Legislative Assembly of Alberta

The 27th Legislature
Third Session

Standing Committee
on
Health

Freedom of Information and Protection
of Privacy Act Review

Public Presentations

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Third Session

Standing Committee on Health

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Standing Committee on Health

Participants

9 a.m. Friday, September 3, 2010

[Mr. McFarland in the chair]

The Chair: Well, good morning, everyone. It's 9 o'clock bright and early, and everyone's here. It's good to see you on a nice, warm, sunny day.

Before we call the meeting to order, I'd like to recognize that we do have one of our colleagues, Heather Forsyth, from Calgary. I have a habit of looking up at the ceiling because she's with us via teleconference. Good morning.

Mrs. Forsyth: Good morning, Barry. Thank you. I hope we have a good day.

The Chair: Just a reminder. Heather was having trouble hearing yesterday, so if everyone can make sure when they're speaking that they speak right into the mike.

As we start this morning, there are a couple of items that we'll do just really briefly. Everyone here should have a copy of the revised meeting agenda and the presenters list. They've all been posted on the website. If you don't have your copies with you and need them, please ask or signal Karen, and she'll get them to you right away.

Are there any other items to be added to other business that we didn't deal with yesterday? Seeing none, then I want to keep on the schedule so that our presenters are able to make their presentations timely.

We'll take a few minutes now to welcome our first presenters, the Association of Academic Staff from the University of Alberta. Before we begin, I'd ask that our guests give their full names and their titles for the record. After that, Dr. Heth, you have 15 minutes for your presentation. Then we'll open the floor to questions from us. We'll also introduce ourselves to you. Please proceed.

Dr. Heth: All right. Well, my name is Donald Heth, and I am the president of the Association of Academic Staff at the University of Alberta.

Ms Renke: And I'm Brygeda Renke. I'm the executive director of the association.

The Chair: Thank you.

Ms Blakeman: Hi. Good morning. My name is Laurie Blakeman, and I'd like to welcome you both, actually everybody, to my fabulous constituency of Edmonton-Centre.

Mr. Vandermeer: Good morning. I'm Tony Vandermeer, the MLA for Edmonton-Beverly-Clareview.

Mr. Lindsay: Good morning. Fred Lindsay, MLA for Stony Plain.

Ms Pastoor: Good morning. Bridget Pastoor, MLA, Lethbridge-East, and deputy chair.

The Chair: I'm Barry McFarland, chair and the MLA for Little Bow.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Good morning. Dave Quest, MLA, Strathcona.

Mr. Horne: Good morning. Fred Horne, MLA, Edmonton-Rutherford.

Mr. Olson: Good morning. Verlyn Olson, MLA, Wetaskiwin-Camrose.

Dr. Massolin: Good morning. I'm Philip Massolin. I'm the committee research co-ordinator and a table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from Calgary?

Mrs. Forsyth: Oh, sorry. I'm Heather Forsyth, Calgary-Fish Creek. Welcome.

The Chair: Thank you. And we've just had a colleague join us.

Ms Blakeman: While she's getting to her place – I'm sorry, Mr. Chair – I forgot to mention that I'm substituting in for Dr. Taft.

The Chair: Thank you very much.

Ms Notley: Hi. Rachel Notley from Edmonton-Strathcona.

The Chair: Thanks, Ms Notley.

Please proceed, Dr. Heth.

Association of Academic Staff, University of Alberta

Dr. Heth: Okay. Well, Mr. Chair, before I begin, I'll just mention that I've spent my working life in an environment where if I speak too long, students close their books and put down their pencils. I've been trained to be brief, and I hope I can do that.

Good morning, members of the committee, and thank you very, very much for this opportunity to speak with you. I represent 4,282 members of the Association of Academic Staff at the University of Alberta. Now, these are the professors, the librarians, the administrators, and other teachers and researchers at the University of Alberta. The members of my association create new ideas and technology through their work with that university. If I may say so, if any of you have daughters or sons of university age, my members, I think, are second to none in the world in mentoring young Albertans in producing the ideas that will bring them into the 21st century. I'm very proud of them, and again if you do have a son or a daughter of university age, please ask them to consider the University of Alberta.

I'm sorry for that sales pitch, but it makes a point, which is that I believe the University of Alberta has a very special place in the history of Alberta and in its current profile. The University of Alberta was special when it was founded in 1906, and it is special today. In 1906 as one of the first acts of the province of Alberta the new Legislature created the university as a university. That word is very important because there are other kinds of decisions they could have made at that time. They could have created a college or a seminary or one of the other kinds of models of higher education, but they decided on a university. The wisdom of that decision is apparent today. When one of the members of my association

publishes an academic paper, the words "University of Alberta" underneath their name carry a respect and an integrity which is due to the fact that this university, this institution, has committed itself to the free expression of ideas and the exploration of new thought.

I'm here today to ask you to recognize the special relationship which my members have with that institution and to ask you as well to protect the expression of those ideas and the criticism which makes them possible. Again, I'm asking you to respect the relationship and protect the expression of ideas.

