and you've confirmed that, John.

My sense, even without that, is that there is one thing that is important about letting the commissioner interpret the existing legislation as it needs to be interpreted, but it's a different thing to interpret it trying to build in public policy. This is why legislation exists. You put public policy into the form of an act, and then you deal with it. If there is something missing in terms of the intent, then the legislation should be changed. You don't leave it up to your commissioner or your courts to decide what public policy should be. Otherwise you have something of the nature that we're complaining about fairly generally now. Not to raise the topic of judicial activism, but, I mean, that's exactly where it comes from: when public policy hasn't been outlined in the format that it needs to be.

So I would in this case think that it's important that we spell out in legislation what the public policy is to be, and then if there are areas around it that need interpretation, that makes the commissioner's job easier. I don't think we should default those kinds of decisions if we're already certain what we want that policy to be.

MR. DICKSON: Mr. Chairman, maybe you can help with my confusion. When I looked at recommendation 28, I took it that this was something that had been done by the Department of Labour subsequent to our meeting last time and building on that, trying to respond to that. Now, as I understand it, it sounds like option 2 is being abandoned, that option 2 is not a live option in front of us. I need some clarification. I just heard somebody from the IPC office say that the implication is that this isn't still on the table. So I need some clarification.

I'd obviously spoken in favour. I'd understood that this was much narrower than the discussion we'd initially had back when we talked about the totality of section 16 and what we were going to do with it and whether we were going to rewrite it or leave it or whatever. I thought that now we were dealing with a very specific kind of

issue, but after the comments I heard a few minutes ago, it sounds like we only have one option in front of us.

THE CHAIRMAN: Not really, no. Both options are there.

MR. DICKSON: Can I get that clarified, please?

THE CHAIRMAN: My recommendation was to move towards the first recommendation if we are going to consider a change from the original position. John clarified that even though the background information we have is based on the commissioner's suggestion of deleting section 16(4)(g), I believe, the commissioner, although he made that recommendation initially, reconsidered and no longer recommends that deletion. So both are there, but if you are going to look at the second recommendation, it would have to be on the basis that it is not a recommendation of the commissioner's office.

MR. DICKSON: I'm sorry. I thought this was a retooled version. I thought we'd gone to the commissioner making a representation, withdrawing it, now coming back to deal with the specific issue that Denis Ducharme had raised and we talked about last time, coming up with a new package. So I've misunderstood.

MR. ENNIS: Mr. Chairman, I might have confused matters here. The commissioner initially did recommend that all of 16 be withdrawn from the act. The difficulty around 16(3) not applying to 16(4) would be overcome. I think my comments extended that too far. It wasn't a question of the commissioner then being specific on 16(4)(g) and saying that that should be withdrawn from the act and then reversing his ground on that. So I have confused matters here. I'm sorry for that.

THE CHAIRMAN: Lisa.

MS WILDE: Yeah. To confuse matters more, the commissioner made two recommendations regarding section 16. One, I believe, was in regards to the wording of the first three sections. The second was in regards to 16(4)(g). In regards to his first recommendation, he did withdraw it. In regards to 16(4)(g), I believe it's still on the table.

However, after talking with the commissioner, he is of the opinion that option 1 is an option that he would consider. I think he would still be in favour, as well, of perhaps proceeding with option 2 in that it does give him more flexibility, but he is not opposed to option 1.

THE CHAIRMAN: Is everybody sufficiently confused?

Denis, was that just making a point or asking to be on the speaking list?

MR. DUCHARME: I think the subject has been covered quite well.

THE CHAIRMAN: Okay. We really have three decisions: stay with our original recommendation; adopt option 1, and if we do, I would suggest we do with some minor editing, as I had originally brought up; or look at option 2.

MR. DICKSON: The orphaned option 2.

THE CHAIRMAN: Or any combination thereof. I'm going to suggest that we do look at option 1. I think it covers the concerns that have been raised. It definitely gets into this area, as I talked about a moment ago, of interpretation, and I think it's up to this committee to recommend based on policy. If that's what we want to do, it would certainly narrow the options of the commissioner. But if we want to leave the options wide open and let the commissioner determine some of the policy, then option 2 would be better.

2:13

MR. DUCHARME: Well, Mr. Chairman, I'd like to move that

> we take option 1 with the edits that you mentioned when we first opened up the discussion in regards to section 24.

THE CHAIRMAN: Okay. Any further discussion?

Before we vote on it, is it necessary to check on whether DAOs would be covered for certain, or do you already know that?

MR. STEVENS: What do we want?

THE CHAIRMAN: Well, in this case, because they're dealing with real property permits, the intent was that that should be public information.

MR. STEVENS: Let's just say that and let them figure it out.

THE CHAIRMAN: So it's a matter of making sure the interpretation is carried through. I think we had addressed that in the sense that DAOs, insofar as they carry out legislative functions, are covered by the act through the contract they have with the ministry. If there's no doubt about that, then this is okay.

All in favour of the motion? Opposed? Okay; it's carried.

Recommendation 51. This came about as a result of a letter from the Minister of Education. The backgrounder on this would have the intent of softening the position. I spoke to the deputy minister the day following our last meeting, and not to put words in his mouth in any way, the letter that came in was probably prompted more by misunderstanding the intent of the recommendation and, I believe, two others that were also addressed in that letter.

Likely this is one of those that was the risk of sending out our first draft of recommendations without a lot of background information. When I explained to him what the intent was, he certainly had much less concern, in fact, I would suggest, felt it was workable. He did still have some misgivings about the interpretation of it, and I suggested to him that one of the things that needs to be done, whether the original recommendation or another recommendation came out, is that the Department of Education and the various school board associations might want to get together and draft some kind of a policy that might make administration of it across the province a little bit more uniform, and regardless of what we came up with or what the future legislation would be, that would be important anyway, because right now there's a hodgepodge of interpretation among school boards. This is probably what fired a lot of the feedback that came in about what might otherwise be fairly innocuous school information.

I still feel that of all the feedback I personally heard, this addresses mostly the kinds of concerns. I realize it opens it a bit more than some would feel comfortable with, and maybe because I have a little vested interest in this with a strong proposal that I made to the committee earlier, I have a bit of pride of ownership in this one, but I still would like to see the recommendation stand as it was originally made.

Lisa.

MS WILDE: Yes. I have one comment. In principle we agree with recommendation 51; however, we would like to see a privacy test incorporated into recommendation 51. Perhaps one way to do that would be to combine recommendations 50 and 51. For example, it would read something to the effect that

> section 38(1)(a) of the act be amended to allow for the disclosure of personal information without the requirement of a FOIP request,

> provided that the test requirements of section 16 have been applied to determine that the disclosure is not an unreasonable invasion of privacy

and then say something like "and may include" and list those items that are listed on this page. In our view that would not only ensure that there's a privacy test that occurs, but it would also enable perhaps the public and the public bodies to gather some sort of understanding as to what sort of information could very well be disclosed under that section.

THE CHAIRMAN: Okay. Comments?

Would the combining of those two have any effect of watering it down? I guess the simple answer would be yes, but would it water down the intent of the discussions as you've seen them by sitting through this committee for a number of meetings?

MS WILDE: I don't think it would water it down in terms of the intent at all. If there's a case, let's say, where a child is being abused and the abuser is looking to find out where the child might appear, at what awards ceremony or graduation or sporting event, this would ensure that the public body would go through that section 16 privacy test to ensure that they're not automatically disclosing this type of information to anyone who asks for it but that there is some sort of mental privacy test that they go through.

THE CHAIRMAN: I understand what you're saying, but I guess my other concern would be: would this mean that schools would automatically look at these and be looking for reasons to withhold it rather than looking for mostly the objective reasons why this is innocent public information and again putting the damper on this? That's my overriding concern. We actually chose this section of the act specifically because there are implied privacy tests anyway. We didn't immediately want to dampen it by saying that this is all great stuff, but by the time you've gone through all the checks and balances, it's easier not to give it out than it is to make it available.

MS WILDE: I don't think it would make it too complicated. I think a public body could go through that process very easily. Under section 16 it states that it must be an "unreasonable invasion" of personal privacy, and that is not a light threshold to pass. Personally I just think that would be a very good idea. It would just ensure that the wrong type of information is not being disclosed to the wrong people.

MR. STEVENS: My observation regarding recommendation 51 as it currently stands is that it was put forward to be a practical recommendation to deal with problems that people perceive in the education field. I look at it, and the way it's currently structured, it provides a list of can-do's, and the approach that Lisa has recommended would read: can do if.

There's a second component to it, and I think it's the second part of the component that creates the practical problem in that if in doubt say no. I think there's a whole bunch of people out there who would rather make no decision than make a decision that requires judgment. If you have a list that says you can, then no judgment is required if you can match the information to the list. So while I hear what you're saying -- and probably I could go through that particular test -- I don't know that in practice you're going to find people would apply it that way.

Given that this particular recommendation started out as a practical one to address practical concerns that are out there, I think there's a lot to be said for leaving it the way it is so that people who in fact have to address the issue have a list they can look to so that if they can match it, they can release the information.

MR. CARDINAL: I was going to say the same thing exactly, so I just won't say any more.

2:23

MR. DICKSON: Gee, I wasn't going to say the same thing. I wanted to raise a little different issue. You know, I'm trying to think -- and, Mr. Chairman, you've got a much better memory than I do. We only received, as I recall, three submissions from journalists. There was Bob Weber in an individual capacity, the Canadian Association of Journalists made a submission, and I think there's one third one.