Let me deal with the second of those first. When an academic member of the University of Alberta creates a new work of scholarship, he or she owns the intellectual property of that work. The University of Alberta is no different from any other university in that respect, but it is different from other public bodies named in the Freedom of Information and Protection of Privacy Act.

For those other bodies copyright of the records created by an employee of the public body is owned by that body, and personal property is not threatened or infringed when there is an information request. However, in my environment when creative works protected by copyright are prematurely disclosed to another person, the creator could lose substantial rights such as rights to priority, claims to a discovery, and the other benefits that come with creation. Now, these may not be commercial benefits, but in my world issues of priority and the creative expression of one's professional skill have long been a very valued component of an academic's qualifications. Allowing any person unrestricted right to examine a scholar's prepublication material would be a severe disincentive for creative scholars to accept employment at the University of Alberta.

Your committee can protect the ideas and expression of Alberta's scholars by examining the copyright implications of those works. What we are asking is that you consider excluding copyrighted material where the copyright is held by an individual or an entity other than the public body receiving the request. That's the first of the issues that I'd like to ask you to consider.

My second request is that you recognize the customary practices of a university when it comes to issues of when records are under the custody or control of a public body. The customary practice of universities has been that scholarly materials and communications are not under the control and custody of the university unless they are created through the administrative work of the university. There's a very fine but important distinction between that because the practice crucial to the expression of free ideas and criticism is that the scholar creating the activity owns the right to control of that activity. As part of that these scholars then are free to express themselves when they communicate with other scholars or when they provide criticism as part of a peer review process. To allow any person to intervene in the free exchange of information would stifle creativity and the criticism that scholars depend on.

Now, we have no specific request in this regard, but I would ask you to consider in your deliberations the extent to which requests for information could infringe upon the free expression of ideas.

Let me give you two examples of what I'm speaking of. First of all, I think we can all recognize that information is a key commodity of the 21st century. What is extremely important is that the integrity of that information be preserved. Now, in my community that is done through something known as the peer review process, which I think you've all seen in the news recently. In the peer review process a scholar who has decided to publish information will submit it to an organ such as a journal or other scholarly entity. During that time the work will be examined by other scholars, who will communicate back and forth with the publisher of that journal or other work.

9:10

It's that exchange of information which refines the work, which sharpens its contribution, and which allows a process by which error is discovered. Those communications are considered both traditionally and also very functionally as confidential because they allow the people critiquing the work to offer their criticism freely. If that process were open to an examination by an outsider not familiar with that process, the unfortunate implication could be that that free criticism will be somehow muted or even withheld. When that happens, the peer review process is severely compromised, and the information no longer has its integrity. That's the kind of consideration that I'd like you to keep in mind as you go through this review.

The second example that I'll mention just briefly is fortunately still hypothetical, but I think it is very real. Any time you go to the university nowadays, you'll see a number of cranes and quite a bit of construction activity, which is in support of the university's mission for advanced technological research. We're very proud of that reputation, and I think the people of Alberta can be very proud of that because the University of Alberta will be in the forefront of medical and technological research for many years to come because of that investment.

But there are people who take sometimes violent exception to specific domains of that research. To pull just one example of that, that might be stem cell research, where there are a number of groups that might be opposed to that kind of research. I think one concern in this day and age with the rapidity of information exchange is that you consider how one particular group violently opposed to a line of research might use the legislation in ways unintended by any of you people here to impede research, to either threaten or intimidate researchers who might be involved in that. I would ask you to consider that particular implication because, again, the free exchange of information is a very, very important part of what we do.

To conclude here, if any person for whatever motive is able to limit the free expression of ideas or to appropriate them from their creator, then Alberta's investment in its universities is diminished. I urge you to protect the property rights of those who teach and research in your universities and to recognize the customary practices that govern their work. Thank you once again very much for this opportunity to speak with you. I'm open for any further questions.

The Chair: Thank you very much. You've definitely presented something that is quite unique and different that we haven't heard so far, and you're five minutes early, so it gives us extra time to ask questions and have some dialogue with you.

I don't want to take up your time because I know one of the first people on the list, Ms Blakeman, has a question for you.

Ms Blakeman: Thanks very much. In your written submission and today you are asking for an exclusion for copyright material. I'm not clear about whether you're asking that this exclusion would apply only to universities or to all public bodies, so a small clarification there. My primary concern here is that we have a section in the act which is already set up that the head of a public body may refuse to disclose to an applicant et cetera, et cetera, et cetera – this is section 25(1)(d) – "information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or the public body of priority of publication." Why, in your opinion, is that clause not covering your concern? In my reading of it, it exactly covers your concern.

Dr. Heth: Yes. I think that's a very good question, and I think it goes to the heart of the issues that I'm trying to explore here. First of all, to answer your first question, I believe that's up to you. That is, I'm not completely familiar with the entire domain in which this act works, but what struck me at the beginning is that copyright is an issue that is very distinctive in the university context although I can imagine there might be other parts where copyright may be more diffuse. So I think my first inclination would be that it might work best at the part where you're talking about exclusions that refer to a university as a public body, and those are the two that refer to teaching materials or to research materials.