I've had a number of discussions since the preliminary report came out, talking with members of the media. We've started to address and have with these recommendations issues around the schools, but I don't remember spending really very much time or any time as a committee talking about media access, and we're talking about the media who report car accidents, police activity, assaults, apprehended people at the scene of a bank that's been broken into, things like that.

I know comments have been made about police radios, and I know because we were talking about personal information that's defined as being recorded information about identifiable information, which limits it a little bit. At some point before we crank out the final report, I'd like to ask the question, sort of the ongoing work of the media, which is a legitimate public service component too, how that's going to be impacted now that police services are going to be subject to the FOIP Act in a way that they haven't been before. There's been an apprehension, rightly or wrongly, by a number of Alberta media outlets that they're going to be denied information that they routinely get now, and some police services have in fact communicated that to members of the media, that a lot of information they get now about accidents and so on will no longer be available.

My preference, Mr. Chairman, is that we deal with it on a public policy basis, and whatever the decision is, at least we've looked at it. As I said, that may have been at some meeting I was snoozing through or not paying attention at, and going through all the *Hansard*s, I don't remember us ever sort of addressing that issue, and it seems to me we've come to this. It's recommendations 50 and 51 that would deal with that sort of media access. So I guess I'm asking the question, even though it doesn't appear to have been raised -- that's an assumption I'm making; it may be faulty -- what impact are our recommendations and the existing act going to have on media access to be able to report those kinds of things that customarily they do now in our daily newspapers?

THE CHAIRMAN: Well, my sense would be that just by coming into the jurisdiction of the act, police services as they're defined - and you know there are some limitations as to how we could define them -- certainly come under the rules. I think we extended the privileges of protection of ongoing investigations and the like, so we made those changes. I guess the coming into effect of the act in itself would have the single biggest impact, and what they then choose to release and what the commissioner would consider is valid would be the deciding factor.

As far as general observable circumstances, even though it's not included in here, I suppose it would possibly come into the interpretation but not specifically. It would certainly come under the test of whether or not there was an investigation going on as to when it could be released. It would make things maybe a little bit more difficult for the media to get information about, say, an accident or any other criminal or civil problem if the police felt that that could hinder their investigation, but I have a hunch that was a test that was applied in any event. I can't believe that a police service, even

before the coming into effect of this act, was going to release information that would be harmful to their investigation or review. It's just that it was more of a judgment issue before, and right now the act would spell it out in more detail.

MR. DICKSON: Mr. Chairman, I always appreciate your opinion and advice. I actually had intended to ask for some input from our experts. I appreciate your comments, but I guess it seemed to me there was a bit of a gap in the background material in our previous discussions, and I was actually trying to solicit some technical advice around the issue. I've also talked to media, and I've offered my homespun opinion in terms of what's going to happen. I'm assuming we've got some people around the table who've studied it, looked at what's happened in other jurisdictions, and can nail this right off the bat.

THE CHAIRMAN: Okay. We'll certainly do that, and I will accept with a grain of salt your comment that you appreciate my advice because it was accepted. Often that is tongue-in-cheek acceptance.

Who wants to take a stab at it?

MS KESSLER: I'll just mention the process that we're undergoing right now. There is a police network that's been established that's co-chaired by Labour and the Department of Justice that gets together the FOIP designates from each of the police jurisdictions. They are currently drawing up a laundry list of issues that they see coming into effect when the act comes into effect for the police. Certainly some of the dealings with the media and the kind of information that's currently released versus what they believe will be released or should be released when the act comes into effect is on that list.

I don't believe they've come up with any definitive conclusions, and of course the way the act works, it's the public body that's ultimately going to make the decision anyway. I know as a group they're looking at these things and are trying to come up with some answers, but I don't know what those answers are at this point.

THE CHAIRMAN: Anybody else? Because that probably doesn't solve your problem any more than my comments did.

MR. DICKSON: I appreciate Sue's comment, but you know we've been at some pains here to try and get the school issue fixed in a way so it's understandable and works for the people that have to apply it. My hope would be that we have the same sort of enthusiasm and the same commitment to try and see if there's something that has to be fixed in this other area, that we're able to do it. I take that what Ms Kessler is telling us is that to the extent there's going to be some resolution, it will be after our committee has reported. I was hoping we'd be able to address it in some more concrete fashion now so at least if we make a decision on a public policy basis, we can defend it or whatever. I've a little trouble when people look to this committee and all of the work and all of the research we've done and then for us not to have a more concrete response when people raise what I think is a pretty legitimate question about: is the media still going to be able to report these things?

MS MOLZAN: Mr. Chairman, if I might just add a brief comment. The police services in B.C. have been subject to their very similar legislation for a number of years, and the concern hasn't been raised a great deal, not that we're aware of anyway at this point, that it shuts down the media's ability to do business. The only area that seemed to be an issue with the police service is section 31. That, I think, I referred to earlier today. The public health and safety section has been used by the Vancouver police to disclose the location of pedophiles that are in the vicinity. I believe it was in the city of Vancouver. Not to say that there may not be some issues, but in both B.C. and Ontario, the police services, it doesn't seem to have shut down the media or completely affected their ability to obtain information. So as far as I can see on an anecdotal basis, we haven't heard a lot, which is not to say that there are not real issues that need to be addressed.

MR. ENNIS: In going to the issue in British Columbia, Mr. Chairman, the one effect that I've seen it have there is that the ability of the media to ride along and shoot footage during live police action was curtailed by the Information and Privacy Commissioner, I think putting an end to a television show that was in the budding stage, a reality police show that was being shot in Canada. The commissioner there said that it was a matter of personal privacy, that people were being arrested for drunk driving or whatever and that the public body did not have the ability to disclose that information to the media on a ride-along basis. That affected that one television show. It also was brought up in a major drug raid that was made by police in Vancouver where the Canadian Broadcasting Corporation was riding along. In that case not only the commissioner but the courts had something to say about it.

I think the issue in Alberta very much has been the issue that we've heard, the issue of scanners provided to the media and access to police bands not just by police but also by ambulance services and whether or not that should be something that's looked at when these bodies come under the act.

2:33

Going back to the earlier discussion we had, going back to this recommendation, I think that incorporating a test of reasonableness of some sort might be an important thing to do, because as the section stands, it's permissive but has no standard of reasonableness in it. There's no way that a public body can anticipate what kind of criticism might come at them for disclosing information in one of these sections, except they might be told that they're being unreasonable to take their particular case and say that it's equivalent to the four bullets that are in the enumeration here.

To have a test somewhat like section 16 in all of its parts, which also has not only 16(2) but 16(3) in it as well, which allows for public scrutiny, overriding personal information for public scrutiny, might be helpful for public bodies to anticipate just these kinds of tough cases: like, do we provide scanners to the media for police work? The police might say that it's in the public interest that the media have these scanners so the media can support the credibility of police operations by reporting them as honestly and contemporaneously as possible. So having a test like the full test of section 16 might be helpful to public bodies in anticipating just how to work that through.

THE CHAIRMAN: That brings up something I was going to say anyway in terms of anticipation. It's one thing to set up legislation that is permissive and assumes that if there are exceptions -- and I'll use an example in the school. If there is in a particular student's file the expectation that a noncustodial parent might have some vindictive motives, there could be some kind of a shield put on that student's file which would be sort of notwithstanding the general openness of the rule.

I certainly don't want to pretend to be a lawyer or a judge or a police officer, but something along the same lines of riding along and observing an event presupposes that the individual, who would either disallow or allow that, would have an insight that would suggest that the observer would use this information for wrong means. There I think we're getting into a whole different test, not only of our freedom of information but maybe some Charter things: what can you prevent someone from doing simply because you

assumed that they're using it for ill intent? I'm not so sure, first of all, that we have enough time to deal with that as an issue or how deeply we'd want to go into it.

MR. GILLIS: I'd just say that in Ontario the police services and the media brokered what would be available under FOIP. They basically sat down and had chats and came to an agreement. So that may well be the case here as well.

MR. DICKSON: I was going to say that our friend from Calgary-Glenmore was his usual persuasive self when he put forward the reason why he supported the particularization and was opposed to the IPC's add-on of an additional test. I was almost persuaded, but I just have this sort of niggling doubt. I think what's clear is -- I mean, in law there's this ejusdem generis. There's this rule about: you fall into a bit of a trap when you start identifying some of the specific things because it's helpful to some. But now we know, as we talk about this a little bit, that this is a big area, and we're responding in some respects to a whole lot of concern by schools, which is legitimate. But by rushing in to fix that problem, we may be creating some other concerns and problems around this. I've raised the media thing. There may be others that we haven't thought of.

If I felt more comfortable that we sort of had the list of the kinds of information that we wanted to make sure were available, I would have accepted Ron Stevens' thesis. I would have been happy to avoid this other sort of test Lisa suggested. But because it's becoming clearer and clearer the more I think about it that what we see on this page of recommendation 51 could be a lot longer -- and we may find that after a year of managing local government issues, it should be a lot longer -- do we run back in and then add another five or six things in the act, or do we right now say that the reason we have Bob Clark in the IPC office is because we trust his judgment?