Now, with respect to the other protections in the act, I take your point completely about priority of publication. As a matter of fact, the federal copyright law also includes a clause which deals with the release of information through FOIP laws. But what I'm talking about here is something a little bit more subtle, which is the exchange of information that comes before the material is coalesced into a publishable form. That is, as a scientist I communicate frequently with my colleagues across both university borders and also international borders. During that time we discuss ideas; we discuss particular approaches, methods of analysis, and things like this. These are the prepublication ideas that come up, and although they would be protected by copyright as personal expressions of an idea, the idea itself is not copyrighted.

It's that idea which I'm most concerned about because someone wishing to encroach on someone's particular approach could use the law to get at some of those prepublication materials. That's the part that I'm quite concerned about because in that an outside person – and the act does say that any person can submit such a request – could potentially examine and use some of these ideas prior to their publication. Again, it's the expression which is covered by copyright.

Ms Blakeman: I am very uneasy about this because you are asking for such a large catchment of all possible material under consideration for research aiming for copyright, which, as we know, could be production of a play to a book. That is a vast amount of information that is now not open to scrutiny, transparency, or accountability. Do you feel that this is a fair balance that is being asked for? The section 4(1) that you're asking it to be under is an exclusion section. The act applies to all records in the custody or under the control of a public body and then goes on to say "but does not apply to the following." You are asking for an enormous amount of work to be taken away from any kind of scrutiny. Do you feel that's a fair balance?

Dr. Heth: What I'm asking for is not to take away the scrutiny.

Ms Blakeman: If we can't see it, how can we scrutinize it?

Dr. Heth: No, no. What I'm saying is that the scrutiny comes when the creator decides that the work is ready for public expression and public display. Take a playwright. A playwright would be in the process of constructing a particular approach, a particular concept for a play, and the principle of copyright is that the creator has, then, the control over the way that the final work appears. As a consequence, my particular argument would be that the final expression is there for the public to examine. The final result is there for the public to examine.

I understand completely your point, which is that the people of Alberta have invested in the university and therefore have benefits that derive from the work that is done by the scholars there. The point I would like to make is that that work is produced when they publish, and it's available at that point, and the benefits derive at that time of publication. I think the benefits would be severely diminished if scholars were not able to develop the work in the way that they are customarily accustomed to.

The Chair: Thank you.

Ms Blakeman: Can you put me back at the end of the list?

The Chair: Yeah.

We have Ms Pastoor and then Ms Notley.

Ms Pastoor: Thank you. I just wanted to perhaps discuss a point of clarification that I don't really understand. But before I do that, I would like to compliment you on your loyalty to your university; however, the University of Lethbridge is absolutely amazing. We do have some very highly qualified international neuroscientists at the University of Lethbridge.

Dr. Heth: Some of whom are my colleagues, by the way, so I understand.

Ms Pastoor: Yes, I believe that we poached one of them for our new president, which is a delight for us.

One of the things that I don't really understand is that universities, of course, are always strapped for cash, and there are so many corporations now putting money into research. Who actually owns that? If they've paid for it, who actually owns the thought processes and the report at the end?

Dr. Heth: That's an extremely complex question, of course, because research is an activity conducted nowadays by large teams of investigators, each of which contributes portions of it. With interdisciplinary collaboration, too, across universities it becomes even more complicated in that way.

There may be an interesting point to make about the ownership of the copyrighted material or the research results, which may be a different thing than copyright, and the commercial benefits to come from that. For example, the University of Alberta has a specific policy regarding patents, which describes the particular commercial rights of the university, of the funding agency, and of the creators for that. So that's probably a different issue than the ownership. The ownership issue comes about because under the Post-secondary Learning Act the Board of Governors has been delegated the authority to decide ownership issues, which they do in negotiation with the faculty association.

9:20

Now, I'm familiar, of course, with my own institution, and I've examined Calgary's. I don't know Lethbridge, unfortunately, as well. But those rights are typically negotiated with the people that are involved in the creation of the work, and they take into account the university's vested interest in it. A good example in that case, I think, a model, would be the University of Calgary, which has a fairly clear description of when the commercial rights are engaged by the university or the funding agency.

I guess that's a very long-winded answer to your question. The short one would be that it is negotiated with the staff associations that are involved. As a matter of fact, at the University of Alberta we are about to engage in those discussions specifically for the issue of copyright.

Ms Pastoor: If this is all negotiated sort of on the side, then how would that apply under what you want us to do?

Dr. Heth: I think it gives you a very clear boundary, which I think is quite important. In my particular environment there is a distinction because many academics perform an administrative role at the university. So, for example, I serve on several committees that support the mission of the university as a public body. Those I regard as activities in which the production of any work belongs to the university. I'm doing it in support of the university. The decisions that come out of the work I do then affect the public interest. Those things belong to the university. In my viewpoint, because I am at that point paid to produce work in these committees, the university owns that work.