Maybe what we do is we do two things: we put that extra qualifier in that Lisa suggests, but then we make a commitment and the strongest possible recommendation as a committee that where we address this is not in the statute but in the advertising, in the work that's done. Peter talks about working with a group that's going to be affected. We just have to make sure that there are instructional orientation materials put together by Sue Kessler's office and these different groups. We can give there the list of examples. But I think trying to list them all in the act is a problem unless we add that sort of additional qualification.

Now that I've confused everybody, Mr. Chairman, I'm just suggesting that recommendation 51 doesn't get us as far as maybe we might like to think it does. There's going to be a whole host of other problems, and I think our obligation is to sort of look beyond just what's hit us over the head and expect what's going to hit us over the head a little further down the road.

THE CHAIRMAN: I want to make a couple of clarification points, Gary. I didn't perceive this recommendation coming from the schools. In fact, I would suggest that the schools would have liked tighter control and taking the easy out of not releasing information. The requests that I'm dealing with did come from parents, community organizations, media, other MLAs, and the like, probably some skepticism from the schools and school boards. Your comment about trusting the judgment of the IPC office or the commissioner: I share that with you. I have some doubts whether I think the individual judgment of several thousand teachers or school boards or whatever would be consistent enough to give the result that the concerns that were raised would otherwise address. So this is here to give us somewhat of a description of the openness beyond having to go through the complications of an IPC review of whether or not the tests have been followed.

MR. STEVENS: I must say that I've always looked at recommendation 51 in the education context, and I think Gary made some good points relative to the current wording which refers to public bodies. So it's a much broader concept than I think the one that you raised initially, Mr. Chairman.

What I'd like to put forward is the possibility of amending the recommendations so that instead of "public body" we have "education body," because from my perspective the recommendation that's put forward was in the context of that particular area. It seems to me that the bullets there all deal with it also. So the point that Gary makes with respect to broader application when we don't have a complete list is correct, but it seems to me that we're talking about an education body, not a public body.

THE CHAIRMAN: For fear of contradicting, the second bullet does talk about "education, health, or other institutional facility." It was broader than just education, and it was the intent, certainly mine when I brought it here. Gary brings the issue of law enforcement bodies and such which might come under this category, but I hadn't perceived that as being the expansion. I certainly wouldn't rule it out if it fell into a similar type of test. I think we have to be careful that, unless there are reasons to believe that the information will be used in a harmful way, we don't unduly curtail what would be otherwise relatively innocent information without being aware, of course, that there is a privacy test that overall is in effect.

I think we're talking about things where we're starting to split hairs: technically you could call it private information, but is it harmful private information? You know, here's where we could probably debate for hours and would still never come to a solution. I would suggest that the intent was for more than simply educational and may even extend to some of the things that Gary suggests. It's just that I don't know how far we can go to define that.

Were you going to say something, Lisa?

2:43

MS WILDE: Yeah. I just have a few points. First of all, in the strongest possible terms I'd just like to emphasize that we really would like to see a section 16 test applied to this recommendation.

Secondly, limiting it to educational bodies would be something that we would also be in favour of because of the wide scope of this provision and the amount of information that it potentially could give public bodies the authority to release.

My third point would be that the term "observable circumstances" is very broad and very vague. Arguably, almost everything is observable to someone at some point, so that is something that may need further consideration by the committee so that it may be limited to a narrower term.

THE CHAIRMAN: I think, just to answer the last one -- the first are differences of opinion -- in the original draft there was different wording. I stand to be corrected on that, but I believe that the word "observable" -- and I'm not sure if it was "observable circumstances" -- was taken from someplace else in the act. So it already exists, and when the final draft was put in, I chose that word. Again I'll subject myself to this being in the act, but I remember amending it because of something that I read either in the act or some of the background information. So take that for what it's worth. [interjection] It's not in the act?

MS KESSLER: No, it's not in the act.

THE CHAIRMAN: Okay. Then it must have been in something of the reams of paper that we dealt with over the last several months.

Well, we're going to have to do something with it. I'm asking the committee to leave it in as it is.

MR. DICKSON: Mr. Chairman, just so we get to the point of voting on it, I'll move Lisa's recommendation.

THE CHAIRMAN: Okay. I think everybody understands the intent of that recommendation.

MR. STEVENS: The one at the bottom of the page.

THE CHAIRMAN: All in favour? Opposed? That's defeated, so I'm assuming that by default it goes back to the original recommendation.

Recommendation 72. We're taking a little more time here than I thought we would, but I guess it's one of the necessary evils of properly debating these things. Having gone through the backgrounder, my understanding is that the change would remove subsection (b) from section 89. Everything else seems to be identical. Am I correct in that?

MS SALONEN: That's right.

THE CHAIRMAN: Diana says yes.

Does anyone have any problems with that? So we're acknowledging that that could be a change?

HON. MEMBERS: Agreed.

THE CHAIRMAN: The next page: Other Issues -- Second Bullet. There are a number of issues that have been raised by the Deputy Minister of Advanced Education and Career Development, and as a result of that, there are three options that were presented. I'm not passing off the concerns that the deputy minister made, but it's two pages of background in addition to their letter. I think if we look at the three recommendations, unless someone has some real concerns, the essence could be captured in there.

The first two recommendations almost by their wording would suggest that they're put there to make us think but are not really strongly being recommended. The first one by its admission would create some uncertainty. The second one could create approximately 20 separate governing bodies in the University of Alberta, which, by the way it's written, would imply confusion at the least.

So it almost defaults to the third one, which is a little more definitive. Am I reading correctly that the third is really the intended recommendation?

MS SALONEN: If the status quo is not acceptable, then the third is sort of the recommendation. Yes.

MR. DICKSON: My suggestion is a modified number 3, modified in the sense that it makes sense to me to recognize the board of governors, obviously, because that's sort of the ultimate authority, and I understand the general faculties council has got a particular statutory basis and a governance role. To me the test is not whether it's listed in the statute; the question is whether it's exercising a governance function. So those two bodies and the academic council in colleges, where it's the equivalent, as I understand it. The senate I think ought not to be included in the definition because if you look at the purpose of the senate, it's advisory. The senate doesn't manage the university, doesn't hire and fire staff. I mean, it's there, you know, to be the link between community and academia. To me it distorts it to make the senate or other kinds of bodies a "governing body." It distorts the meaning beyond all recognition.

So just to sum up, I'd move that we respond to what we've heard from postsecondary institutions, that

> we give "governing body" a definition which would include board of governors, general faculties council at universities, and in the case of colleges, academic council.

THE CHAIRMAN: What you're doing is just deleting the word "senate."

MR. DICKSON: Right. Except those are only examples, Mr. Chairman, and as I understand, there may be other kinds of bodies, so I'm just identifying these. I'm just deleting "senate" from the text that's here, but implicit in what I'm doing is that I understand there's a bunch of other bodies that potentially could vie for some mention.

THE CHAIRMAN: Okay. I'm certainly not in a position to debate the deletion of the senate, but my maybe lesser informed understanding is that you are correct, that they don't in fact make changes, hire and fire staff, that sort of thing. So whether they're actually a governing body, my interpretation would be similar to yours.

Any other comments?

The motion is, for the purpose of the written form, option 3, having deleted the word "senate." All in favour? That's carried.

2:53

Last page: Other Issues -- Bullet 4. The concern was that there's a new definition or an existing definition -- I forget which -- that would be in conflict with the interpretation of the definition of "law enforcement." Our existing recommendation was dealing with "a possible violation of law," and the recommendation is that we substitute those words as part of a law enforcement matter, which would be more consistent with the accepted definition.

MR. DICKSON: I'm flat out opposed to the recommendation. You remember we did not agree on the expanded role of law enforcement. I think that was a dangerous exception, and I'm opposed to that. Now what we're doing, let's recognize, is leveraging that decision that was made then to expand this provision of section 16(2). I think, you know, that we do a disservice to the principles of the act. To me, to now try and make it consistent with this hugely expanded definition of "law enforcement" just compounds what, I respectfully suggest, was an error that the committee has already made.

THE CHAIRMAN: Further comments?

MR. ENNIS: On that issue, Mr. Chairman, sections 16 and 19 -- Gary, if I've got this right, the first change that we were talking about was the expansion of section 19 in terms of the definition of "law enforcement." Section 16 cuts exactly the other way in that section 16 is for third-party protection, whereas section 19 would impact on a person's ability to get their own information from a law enforcement body. So without commenting on the wisdom of going one way or another, it's just important to know that here we're looking at expanding the sheltering given to witnesses, expanding the sheltering given to informants. Really that's the impact of this amendment, I would guess.

Is that a fair assessment in your view, Gary?

MR. DICKSON: The original notion of this was investigations that were going to lead to the imposition of a penalty. Well, for some of us who were initially involved in the act, there was no intention to take all kinds of administrative investigations and so on out from under the scope of FOIP. That's effectively what we did before, and

my concern is that those informants and those sorts of people have protection already. What this does is broaden the scope of material that cannot be accessed under the act. Absent some compelling, cogent reason why we should do that -- well, to be fair, we did get a submission that wanted this change -- just to make it somehow parallel the new definition of "law enforcement" to me isn't a good enough reason.

THE CHAIRMAN: Okay. Does anyone else want to comment, maybe the department people who made the recommendation to change the definition? I realize it may have been made simply to accommodate the request that was put before us, but I'm asking maybe for a comment as to what this might do to practical application of the act should it be changed.

MR. DICKSON: Mr. Chairman, I'd just add that I'd take an entirely different view if we had good whistle-blower legislation in Alberta, but absent that, I stand by what I said a moment ago.

THE CHAIRMAN: I'm sorry. I missed the first part.

MR. DICKSON: I'd have a different view if we had whistle-blower protection in Alberta. We don't.

THE CHAIRMAN: Am I putting anybody on the spot here? Like I say, I truly realize that you've probably just reacted to a concern that was raised, and we tossed it back to you to look at, maybe redraft, not always necessarily by your initiative or agreement.

MS MOLZAN: Sir, I think I can offer some comment on that. Basically, I think recommendation 3 really is to clarify exactly what "law enforcement" is supposed to apply to in the definitions. Since we're changing it there, it then will affect 19, which uses the same term, "law enforcement," whereas in 16(2)(b) we say "a possible violation of law" instead of "law enforcement." It's really correcting, from the way I viewed it, simply an inconsistency, that you've got different definitions. We really don't define "a possible violation of law" anywhere in the act, so I guess you'd have to just go by the common meaning of what that is. Because of the way 16(2)(g) talks about someone's name and anything else about them, it could be that the administrative things are already captured. That's arguable.

I don't think the commissioner has heard any cases specifically on this point, 16(2)(b), but I sort of approached it from a commonsense, logical point of view that it would make it consistent throughout. So "law enforcement" under the definition is the same as under 19 and is the same as under 16. We're talking about the same thing, apples and apples.

MR. STEVENS: Was there any indication, when the act was originally put together back in '95, whether that was the intention for the definition of "law enforcement," to mean the same thing, if you will, as the words that are currently found in 16(2)(b)?

MS MOLZAN: I don't recall exactly what all the discussions were in the committee. I was present when we had the public hearings and went around the province. I don't recall that issue actually coming up very often if at all. That didn't seem to be of concern to the individuals that responded to the panel that went out, but certainly I think recommendation 3 is in response to some of the situations that have arisen where one body investigates, another will prosecute a crime, and another one will impose the penalty or whatever.

I guess I can't say exactly what that committee that went around the province intended, but when the act was reviewed or considered before it was brought in, there was some opinion or belief that it would be expanded to situations where there were administrative-type reviews so that all the information of someone in an employment situation who was, let's say, being investigated for a crime, stealing or something, couldn't be disclosed prior to investigating and finding out what was actually occurring.

I think there was some recognition that where an individual is in an employment situation and does something such as the case the commissioner heard, where a guard in one of the correctional facilities had an administrative investigation in regard to his actions that related to an attempted breakout from the institution, that sort of be kept cloaked under "law enforcement" until it all could be sorted out as to who was doing what and so forth and that it was intended to be captured to give some ability to investigate and complete that matter before it all became available to everyone.

I think, though, that it is important to consider the comment that Mr. Ennis made about how under 16 we're talking about the flip side from 19. It is going to be protecting. Certainly it takes things out of the scope, but in this case it also is designed to protect the individuals such as the complainants, the witnesses, seeing it as their personal information until at some point the matter is dealt with. It's not a possible violation. It is in fact a proceeding; something occurs. It may be that at some point that would provide that information.

3:03

Also, it's important to remember that under criminal law a defendant has huge rights, as indicated by the Supreme Court and generally the law of disclosure, to get access pretty much to almost anything. As we know, these things are constantly being debated: whether a defendant can get the records of the complainant's counselor. You know, all those cases are based on that concept that it won't -- this doesn't override the ability of someone who's accused to obtain information to make a fair defence. We've got sort of two areas of law going at the same time. Certainly the criminal law and those abilities would still exist, so we're not excluding things from an accused. Perhaps for the media or another third party that's trying to get at certain information about names of complainants or something, it may stop that, but a lot of that is not accessible right now anyway. So I'm not sure if the effect would be that dramatic from what happens right now.

THE CHAIRMAN: Did everybody except the lawyers in the crowd understand all that?

MR. STEVENS: Just to make sure I understand it. This is not a section that has been the subject of interpretation issues at the commissioner's office.

MR. ENNIS: The issue of violation of law versus law enforcement?

MR. STEVENS: Right.

MR. ENNIS: There was the case that Donna alluded to, which was the one case that ever went to judicial review. That was the case in which the commissioner found that the reports on the activities of the prison guard were in fact personnel evaluations as opposed to any law enforcement matter. The position of the public body was that the reports that had been put together by supervisors about the activities of staff were law enforcement matters because there was a prison break being investigated. The commissioner found that that wasn't the case. I don't think that decision would go much differently with the changing in these words. His view was that it was personnel evaluation, not a law enforcement matter.

MR. STEVENS: In any event, that case didn't deal with a possible violation of law.

MR. ENNIS: No.

MR. STEVENS: I take it, Donna, that your point is that the suggested modification would, if nothing else, provide consistency of interpretation between the definition in the two sections that you referred to.

MS MOLZAN: Yes, and I think it just provides a little bit more certainty that when you read the term, it's the same throughout the act, that you don't have to wonder if a "violation of law" is the same as "law enforcement," because you use the same terminology. That would be basically it in a nutshell, I think.

MR. ENNIS: Just going back to the previous question you had about whether the commissioner found anything to do with "a possible violation of law." He did use the term "violation of law" as a test and decided that what was being investigated there had nothing to do with a violation of the law since the employees who had been disciplined never themselves contemplated this having breached the law. So in a sense it was a negative test. It showed that that wasn't a violation of law process, so it had to have been something else. So it was useful, but it wasn't an exact finding on that point.

MR. DICKSON: Somewhere in this we have to factor in the public interest. When the elevator with 20 shoppers crashes to the bottom of The Bay department store and there's an investigation to find out whether the privatized elevator inspector had done his or her job properly, this investigation is not done to mete out a penalty. That's an investigation to find out what went on, and that would be an example of an administrative investigation. There may well be a public interest in some of that information with the appropriate exceptions being available to the public, whether we use it in question period in the Legislature or whether it's debated in some public forum or whatever.

I appreciate Donna Molzan's comments. She doesn't think that this is going to have a significant impact, but I'm very nervous. Once we decide that we've taken that expanded definition of "law enforcement," whether it's the Securities Commission or the Department of Labour doing an investigation into elevator inspections or a whole host of things, this may mean that things that the public are interested in, would have a right to know, would not be available. So in that sense, you know, I think it's problematic.

MS MOLZAN: Just one brief comment. Section 16(2)(b) does only create a presumption though, and that is clearly rebuttable in 16. So if you go into 16(3), you still can decide if it's desirable for the purposes of subjecting activities of the government or a public body to public scrutiny and so forth. All those tests apply. So it doesn't completely remove it; it just creates a presumption at law, which can be rebutted in (3). It may be that it's, again, a case specific to that particular record and what occurred. In any given circumstance it may be very much that it doesn't keep it out of the public domain at all but that in fact it is an ability under (3) to give it out.

So I guess I'm not trying to belittle the effect it's going to have and say that I don't think it's going to affect anything, but it is merely clarifying the presumption, that can then be looked at in (3). For the sake of clarity, it's just making a presumption a little stronger.

MR. DICKSON: It can be said that opposition MLAs spend their time reacting and jumping at shadows. I appreciate the clarification, but I still think that that is a concern. I think the suggestion would be one that's adverse to the public interest to be able to know.

THE CHAIRMAN: Okay. I hope everybody understands it as well as I do.

MR. STEVENS: Well, I was just going to say, so we can deal with the matter, I move that

> we adopt the redrafted provision at the bottom of the page.

THE CHAIRMAN: Okay. The motion is there. All in favour? Opposed? It's carried. Okay. We've gone through that.

You wanted to raise an issue, Gary? I presume that's that letter from the University of Calgary.

MR. DICKSON: It is.

THE CHAIRMAN: Do you want to distribute it?

MR. DICKSON: I'm sorry, Mr. Chairman. I don't have enough copies for everybody. I've passed one to Sue Kessler and one to the IPC.

MR. STEVENS: You can practise your reading.

MR. DICKSON: Well, I'm not going to read two pages.

As I understand it, this is the concern. It goes back to this whole business of accessing archival information. This is from the University of Calgary, and it's in a letter dated February 5, 1999, that's subsequent to a discussion I'd had with some concerned people. Mr. Chairman, you'll be happy to know that there are a number of Albertans that are reading *Hansard*. They're reading every word that's uttered in this Assembly. We may think we're operating in the dark here, but there are some Albertans that are keenly interested in what the committee is doing.

> Recommendation #58 appears to deal with the problems related to scholarly research but provisions requiring the public body to review the records for specific personal information put the institution and researchers in exactly the same position they are in now. Archival staff will still be required to review the files line by line and sever information according to continuing restrictions. Researchers will still have to wait until this process is completed before gaining access to unrestricted records and will still have to pay for photocopying and other charges relating to the review process. In many instances, researchers will review literally hundreds of files per day in order to find the materials they need for their particular project. FOIP, therefore, makes some projects completely unviable.

Now, the proposal from the university that we talked about parallels a little bit of discussion we had with the health information steering committee. When it comes to universities doing research, they have a vetting process. They have ethics committees that vet a research proposal for a host of considerations. The proposal from the University of Calgary is this. In those cases where a university or people in a university have embarked on a bona fide research project with, hopefully, some significant public benefit to research this thing, instead of being sort of thrown into the act and then having to go through severing and analyzing boxes of documents, it might be possible for them to go to the IPC.