The work that I do as a scholar, where I develop – my own specialty is in the field of Pavlovian conditioning, which is a very recondite topic. When I do that, I regard that as part of the work that I do as a personal scholar. It's that creation, that work, that I regard as part of my work and part of the stuff that I own. Now, whether the university has a financial interest in it, if there's any financial interest that would come out of such an obscure topic, that would be something that would be covered by the staff association agreement.

Again, I think there's a pretty appropriate boundary in this regard because the copyright that pertains to the administrative function of the university would be owned by the university; the part that pertains to private scholarship would be owned by the creator.

Ms Pastoor: Thank you.

The Chair: Thanks, Ms Pastoor.

Ms Notley, please.

Ms Notley: Thank you. I just wanted to follow up a little bit the line of questioning that Ms Blakeman had. I was just wondering if you can provide us with some concrete examples of where this problem that you describe has occurred. Has it already occurred, this problem that you describe that you're wanting us to fix through section 4?

Dr. Heth: I would say yes, but we are currently involved in a court case that may be pertinent to it, so I don't think I can go into the details of it. But I will say that it is an instance which I think would be very distressing to many of my colleagues.

Ms Notley: How frequently has it occurred, then, I guess is my other question.

Dr. Heth: I'm new to my role as president here, so I don't have a lot of the common knowledge that might come from experience if my term were longer. It is a little bit difficult to say, but I think it is not unique to Alberta; that is, there are other jurisdictions in which FOIP laws have been constructed where I see the same kind of problem. But in terms of a frequency at this point I can't tell you except that I guess I share everybody's apprehension about the new information age and what it will mean to our privacy rights and how much of our own personal lives will be open in ways that we don't wish them to be. So I expect it might be a more frequent thing for the future, which is why I think it's so timely to consider it now.

Ms Notley: I wonder if it might be possible for you to follow up with us by giving us more information about where or when or how often the problem that you're seeking to have us address has occurred, just so that we could get a sense of the breadth of it.

Dr. Heth: Okay. I'm sorry; do you mean subsequent to this presentation?

Ms Notley: Yes. Exactly.

Dr. Heth: Oh, I'd be delighted to. Thank you. I'd welcome that opportunity.

Ms Notley: Thank you.

The Chair: Thanks, Ms Notley.

We're down to the last two minutes, so we'll go back to Ms Blakeman briefly.

Ms Blakeman: Thanks. This question is two sides of the same coin. In section 4(1)(i) it excludes research information of an employee of a postsecondary educational body. Two sides of that. How does that not cover the issue that you're trying to get us to address? Secondly, in inserting this into the act, when it was put in, what it did was have the effect of excluding protection for those people who are research subjects. What recourse does a research subject have if they believe that their personal information has been improperly disclosed or inadequately protected by a researcher? You mentioned stem cells: great example, right? So two sides of the same coin there: how does this not address your problem, and also what are the protections available still under the act and your understanding to the subjects of research?

Dr. Heth: Okay. Thank you. As a matter of fact, for a large time I was actually a member of a research ethics board, so I'm quite familiar with those issues. My role there was to protect the participants in research that way, so I'm very, very sensitive to those. With respect to that issue I'm not sure how the act pertains to that.

Ms Blakeman: It doesn't. I think that's my point.

Dr. Heth: I think that's a very important point. There are other protections that universities put in place. I was the subject of withering scorn on a number of things by insisting upon those protections when people thought they weren't necessary.

I think the act, in referring to research materials, does not necessarily exclude the particular records that occur in the start of that research with a participant. For example, the things that would come up in my particular examination of ethical things would be the kind of information given prior to the person consenting to the research, the rights that they are retaining and the rights they are giving up when they start. These are all materials that would be part of my work as an administrator at the university, and I think they fall, then, under the administrative portions of that domain.

The Chair: Thank you very much. Ms Renke and Dr. Heth, thank you very much for your presentations. We look forward to the other information that you're going to provide to the clerk that Ms Notley suggested you might want to forward to us.

Dr. Heth: Okay.

The Chair: While we're setting up for our next presentation, from the Alberta Teachers' Association, I neglected to recognize our colleagues George Groeneveld, MLA for Highwood, who's on our committee with us, and Dr. Raj Sherman. Thank you very much.

I would also entertain a motion at this time. I neglected at the start of the meeting to get a formal motion to adopt the agenda for today. Mr. Quest. That would include our previous presenters. All in favour? My apologies, folks. Thank you very much.

At this time I'd like to welcome the Alberta Teachers' Association. Before we start the presentation – I'm not sure if they were here at the start of the other one – what we'll do is have you introduce yourselves for the record with your name and title, and then we'll have the rest of our committee members introduce themselves to you. We'll then proceed with 15 minutes for your presentation, followed by a Q and A from the committee in response to your presentation. Please proceed.

9:30

Ms Shane: Thank you, Mr. Chair. Good morning, everyone. My name is Margaret Shane, and I'm officially the information and records manager, the privacy officer, and the archivist for the Alberta Teachers' Association. I'm joined today by Dr. Ernest Clintberg, who is our associate executive secretary. We very much appreciate the opportunity to speak to you today.

The Chair: Thank you.

Ms Blakeman: Good morning and welcome. Thank you very much for appearing. My name is Laurie Blakeman, and I'd like to welcome both of you plus the new additions to the room to my fabulous constituency of Edmonton-Centre.

Thank you.

Ms Notley: Good morning. It's good to see you here. My name is Rachel Notley. I'm representing Edmonton-Strathcona.

Mr. Vandermeer: Good morning. I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good morning. Fred Lindsay, Stony Plain.

Ms Pastoor: Good morning. Bridget Pastoor, MLA, Lethbridge-East, which really is actually quite fabulous as well, and also deputy chair.

The Chair: Good morning. I'm Barry McFarland, from a more fabulous constituency, Little Bow, which is in southern Alberta. I chair the committee.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Dave Quest, MLA, Strathcona, where it's absolutely amazing.

Mr. Horne: I give up. Fred Horne, MLA, Edmonton-Rutherford. Good morning.

Mr. Olson: From the centre of the universe, Verlyn Olson, MLA for Wetaskiwin-Camrose.

Dr. Sherman: Good morning. Raj Sherman, MLA for Edmonton-Meadowlark, where we have the most fabulous shopping on the planet at the mall.

Dr. Massolin: Good morning. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

Ms Shane: Well, I admit to being somewhat overwhelmed by all the fabulousness in the room.

The Chair: We have one more, Ms Shane, from Calgary.

Mrs. Forsyth: Good morning from the fabulous, sunny constituency of Calgary-Fish Creek. I'm Heather Forsyth.

Alberta Teachers' Association

Ms Shane: Okay. Good morning, everyone. Before we get started, we'll just say fiat lux, and that will be our nod to the University of Lethbridge this morning.

You're probably wondering why a PIPA body is here speaking to you about the FOIP Act. I'm seeing nods around the room. The association's activities are governed by PIPA. However, for our 38,000 to 40,000 active members, depending on whom you talk to, certainly all of their activities in their work life are governed by FOIP. They are employees of public bodies, and the association often finds itself involved in FOIP matters in advising our members and in participating in access requests and whatnot. So we do have some experience, definitely, with the FOIP Act.

We submitted our submission to you back in June, which seems like a very long time ago now, but we'd just like to take this opportunity today to meet face to face and highlight some of the elements in that submission and possibly expand upon them with any questions that you may have.

We've certainly appreciated the structure of the submission requirements. It makes it very easy to discuss specific elements of the act, specifically the improvement of privacy protection. We were very gratified to see – well, we were gratified secondly. We had a little trepidation first when we saw the mandatory reporting requirement that was brought in under PIPA on May 1, but we understand its intent, and we would certainly like to see that mandatory reporting be extended to public bodies. In the event of a breach of significant harm we would definitely support mandatory reporting for public bodies.

The example that we gave in the submission was the loss of the 48 laptops as reported by the city of Edmonton auditor earlier this year. That amounts to about one a month, on average, that wasn't reported. Public bodies are human institutions. They do and will have privacy breaches, some of which have significant harm, and we would like to see that protection extended to public bodies.

The other side of that is, of course, transparency and accountability in addition to mandatory reporting. We think it's a good idea to consider, at least, asking public bodies in instances where they are engaging in significant collection, use, and disclosure of personal information to do the due diligence and write a personal privacy impact assessment. We'd like to see PIAs, that are required under the health act for good reasons, extended to public bodies in instances where there's a project of substantial collection, use, and disclosure. PIAs are an enormously important tool. They are very effective in marshalling the thoughts and the purposes and the objectives behind these large projects. As we move toward greater ease and efficiency with electronic information and greater reliance on technological solutions for our data-processing requirements, I think a personal impact assessment in large projects would be an effective protection for Albertans.

We'd also like to see the protections or, at least, the notification requirements that were brought in under PIPA extended to public bodies where that data is going to be housed outside of Alberta and, certainly, outside of Canada. Where we have servers sitting in the United States or western Europe or Iceland or Winnipeg or wherever it is, we would certainly like to see that the data subject, the individual Albertan, be aware at the very least that that data is sitting in a locale where it might be subject to very different privacy regimes than exist in Canada or in Alberta.

Of course, we all are familiar with the PATRIOT Act and how that works, but there are very different privacy regimes all over the world, and literally your data could be sitting anywhere. We'd like that considered by the committee. In reading the transcripts of your meetings, I see that that is an issue that you're already grappling with, so we'll just cheerlead from the side on that issue.

In terms of improving access, we were very happy to see in PIPA the requirement that personal information that is no longer required for business use be securely destroyed at the end of its active life. What that means from a records management perspective is that you've enshrined in law the requirement that the end process of a record management life cycle is now a requirement under the statute, which implies, of course, that you have the rest of the process in place in order to do that properly.