3:13

Here's the recommendation: that the IPC have

> the power to authorize access to personal and associated contextual information by the scholars of any post secondary research institution with an approved code of research ethics.

The notion is that if I'm a researcher associated with the University of Alberta or the University of Lethbridge and I can go in front of

my ethics review board and explain the ways I'm going to respect the privacy of people whose information I'm going through and that sort of thing and perhaps get some approval or permission or review it with the IPC office, would it be possible to just sort of hive that out from the rest of the process and simply respect the fact that if you have these kinds of ethics review panels and so on, that's your check? Running it by the IPC office is a further sort of check and balance to ensure that personal information isn't willy-nilly being accessed and abused in some way.

Anyway, that's the proposal. As I say, if you look at the New Zealand model in terms of privacy protection, the notion of allowing industries to in some respects develop their own code, their own standard -- and we're not talking about doing that throughout government. But recognizing that bona fide researchers have got (a) a legitimate public interest they're serving and that (b) this makes an enormous amount of work for the universities in terms of going through and doing all of the line-by-line review and that sort of thing, the issue is: does the public interest in having the research done justify finding a creative way to allow that to happen?

That's the proposal. I apologize; this was a bit of scramble to get here this afternoon, so I don't have copies for everybody. But I think that's sort of the gist of their recommendation.

I have to tell you that I'm a big hawk, Mr. Chairman, for expanding FOIP and making it apply to everything that moves, but I'm also trying hard to take your lead and be a bit pragmatic about issues and problems. I have to tell you that when I talk to these people whose life is involved in research, I think they make a powerful case. Anyway, I think it warrants some consideration. I don't know exactly what they do in other jurisdictions, but it does seem to me that it's a bit unique where you have a body. I've had some experience in talking to the people in the area of medical research that vet and have to approve medical research things, and believe me, it's a very rigorous process. Lots of research proposals are denied because they haven't adequately addressed either privacy considerations or things like that. This isn't inventing some new bureaucracy; these things exist already. They're used. I think they work pretty effectively. We know they do in the medical research area.

As I say, we had a bit of information about this when we were dealing with Halvar Jonson's steering committee on health information. I stand to be corrected on this, but I think that committee was interested in, where possible, sort of allowing that process to continue and not immediately rushing in and displacing it and saying that we have to have more bureaucracy and do it in a different way. I stand to be corrected on that, but it seems to me that on the health information steering committee we had looked favourably on a parallel kind of request.

THE CHAIRMAN: Just a quick question. I tried to read this letter as you were speaking, but it's a little difficult to do both with justice. Do I understand this to be a request to have access by, say, a researcher who was particularly qualified, sort of like a bonded researcher, having access to provincial archived material or generally to anything?

MR. DICKSON: The letter is worded quite broadly. In our discussions we were talking more in terms of archival information. You know, we may decide, if we're interested in going down this road, to build some fences around it, some limits. But I'm not an archivist.

THE CHAIRMAN: The reason I asked that. If this was just generally any kind of information simply because you had the qualifications, I would have some real concerns about it, but in our recommendation we did ask, whether it was through the staff or whatever process, that the availability of research information that exists in the Provincial Archives be made as simple as possible. We didn't go much beyond that, and whether that was a lot of help or a lot of solace to researchers, I don't know.

The general mechanics of what you're talking about to me has some value. I don't know if there is such an organization or a way of getting the qualifications that would make it possible to do this, but if it was restricted to information that was, say, in the Provincial Archives that isn't otherwise excluded -- at least my understanding is that there are certain kinds of information that we put in there that are virtually sealed for other reasons by virtue of the public body not wanting to make it available; it's just there for storage. But there's a lot of information there that's generally available with really no observation as to whether it's sensitive or otherwise or what test should be afforded it.

Listening to what you said -- and I can appreciate this. You and I don't always philosophically agree. This is one of those areas where, if the mechanics could be worked out, this may be a solution to having first the staff at the Archives go through and research mountains of paper to see what has to be excluded, simply because they happen to be an employee of the government, and someone with exactly the same qualifications who might be an employee of a university, you know, who should really be able to read that, as long as there was absolute protection that it was used for the intent predetermined. I don't know if this is workable, but to me this does maybe touch one of those lines of what might be a way of providing some access in a reasonable way.

Lisa, and I saw a hand go up there. It was you, Ron? Okay; Lisa first.

MS WILDE: My comment would be that I'm not sure how section 40 doesn't address these concerns already. Basically section 40 says that "a public body may disclose personal information for a research purpose, including statistical research," and then it goes through a number of factors, all of which I think are reasonable. One of those factors is that "the research purpose has been approved by the Commissioner." So I'm not exactly sure what the University of Calgary is asking for. Perhaps I could receive some clarification on that.

THE CHAIRMAN: Okay. Well, a question to you first: can the commissioner approve someone to go in and have access to, say, a group of files or a file for research purposes without having it first screened by the staff or officer of the Archives?

MS WILDE: In section 40 the research purpose is approved by the commissioner, and the public body then makes that decision and has to screen that information. Again, they screen it for:

> (b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest,
> (c) the head of the public body has approved conditions relating to the following:
> (i) security and confidentiality,

has removed individual identifiers, and it goes on. I don't think those are things that we want to remove from the act. I think that once you do that, you're opening yourself up to the disclosure of information that may be very sensitive, that researchers perhaps should not have access to.

3:23

MR. STEVENS: I think the proposal that Gary alluded to and what Lisa said about section 40 make a lot sense, but I must say that I'm

not sure how it all fits together. I don't know where it fits in in relation to archives, but it seems to me that to the extent that we can develop a system which facilitates access but protects those things that we think are important to protect, then that would be an improvement. I must say that if you develop a system which requires line-by-line review of material before it can be released and there's an alternative to that that protects but is more user friendly, then I think we should be doing that.

MR. GILLIS: My reading is that section 40 creates a right of access through research to any identifiable personal information a public body should see fit to grant having gone through a research procedure, part of which might be consulting with the Information and Privacy Commissioner. The second part, 41, embodies an access right specifically for the Provincial Archives and how it will deal with it. It doesn't preclude Provincial Archives using section 40, but it is constrained after that by section 41. So to my mind the University of Calgary as a public body already has most of the rights that it's seeking in its new amendment. Right now it can decide to name its ethics board as its research body to set up a procedure, to have all archival matters referred to it, to have the Information Commissioner review it. That's their desire, and I don't see that they're adding much more. I can't see it, having read the letter.

MR. DICKSON: I appreciate the comments. I might just read out the one other paragraph that I didn't read before. It's only a few lines long.

> Sections 40 and 41, which permit the disclosure of personal information for research purposes, do not allow researchers to have broad access to complete files that provide the administrative context for their work. University of Calgary researchers, both faculty and students, who conduct research involving human subjects are already required to follow a set of guidelines and protocols imposed and enforced by the Committees on the Ethics of Human Studies. Researchers have indicated that additional restrictions imposed by the FOIP Act have compromised their ability to work in fields like nursing, law, medicine, social work, and history.

I appreciate the information from our experts. I'm simply relaying the information I had from the University of Calgary, that felt reading the sections and presumably -- in fact, I know they've spent some time talking to researchers in British Columbia. They still have this concern. It may be an interpretation issue or whatever; nonetheless, it's a concern that they had raised.

MR. ENNIS: Mr. Chairman, at the risk of having my history degree revoked by the University of Calgary, I would like to say that I think they are perhaps anticipating something in this letter that really hasn't been a reality yet for us. The act has been in place for several years now. We've had one case where we ran into a sense that academic initiative was being undermined by the act, and it turned out in that case that the facts reported in the popular press were significantly different than what was really going on.

A couple of points on this in terms of access to what is going on in the Archives. Researchers are looking for the most up-to-date information in many cases, and sometimes records are still in a restricted form in the Archives. So archivists as they decommission records make them accessible to the public because of certain time frames; for example, cabinet information or information deposited on a private deposit by former cabinet ministers or whatever.

As that information comes due to be released to the public, the archivists work through those boxes. They work through them very quickly but thoroughly to make sure that there isn't any matter in those boxes that they shouldn't be giving out under FOIP; for example, that would deal with someone else's personal information. The researchers are pushing them on this trying to get to that information as quickly as possible, and they're impatient that the archivists have to do their job, and it does take some time.

On a more important point, I think what's missing here is that the researchers aren't recognizing that in the broader sweep of government reform, not just the FOIP Act -- and I don't want to do a commercial for government reform one way or the other -- there have been some changes to how records are presented to the Archives. I believe the Government Organization Act made it clear that all the records of a body go through the records disposition system that ultimately sends them to Archives. There no longer is the ability of a deputy minister to say arbitrarily: those records are restricted, and give these ones to the researchers and keep these ones in a box. That process used to happen. It doesn't happen anymore. So researchers are mining veins of ore that are a lot richer than they ever had before because they're complete. Archivists are having to take care with protection of personal privacy in that process, and that gets in the way of the gold rush, if I can put it that way.

I think it's important to know some of the dynamics that are going on here. It's not a case of the FOIP Act having made historical research something that's not easy to do. It's a case of there being a richer set of resources out there now and some more checks and balances that this group has to contend with, but I don't think there's an appreciation for that in the position as it's advanced by the University of Calgary. It tends to be more of a sense of impending doom for this function, whereas in fact it's just a new age for their function, and it's done in a different way.