You know, timely access is absolutely a function of being able to locate, retrieve, assess, and then produce information with precision. The more information we have electronically, the more important it becomes to be able to retrieve that information in response to an access request with some precision rather than with recall. What will happen in that case is that when you have results that come back with recall, you have a lot of extraneous information in them. If anybody remembers Yahoo! back in the day, 1996 to '98 vintage, where you put in your search request and get 13 million hits, that's recall. That's hardly helpful. We want to be able to retrieve information with precision, and in so doing, you'll be able to respond more quickly.

What we're asking for is: have a look at the rest of the information management process, the rest of the information life cycle, and seek some advice on how best to enshrine that within the act as well. If all it becomes is the end process, where you're still requiring the secure destruction of personal information, we would applaud that. But as you consider that, please consider the rest of the information management cycle as well; that is, taking information and managing its content from the beginning of its life, from the time it's created, until the time that it's ultimately disposed of or archived. There are only two dispositions, really, for information that's come to the end of its life. It goes to the heaven of the archives, or it goes to the hell of the shredder, whichever, but we'd like to see that dealt with.

Incidentally, we would also appreciate if – and we're not sure how the committee might choose to do this. Information access and protection of privacy as a professional activity is emerging in its certifications and its standards, and we would certainly like to see that encouraged within public bodies, that individuals fulfilling the role of FOIP co-ordinator or fulfilling the role of privacy officer be encouraged and supported in pursuing those types of certifications. At the moment the only game in town is the CAPAPA certification, from the Canadian association of – Marylin, help me out here. It's a very long acronym. Basically, it's the Canadian association of privacy and access co-ordinators. We would like to see that explored.

Moving on, we actually covered this quite extensively in our submission, so we won't take up too much of the committee's time here. In answering the question of how to make the act easier to administer, we would welcome any activity around dealing with the mediation and investigation and inquiry phase by the oversight body, how that works. You know, at the moment you can be in mediation and investigation for a good long time, and then at the end of that process there may be an inquiry that proceeds, and that takes even longer to get through. So there are extensive delays, and this speaks to another point we'll talk about, harmonization, in a moment. We would like to see that process streamlined if possible. I know it's a thorny issue, and I know that this committee has been grappling with all kinds of thorny issues, but really streamlining that mediation stage, streamlining the ability of the oversight body to just get to the issues would be most welcome.

9:40

We'll move on because I'm mindful of time here. Specifically with respect to education and pedagogy we would like to see instances where organizations that are made up only of public bodies – in other words, the constituents of the collective are solely public bodies – also be specifically required to be subject to the act, that the collective is subject to the act in the same way that the individual constituents are. There are, you know, organizations that are made up of public bodies only that we would like to see specifically mentioned in the act or in the regulations if that's better suited to the committee.

The other thing we'd like to have a look at is how affected parties are named within the act, what rights they have as affected parties to fully participate or not in inquiry processes. You know, is it a situation where it's simply up to the commissioner now whether or not somebody is named as an affected party? Should the affected party be able to advocate for that role if they feel that their interests are involved in the issue at hand? In other words, what are the criteria? How are we going to determine how affected parties are treated?

Moving on to the harmonization, we are aware of the extension under section 50 of PIPA for the commissioner to go from 90 days for the required completion of an inquiry to 365 days, or a year. We would like to advocate that you resist that element of harmonization under FOIP. It is very clear from the *Hansard* transcripts of the 23rd Legislature that they very much valued the timely and effective resolution of complaints and disputes. It's all over the debate record. Alberta's teachers and the general public are not served by protracted review times. Writing for the majority of the Court of Appeal recently, Justice Watson made that point very clear, and I won't read it into the record because it's there in front of you. We would very much resist that year-long review period.

We do share Ms Blakeman's concerns that she did express in the July 7 meeting, and the transcript is at page 463 of that meeting. In our experience – and we can't speak for everyone – for the cases we've been involved with, all of them have exceeded the 90 days and many of them by a goodly amount of time, and by that I mean heading into years. There are all kinds of extraneous reasons for that based on individual cases, but in the collective they're all past the 90 days in our experience.

It's our contention that these delays are at least partly the result of the processes that are in place, and there is a mechanism already in FOIP for addressing backlogs that do occur – they certainly do in any large administrative body – and that is section 70. The commissioner does have the discretion not to proceed to inquiry on issues that are de minimis, as I describe them. We believe that there is already a mechanism in FOIP for that. There isn't a necessity to extend to a year. Even if you did extend it to a year, in our cases a year wouldn't have been enough anyway. We believe that those types of problems can be addressed operationally. Of course, we say this from the outside looking in, but that is our experience.

I think I've taken it right to the 15 minutes, Mr. Chair.

The Chair: Pretty darn close.

Ms Shane: Pretty darn close. Dr. Clintberg and I thank you very sincerely for the opportunity to participate in this dialogue, and we'll be happy to try to answer any questions that you have.

The Chair: Thank you for your presentation, too, Margaret.

I'd like now to open up for questions. The first one on the list is from our fabulous Ms Blakeman.

Ms Blakeman: We're all fabulous. Thank you.

I'm referring to the point you're making in your written submission on page 7 under harmonizing, bullet 3, and in your handout from today under harmonization, (a), and that's around additional bodies that are created. In the act I can find examples of where anything a health care body creates as a subsidiary is captured, anything a local government body creates is captured. I see no provision for a similar capture by educational bodies, and you mentioned this. Can you provide examples of entities in the education sector that are constituted entirely of member public bodies, and further would you make a distinction when it comes to making them subject to the FOIP Act between corporations and unincorporated associations?

Dr. Clintberg: I'll answer that. There is a case currently before the commissioner, so I hesitate to go into any detail. But an example of an authority under the School Act and under the labour code: the school boards have the ability to form bargaining authorities, so they are solely made up of public bodies. Public bodies sit on those boards and form them. That's the example, but I don't feel quite at liberty simply because the commissioner is currently looking at a case related to that.

Ms Blakeman: Do you feel they should be incorporated?

Ms Shane: Well, I certainly feel that they should be incorporated specifically. If the constituents are solely public bodies and the public bodies individually are required to be transparent and accountable and fulfill the access requirements of the act, then surely the collective should also be subject to that and the records that they produce.

You know, when I tell my students what FOIP is about, it's about: because you have a collective interest in the production of records by your government with your tax dollars, then you should have a universal right of access to everything subject to specific and limited exceptions. The collective body should not be exempt from that simply because they're acting in concert, right? The records produced by the collective should be subject to the same provisions of access and restrictions that govern the individual public bodies that form the association, or form the collective. I hesitate to say association because that brings up other connotations, but collective is a generic term that I'm using for that type of thing.

In our experience these school boards are able to form these types of organizations. They have formed these collectives in the past, and there is one in existence now. As I said, and Dr. Clintberg advises and quite rightly, we'll let that play out in front of the commissioner. But to answer your question, Ms Blakeman, that's definitely the example that we are most familiar with.

Ms Blakeman: Good. Thank you.

Could you put me back on the list, please? Thank you.

The Chair: Certainly.

I'm sorry. Ms Notley, had you indicated?

Ms Notley: Yeah. I had one quick question. Just going back to the issue with respect to the role of the commissioner and the process of mediation versus investigation, we've heard different submissions on that issue because, as you rightly point out, it certainly is a complex issue. I guess my question is: what is your opinion on the ability of an investigator to subsequently act as a mediator? Ought those roles to be combined? There are arguments on both sides, you know. Certainly, in terms of, I think, practical efficiency there is value to having them do that – right? – but there have been arguments raised that that's potentially not a good dynamic. It sounds as though you have some experience in the area. What's your opinion on that?

Ms Shane: We do certainly have experience in that area. Because the association is disciplined by law, it fulfills much the same type of tribunal administrative role as an oversight body. You know, it's not directly analogous, but it certainly gives us experience in being the investigator and the prosecutor at the same time.

In this instance we don't see a conflict in there being established by the commissioner, certainly with his expertise and his experience, minimal thresholds for what is necessary to go forward to inquiry. At the present time where we see the hiccup, where we see the bottleneck, is that the inquiry is conducted de novo, so absolutely no consideration at all is given to what has gone on in mediation in terms of the facts of the case or the findings of the investigator. You go through all of this work and effort to co-operate with the investigation, and then one of the other parties still feels themselves aggrieved, so they just make a submission for an inquiry. In our experience we have yet to have a situation where an inquiry has not been granted, and in our opinion some of those are not the best use of resources for the association or for the OIPC, quite frankly.

9:50

There should be a mechanism by which a threshold is met, however the commissioner wants to arrange that or how he wants to deal with that. Instances of – in our case it was a PIPA case – a simple item of misdirected mail should not require the association to go forward with all the resources at our disposal to defend ourselves at an inquiry because of something inconsequential of that nature. How that looks? We don't feel that we're, you know, competent to lay out the structure. We certainly have ideas and opinions. Something that would prevent something so de minimis from going forward would be a huge boon not only to applicants and people working with the commissioner but, I believe, to the commissioner himself and would relieve the burden. Under FOIP that mechanism is there in section 70, right?

Does that answer your question, Ms Notley?

Ms Notley: Somewhat, yeah.

Ms Shane: Okay. The answer to the direct question: we don't see a conflict between the same body, you know, going forward with the process that considers what's gone before in mediation, at least on the facts of the case.

Ms Notley: Okay. Thank you.

The Chair: Thank you.

Ms Shane, yesterday I had asked one of the presenters – and I'm referencing item (b) on the first page, on these PIAs, personal information assessments. In your opinion who should be responsible for the cost of putting together these personal information assessments?

Ms Shane: Within the public body itself?

The Chair: Correct.

Ms Shane: Who should bear the cost?

The Chair: Right.