THE CHAIRMAN: At the risk of prolonging this, it looked to me that this was a request that someone who was an employee at the University of Calgary and by virtue of their qualifications, having been accepted being ethical enough that they would have access to all the archives of the University of Calgary and wouldn't abuse that privilege that was used for pure, say, scientific or medical research, could attend at the university in Edmonton -- I guess maybe I shouldn't expand it because we're talking about the Provincial Archives here -- could attend at the Provincial Archives with the limitations of protected files and such, those things that were truly just archived material, could go through that with the expectation that they would do nothing more than take the research even if there might be a name or a private file. Simply by virtue of a code of ethics that they could be disciplined for, they could go through that, and you know that that's the expectation.

Correct me if I'm wrong, but I'm assuming that a police officer working for the city of Calgary police force, if they were doing a criminal investigation, could come to Edmonton and would have access to the Edmonton police force files for the same purposes by virtue of the fact that they're bound by the same restrictions. They aren't going to get a pile of boxes with all the names and the personal information of the criminals taken out of them. You recognize that there are similar qualifications. I thought that was a little bit of what was being asked here.

Now, having gone through that rambling preamble, is there anything like that available right now? Peter's comments suggested there might be something like that but with some minor limitations. The letter suggested that the limitations aren't so minor.

3:33

MR. ENNIS: The issue would be around identifiable information. Where the FOIP Act would come into this is personal identifiable information. Among the lists of people that seem to be concerned are the historians. It's difficult to imagine history written without reference to the persons it's about. A police officer has no interest in disclosing the findings of his research. He or she is simply

analyzing and moving on to solve a crime. Researchers amongst the type enumerated here would have an interest in disclosing the personal information they are finding in their research. I think that's why the FOIP Act would require that there be caution and checks and balances on that activity.

THE CHAIRMAN: This issue of disclosing the personal information would maybe be a telling point.

I'm going to suggest -- because I even see myself getting caught up in this debate, and I'm not sure it serves any purpose. We have made a recommendation to the Department of Labour and to the administrators of the Provincial Archives that within the context of the existing legislation the process should be made as easy as possible. If something like this could be built into that make-it-as-easy-as-possible framework, maybe that would be considered without us going into an extensive suggestion as to how the act can be changed to accommodate it. If in that process it means some amendment to the act, so be it even at that point.

But I and other committee members, I believe, have expressed a sharing of concern from researchers that there is no undue restriction for valid research reasons but not simply for fishing trips and other things that would allow exposés and otherwise unacceptable uses of personal information. Would it be possible to do this by virtue of a footnote? It probably doesn't accommodate completely what you're asking for, Gary, but I think otherwise we're going to get hung up here on a long detailed version of: how do we amend the act to accommodate this?

MR. DICKSON: Mr. Chairman, I'm happy. The concern by the university has been raised, and we've had, actually, very instructive comment, and they'll be following *Hansard*. I suppose if they have ongoing concerns, they're going to be able to communicate that to the Minister of Labour or the Justice minister.

THE CHAIRMAN: With that, it brings us through the newly identified information, and apart from the fact that that will be incorporated into the draft final report, we can now move into the review of the report itself.

The request I had made last meeting was that we would go through this in sort of a chronological fashion without stopping at every page and asking if there are questions. If that gets unmanageable, I guess we would have to go back to it. I'm going to suggest that at this point people will have flagged the pages they have concerns about, and we would just simply move on to the next one that's being proposed. I don't know if it's physically possible to go through this thing in an hour and a half.

My fondest hopes are that we might be able to do that, and then this could be the final meeting. I say that tongue in cheek because I realize that even some of the notes that are made from the earlier discussions today are going to reflect in some changes that may have some committee members coming back for clarification. If it's evenly remotely possible that we could do that clarification by sending out the documents that have been changed to committee members and asking for your feedback either by telephone or in writing, that would save another meeting.

If we don't get through the document or if the changes are so extensive that that won't work, we'll reconsider it, maybe at the end of the meeting, but recognize that as of next week we're in session, and it's going to be more and more difficult to get the time to continue to meet. I'll leave that open for observation or comment.

MR. DICKSON: Mr. Chairman, you will have seen I had a number of concerns about the preliminary report, and I've tried to reduce that to writing, and I've shared that with you. We probably could be here a long time in terms of going through talking about the recommendations and explanations. Not to be a natural contrarian, but I've tried to put in writing some of the concerns I've got. Frankly, most of those concerns aren't allayed or addressed in the final report.

I guess what I'm doing is I'm trying to incorporate by reference my seven- or eight-page commentary to avoid having to go through item by item and keep the committee here for a week. I don't want my silence to be taken as agreement or acquiescence in the report we've got in front of us. If you want, we can go through individual items, but I do want to raise that concern and the fact that I have particularized issues I had both with the process of the committee and the substantive recommendations you have here.

THE CHAIRMAN: I wasn't suggesting to curtail any concerns, just simply that we didn't spend a lot of time, me asking page by page if there are some concerns and, as we did last time, invariably going back after we'd passed that page anyway. I was just hoping this would expedite the process a little bit. Let's try it. If it doesn't work, then I will be glad to read out each page, but I would prefer that we do this by identification of the next nearest page that you have some concerns about.

MR. STEVENS: Just before we start into this process, I think that if we get through this, what we will next get will be a black-lined rewrite of this draft.

MS KESSLER: That's correct.

THE CHAIRMAN: As I said, maybe being naive and presumptuous, those changes might be dealt with by individual contact maybe through myself to committee members. If they're extensive, there's no doubt we have to be back here for another meeting.

MS WILDE: I have two comments to make on the draft. The first is in regards to page 47 and the first paragraph. It states:

> The Committee was persuaded by the fact that, in a substantial number of cases, the Government was, on the advice of counsel, already collecting personal information under the authority of a regulation, and that the Commissioner's office agreed that this was not problematic in practice as long as the regulation was consistent with the enabling Act.

In regards to this quote, the commissioner's office would like that amended to more accurately reflect the commissioner's views on whether the authority to collect should be by an act or a regulation. The commissioner has repeatedly stated that he believes the authority to collect information should be by an act and not a regulation, and this phrase does not reflect that statement.

THE CHAIRMAN: I think that accurately states what we heard. Since this is not the recommendation itself, can I leave it to your office and the Department of Labour to correct the preamble to accurately reflect the concern?

MS WILDE: Sure.

The second comment that I would have would be in regard to page 62, the last sentence actually of the first paragraph. It states that the current time limit for a judicial review for an applicant or another party is six months according to "common law." That should actually read "the *Rules of Court*," and that's rule 753.11.

3:43

THE CHAIRMAN: Can that be corrected likewise?

MS WILDE: Absolutely.

THE CHAIRMAN: What was the first page you referred to, Lisa?

MS WILDE: The first page was 47; the second was page 62.

THE CHAIRMAN: Okay. Who wants the next crack at it?

MR. STEVENS: Dealing with the report and recommendations, public consultation portion, which starts at page 13 and goes over to 14, I think it might be of some assistance if we had a line or two that outlined briefly the advertising and web site aspect of the notice given to Albertans with respect to what this committee did. What it says specifically is that there was distribution to more than 3,000 individuals, public bodies, et cetera, but it seems to me that what we did offered more people to get involved, and I think it's important for us to say that in some fashion.

THE CHAIRMAN: If we did do that, that could be added to the introductory paragraph just above the boxes of technical information.

MR. STEVENS: Something like that would be fine.

MR. DICKSON: Page 19, recommendation 4. Nowhere in the analysis is there a normative assessment that points out that the federal legislation that people in Red Deer or Grande Prairie, for example, and the RCMP have to rely on is much weaker than the provincial legislation that their fellow citizens in Calgary and Edmonton and Medicine Hat enjoy. If I were to read this page 19, I mean, I'd be saying: "What's the big deal, federal or provincial? It sounds like privacy legislation is the same everywhere." It isn't, and to point out that this is a condition that we want to remedy as quickly as possible, I think we ought to acknowledge that the federal Access to Information Act and the Privacy Act are clearly deficient. You have differential rights in Alberta.

THE CHAIRMAN: I think we can incorporate the fact that it's different. I'm not so sure I'd want to suggest that they're deficient; that could be a matter of opinion. We could expand on the fact that there's a difference.

MR. DICKSON: Well, I don't know. Is there anybody around the table that thinks that the federal legislation is stronger than the Alberta legislation, that our information and privacy rights are better protected under federal legislation than under our provincial FOIP Act?

THE CHAIRMAN: Not in my observation, simply because I'm not very familiar with what the federal act says, and without going through the motions of reading it and comparing it, I wouldn't want to make that statement.

MR. STEVENS: How about if we say something like "Some believe that"? Then the point is at least referenced, and that would at least raise it in the text, as Gary has requested, without necessarily making it a committee observation.

THE CHAIRMAN: I would still like to leave the word "deficient" out of it and use some other statement that suggests there might be less protection.

MR. DICKSON: Well, I'm happy to use "deficient." It seems to me that Ron's suggestion allows you to distance yourself, Mr. Chairman, from that sort of rabid criticism of the federal government. I know you wouldn't want to do that.

THE CHAIRMAN: Not in this case anyway.

Are you suggesting that "deficient" stay in there?

MR. STEVENS: Well, like you, I'm not in a position to comment, but I think it was generally stated when we discussed this part of the material that Albertans would be further ahead if this aspect were brought under our legislation rather than left under the federal legislation. Now, I would suggest that our drafters find an appropriate word to reflect what that difference is. We use the words "some people" so that it doesn't reflect the committee, but it does raise the point.

THE CHAIRMAN: I can live with that.

This is preamble anyway, besides which I think our debate centred not so much on which was better legislation but on which we had control over, and if it was for this province to choose, we would prefer something that we had some control over. Okay?

Next.

MR. STEVENS: I have a comment. At page 24, under the heading "inclusion of self-governing professions under the act," first paragraph, third line from the end, specifically the wording "because they are Government appointed committees." We use the wording slightly differently at page 22, at the bottom of that page, where we outline criteria for determining whether or not a particular body is included in the FOIP regulation. I note that the applicable bullet there is, "The Government appoints a majority of members to the body or to the governing body of the organization."

The question I have is whether or not it would be more appropriate to mirror in the bullet the wording which we use on more than one occasion in the text so that when somebody reads this, they can see the parallel, rather than choose new wording which might mean something else, subjectively speaking.

MS KESSLER: That's correct.

THE CHAIRMAN: Okay. I can make that correction.

MR. DICKSON: Just while we're dealing with that -- that was number 12, page 24 -- on page 25, if you look at the recommendation there, I remember that debate quite clearly, and I remember circulating a draft letter I had written and then it being pointed out to me that people felt that all this focus on fair information practices wasn't adequately addressing the access side. So I thought we'd gone past that to say that we expect those self-governing professions to address both the access to information side and fair information practices, which tend to relate more to respecting and protecting the privacy of individuals. We seem to have lost that.

THE CHAIRMAN: What's the specific reference, please, Gary?

MR. DICKSON: Recommendation 13, page 25.

THE CHAIRMAN: Okay. Are you talking about the actual wording of the recommendation or the preamble?

MR. DICKSON: Well, in both places really. There's a paragraph here somewhere where we mention fair information practices, that we felt that they weren't broad enough. Then we sort of end up orphaning that comment, and we end up with

> a recommendation should be made to Government that common general guidelines for fair information practices be established.

Well, I thought that our consensus was -- and I thought we'd all agreed on this -- that fair information practices and access

processes would be part of the package.

THE CHAIRMAN: Okay. I guess I wasn't caught up in the distinction, apart from the fact that we did approve the wording here, but if there is some concern that the wording isn't accurate, it can always be changed. I assumed that fair information practices applied to both sides, whether you were giving or receiving.

3:53

MR. DICKSON: But we went through that, and I remember specifically Peter in fact addressing that. My recollection at the end of the day was that there are some access rights that aren't necessarily rolled into fair information practices. I think that was what we discussed, and I just want to make it clear. I mean, we're trying to cue these self-governing professions; there's no sense being too subtle about it. I'd like to be reasonably explicit that what as legislators we're looking for is for those professions to address how Albertans can access records in their possession, subject to specific kinds of exceptions, and also how they in their record-keeping practices and processes are going to respect the privacy of individual Albertans.

MS KESSLER: My recollection was that we discussed access to personal information, not the broader general access to information. Is that your recollection, Gary?

MR. DICKSON: No, no. In fact, I started off talking about fair information practices, and I was brought up short. Somebody reminded me that typically this sort of European model of fair information practices is narrower. I thought that we'd then come back as a committee -- and I don't have the *Hansard* page reference -- and said we expect that there's some responsibility on both sides. I might just say, editorially I mean, that it should be the same principle. The Law Society is performing a quasi-public responsibility. I think most Albertans expect a degree of transparency, subject to appropriate exceptions and protection of personal privacy and third-party interest and that sort of thing.

MR. ENNIS: Mr. Chairman, just to echo somewhat what Sue was saying about fair information practices. Including the right of access to personal information also includes the right to seek corrections, the right to have information secured, and so on. I just wanted to make that point, that the description that we got eloquently from Peter earlier in the process went to that issue. I don't recall it going to the issue of general information. We might have discussed that later on or whatever, but fair information, as I understood it, was meant to deal with personal information of the date and subjects involved and not go beyond that.

THE CHAIRMAN: Okay. Other comments?

MR. STEVENS: I agree with what John just said. That's the way I perceive it. So if that's what this means to people, then I'd suggest we leave it as is, but if it doesn't, then we can discuss it further.

I also have another point on this section, so you may want to deal with Gary's.

MR. DICKSON: Well, if I can. What's happened is this. In British Columbia, when they included self-governing professions, it wasn't strictly because they were concerned about British Columbia residents' privacy rights. There was also a strong sense that if you have bodies operating quasi-public functions, like the Law Society, like the College of Physicians and Surgeons, there was a corresponding obligation to be open within reasonable, practical limits.

I think Albertans would be no less interested. Clearly legislators here want to make sure the college is not running off without any attention to the concerns of Albertans. So I think what we're trying to do is remind those professions that they don't have to necessarily mirror the act, but we expect them to address this, access to public information as well as respecting the privacy. So I feel pretty strongly that it's not good enough just to focus on the sort of personal privacy side. I think there's that other public obligation too, Mr. Chairman.

THE CHAIRMAN: So you're suggesting that the words "and access" be included between the words "fair information" and the word "practices."

MR. DICKSON: Okay.

THE CHAIRMAN: This happens to be a recommendation that isn't in fact going to be changed in the act but gets a message out, if that's of major concern. I have no real problem with it. I would more defer to the professional people here who were more involved in its application.

MR. STEVENS: Well, for what it's worth, I would agree with what Gary has just said. I'd agree with the recommended change.

THE CHAIRMAN: Okay.

You said that you had another concern on the same section.

MR. STEVENS: Well, just in the paragraph immediately before the recommendation. The last full sentence ends by saying that if self-governing professions failed to deliver, "legislation be enacted to ensure compliance with FOIP principles." While that might be the consequence at the end of the day, it seems to me, at least speaking from where I was when we discussed this, that was to ensure that the professions understood that we thought there was a better way of dealing with this, and that was for them to deal with it separately and on their own but that we would provide them with guidelines as to what we thought was necessary.

It seemed to me, however, that if there was a problem in ensuring compliance with that, the matter would be reviewed and that, if necessary, legislation would be enacted, but I don't know that I'd go directly from today to that position if in fact three years from now certain of the professions hadn't lived up to our standards. So I think the wording in that sentence, speaking personally, is a bit too strong. It certainly would be the end result, but I don't know that it follows that if they fail in some measure, that will be the consequence.

THE CHAIRMAN: In other words the word "legislation" might be strong, but something that implies some other actions might be taken to ensure compliance.

MR. STEVENS: Well, consideration of legislation would be the way I would look at it so that people understand that that will be on the table. Rather than the absolute consequence it will be a consideration.

MR. DICKSON: In fact I was just going to suggest that there has to be another step that comes in. This is sort of a sliding scale of compliance, and you may have what in the committee's view is success or would be complete compliance. You may have partial compliance. There'd be a host of other considerations before legislation ensued. So it ought to be that if you failed to do so, consideration be given to legislation to ensure compliance with FOIP principles.

THE CHAIRMAN: People diligently writing at the other end kind of got the gist.

4:03

MR. DICKSON: Mr. Chairman, you'll be happy to hear that I've got a meeting with your House leader here, so I'm going to be leaving very quickly. But just while we're on page 25, I think we're really missing the mark with not just the recommendation but the explanation, to the extent that this report can have some educational value, some public awareness value. If I were to read this and if I were completely uninformed about this area, Bill C-54 would be of absolutely no consequence to me. I'd not see this as being what it is, which is potentially one of the most significant pieces of legislation we're going to see for a very long time. It has huge, huge implications.

I know we've had the discussion, and you may have a different view of it, Mr. Chairman, than I, but I think we'd be doing a disservice to anybody who reads the report to not signal the significance of the bill, the significance of the issues. This narrative is so neutral and so nondescriptive, it's almost misleading in terms of highlighting what's at stake. You may think that this is all hyperbole, but I just happen to think that we're going to hear an enormous amount about Bill C-54. I wasn't successful in persuading the committee to deal directly with it, but surely we can signal to Albertans and to our colleagues in the Legislature that this is something that should receive some immediate attention, not sort of just one of the items we identify on the horizon neutrally.

MR. DUCHARME: Mr. Chairman, if I recollect the discussion that took place at that time, we had forwarded a letter to the government to make them aware of this legislation and that they watch it carefully.

MR. DICKSON: Well, with respect, Mr. Chairman, we're a committee of the Legislative Assembly, not a committee of Executive Council. We've got a whole bunch of perhaps unsuspecting colleagues who don't know what's coming, which may have an enormous impact on the businesses in their constituencies, on their constituents. We have the benefit of having heard presentations from the IPC. We've heard all kinds of information, and all I want to do is share that in some constructive way with our colleagues.

MR. STEVENS: I don't have any problem in expanding the description of what Bill C-54 is. It seems to me that two or three more lines that articulate its scope and potential impact will add context to this particular section. So if that's what Gary is proposing, I don't have a problem with that.

THE CHAIRMAN: Okay. Me neither. It probably would be similar to an earlier recommendation that you made, Ron, that doesn't necessarily imply that everyone had the same concerns but that it was raised that there may be some significant impact and that the committee wasn't totally in agreement as to the urgency of getting involved and to the extent of getting involved, evolving around that, which would show that there was certainly concern expressed.

You just dropped a bit of a bombshell here, Gary, in that you said that you were leaving right away. While we may have some private thoughts about how much easier this would make the committee work, I would suggest that it would leave a problem, though, of unresolved issues. How quickly do you have to leave?

MR. DICKSON: Well, I've got a meeting with your House leader. I'd mentioned before that I'd tried to incorporate by reference when I sat down to give a detailed identification of the things that were problematic, and you've got that already, Mr. Chairman, so nothing has happened to . . .

THE CHAIRMAN: Well, we didn't do anything to any of the documents. That was tabled at the last meeting, and we were going through the context of new items. If you could be a little bit more specific as to how long you're going to be here, I'd be glad to give you a short amount of time for your issues, and we could deal with them. I really hope that your leaving isn't going to mean that we're going to have to come back for another meeting to deal with those items. If it would help, we could deal with some of your major concerns right away, and then the rest of us could continue with other committee member concerns.

MR. DICKSON: I am certainly not so presumptuous to think that my departure is going to hold the committee up. I accept that you're going to be going through the balance of the report as per the agenda.

THE CHAIRMAN: I think it's a fair assumption, too, that if we're making changes to recommendations, which we essentially did by the exercise that we went through last meeting and earlier this meeting, those are going to be taken with a much different view than correcting the perception of the preamble, depending which kinds of concerns you have. If we could maybe deal with the recommendation issues, those I think everybody wants to hear. Changing the preamble to make sure it's an accurate reflection is much easier, and in many cases that can be done even after the meeting if certain things come up. Maybe it would be a fairer question: in your recommendations are your requests actual changes to recommendations?

MR. DICKSON: Well, there was a set of concerns around process. There was a set of concerns around substance, but I think virtually every one of them has been raised in debate. They're part of the record. No surprises there, Mr. Chairman. In fact, Sue Kessler and I went through, and I've already identified the recommendations that I supported, that I accept on behalf of the committee, and she probably still has the list somewhere. I think that's reflected. I think in the report she's indicated unanimous, and I think it corresponds with those recommendations that I thought were unanimous.

MS KESSLER: That's correct.

MR. DICKSON: The other ones: I'm not sure I was the only contrarian on all those recommendations.

THE CHAIRMAN: I would accept that as a general comment. It's relatively mechanical that if something is reported in here as being unanimous or implied that way and you or any other committee member felt that they did not support it, we would certainly take out any reference to unanimous, and I think we could do that across the board.

MR. DICKSON: Frankly, Mr. Chairman, what I'm worried about is I could very easy slide back into debating the merits of things that we've debated at length, maybe in the minds of some members ad nauseam, and that the committee has made decisions on. I appreciate your courtesy in giving me the opportunity, but there's just a whole series of substantive disagreements. It's usually disagreement with the substance of the recommendation, not the representation of the recommendation.

THE CHAIRMAN: Okay. That's fair enough. Inasmuch as we

would enjoy debating with you for another hour, we would probably excuse you from putting us through that pleasure.

MR. DICKSON: Okay. So is it fair to ask then, Mr. Chairman: your expectation is that this is the last meeting of the committee?

THE CHAIRMAN: Unless someone has some really strong feelings that we would miss each other's company so much that we'd want to come here a few more times just to do it for a social exercise.

MR. DICKSON: I expect we're still going to be able to wrestle over the bill when it comes into the House.

MR. STEVENS: My own personal view is that we have sufficient time to cover off the balance of the committee considerations regarding the draft report, and my own view would be that we should be able to deal with the black-lined copy simply by making additional comment on an informal basis rather than bringing all these folks together and having *Hansard* here. So I'd like to think, unless one of the committee members feels it's necessary to call the committee back, that we can deal with the finalization of the report on an informal basis, as was proposed by the chair.

THE CHAIRMAN: What I would undertake: if there was anything that appears to be substantive in the change, I would contact everyone immediately. Maybe we could give the technical people licence to do grammatical changes and things like that, which don't affect the content of the report, that we do that without having to go back for full approval, but anything that would change substantially the background information could be done by, as Ron calls it, a black-lined copy coming in. Anything that changes the recommendations themselves, other than possibly punctuation or grammar, that wouldn't change the intent whatsoever, would have to come back to the whole committee though.

4:13

MR. STEVENS: If I could just make another comment about page 25 and the inclusion of the private sector under the act. I notice that we talk about "proposed health information legislation," and we talk in the recommendation about pending federal privacy legislation. The very first line in the third paragraph talks about taking into consideration "Federal legislation." My thought would be that it would read better, more accurately if we put "proposed" in front of that.

MS KESSLER: Yes.

MR. STEVENS: If someone tells me that there's federal legislation, I automatically assume that it's not in bill form but real, active legislation.

THE CHAIRMAN: Okay. That's certainly acceptable.

Also, since we're just starting out on this, in my opinion that would come under the category of grammatical or technical correction. If any committee member came back to me or to the technical advisory people, bringing in a word here or there that doesn't change the substance but reflects it more accurately, we would take that without having to go back for approval by everybody. Would that be acceptable?

Okay. Go ahead.

MR. STEVENS: My next comment is at page 62. This may fall into the category of what the chair just commented on, but it may not, so I'm going to raise it. In the recommendation we use the words "is complete." If you take a look at the end of the recommendation, the words are "is complete," whereas when we describe the same situation in the narrative, looking at the very last line, we talk about "has expired." So the time has expired or the time period is complete. I personally understand time period expiring, and my own personal view would be that that is more accurate than "is complete." Quite frankly, I don't know what "is complete" means in the context of the recommendation.

THE CHAIRMAN: So you're suggesting taking out the words "is complete" and substituting the words "has expired."

MR. STEVENS: That would be my personal preference. I think that using wording that is clearer would have us do that.

THE CHAIRMAN: Everybody agreed?

HON. MEMBERS: Agreed.

MR. STEVENS: My next comment falls on pages 71 and 72 under the item MLA expense records. There was an issue that was discussed at some length by some of the members, and that is that the issue of confidentiality associated with constituency matters was a concern. That is not referenced whatsoever in this description. It seems to me that it bore sufficient weight in the debate on this issue that it should at least have some reference.

THE CHAIRMAN: In fact, it probably was a significant part of the discussion, so I would certainly concur with that.

MR. STEVENS: I just have a couple of grammatical points I'll share with you after the meeting concludes.

I would like to say that I thought this was an excellent first draft. I found it very easy to read. I found that it summarized accurately in general terms and in specific terms in most cases what we discussed and how we thought about things. Clearly there were a number of eyes that had read it before we got it, because the grammar and punctuation and things of that nature are first class.

MS KESSLER: Thank you.

THE CHAIRMAN: I had conveyed similar observations to the staff people that put this together. Earlier versions of the material that the committee got I found myself editing quite brutally, but I was amazed at the thoroughness with which this part of it had been gone through. You know, as the chairman, because I had the pleasure of doing a lot of the work before the committee met and had to go through it, I also had the privilege of being able to edit some of this stuff as I saw it. So when I found myself going through this with virtually -- I shouldn't say no editing comments -- very minimal editing comments, I have to suggest that some people spent a lot of time going through the earlier documents. Probably the biggest job would be going through *Hansard* and extracting from there the context of the discussions. I would like to echo the satisfaction and the appreciation that we know someone must have spent time on it.

Also, since it appears that we're coming very close to the end of this meeting, I'd like to express a personal and a collective thank you from all the committee to the technical people that were helping us, those who are here today and others who from time to time filled in. The support was just absolutely the greatest. I think the time lines we put you folks through while we were drafting this and expecting reports back left almost no room for at least any spare time and very little room for second thoughts and reflection. I certainly have to appreciate that. Knowing that some of you spent weekends and probably many evenings doing this to meet our time lines is certainly appreciated, and I'm hoping that your bosses, who might take the time to read *Hansard* and see this, will notice. Maybe you could even take those pages of *Hansard* and underline this and hand

it to them to make sure they read the appropriate pages.

To the committee members. There was a tremendous amount of time put in. I wish all the committee members were here to hear it personally. Likewise, I'm hoping that'll be conveyed. As this progresses, there will be some input from yourselves. Maybe if you have a little time to go through, if there are grammatical or clarification points you'd like to make, feel free to make them directly to myself or Sue, and we'll try and incorporate them.

My understanding is that when the session is -- what do you call it? -- called into order on Tuesday, this committee would automatically be disbanded by virtue of proroguing the Legislature, but provisions are being made to re-establish the committee, even though we will not likely have any formal meetings, just to make sure that it is there in status. If nothing happens until the time that this report is finally tabled in the Legislature, that would be all there would be. We would be a committee in name. Once the final report is tabled in the Legislature, the committee automatically disbands. So if you see this coming up next Tuesday or Wednesday, whenever it happens to be, that's the purpose of it. Even though everybody thinks that we've finished our job, we have to allow for the provision that if something comes up, at least we exist.

4:23

I think that's all I need to say, just a large, very underlined, very emphasized thank you to all of you.

Any other business that we need to deal with before we adjourn? If not, we'd be most happy to call the meeting adjourned.

MR. CARDINAL: I so move.

[The committee adjourned at 4:24 p.m.]