Ms Shane: It should be whichever operational centre is responsible for FOIP compliance within the organization. That will be collaborative in most cases with an IT department and a legal department, but it should come out of the FOIP compliance budget line, whatever that looks like. I haven't looked into this, but I assume in health bodies that's who's responsible for creating PIAs where necessary. It would come out of the privacy compliance office or budget, and I believe that's an appropriate place for it to be in public bodies as well.

The Chair: Back to Ms Blakeman, please.

Ms Blakeman: Thanks very much. The FOIP Act is media neutral. I am very interested in the current practices involving classrooms making use of Facebook and Twitter and some things like that, but it also raises concerns, particularly around risks for privacy. Are you aware of or can you provide an example of a case where the principles of the FOIP Act did not address the current practices of the public bodies with respect to new media, social media in particular?

Ms Shane: Wow. How much time have you got there, Ms Blakeman?

Ms Blakeman: You can always provide a written response through the clerk.

Ms Shane: We would probably appreciate the opportunity to provide a written response. There are numerous examples of instant collection of teachers' personal information and other students' personal information inside schools, which are immediately broadcast. You know, where does the custody and control lie in those situations? Is the public body able to exert any control over records that are created in that way and then become public?

Ms Blakeman: You haven't made a specific recommendation around it?

Ms Shane: No, no. We haven't made a specific one, but in our submission we did ask the committee to look at it very, very carefully. It's such a hydra-headed monster, really. If you're asking us for a supplemental submission on specific recommendations, we'd be delighted to do that. Is that something the committee would accept, or correspondence to that nature?

Ms Blakeman: We've had people complete their answers with written follow-up, but I don't know about additional submissions.

Ms Shane: Well, we would call it written follow-up, then, and provide you with those concrete examples if you like. There are a myriad of examples from the field. We do know that our members, both administrators and professional teaching staff, are struggling with this issue. So we'd be very happy to provide you with those concrete examples for consideration by the committee, and we'll get those to you in a hurry.

Ms Blakeman: Is there still time?

The Chair: May I check with Mrs. Forsyth first?

Ms Blakeman: Oh, yes.

Mrs. Forsyth: Okay, Barry. Hi. Thanks. I am conscientious about the time, so I just have a brief question. During your submission you spoke about timely access, and I wonder if you can just elaborate on that.

Ms Shane: In our submission, Mrs. Forsyth?

Mrs. Forsyth: When you were speaking.

Ms Shane: Oh, okay. Yes. Certainly. Well, you know, there's that old chestnut in privacy work: access delayed is access denied. That comes up and is attributed to various people. I like to attribute it to Bob Clark, so we'll go with that. Basically, the idea is that privacy compliance and good records management, good record keeping, are two sides of the same coin. You can't do good privacy compliance without getting your records in place, and you can't do good records management without thinking about privacy.

Really, one of the shortest routes between chaos and being able to operate effectively in a FOIP office is being able to get your hands on the requested records as quickly as possible, do your analysis, and move forward. The quickest route between those two places is a sound records management program. The example that I brought up was the PIPA amendment, which for the first time ever anywhere required that records destruction be secure. That translates in the records management world into the end of the process, so we would like to see the rest of the process encouraged and dealt with and supported, if not actually required in statute.

You can imagine that although the government of Alberta and its ministries have very robust records management processes and are very good at what they do, all public bodies are not created equal when it comes to dealing with their records. We feel that that would be an efficient route to improving access.

Mrs. Forsyth: Thank you.

Ms Shane: You're very welcome.

Mrs. Forsyth: Thank you, Chair.

The Chair: Thank you.

Back to Ms Blakeman for the last two minutes.

Ms Blakeman: Thanks. The issue of charter schools: the operator is under PIPA; the school is under FOIP. Can you explain why you think a private-sector organization operating a charter school should be subject to the FOIP Act?

Ms Shane: Well, this is certainly an anomaly that arose out of the new privacy regime. You know, FOIP came in in 1995, PIPA not till 2004. This is just one of the first opportunities we've had to really bring the attention of the legislators to this problem.

The idea is that PIPA and FOIP are on parallel tracks. If I get consent under FOIP to take pictures and publish, I can't use that under PIPA, for example, and vice versa. Although they share some DNA in the OECD principles, they're really there for different reasons. PIPA is there to protect your human right, largely, in the marketplace, your right to control your personal information. FOIP

is there to enshrine your democratic right to access information created by your government and to have them protect your personal privacy. They really are there for different reasons.

Now we have a situation where the governing body of the charter school is by definition in PIPA land – right? – so we would have to have contractual obligations back and forth between the FOIP body and the PIPA body. It's just something that needs to be smoothed out. It's a hiccup that needs to be smoothed out because, obviously, the governing body of the charter school needs to share, collect, use, and disclose information about what's going on in their school. However that's dealt with, we just wanted to bring it to the attention of the committee that there's actually this rub there. It's one of those leftover considerations from when PIPA was brought in in 2004, but it does have the potential to get either body in hot water in terms of disclosures or collections or uses of that information.

Ms Blakeman: It's also a difference between who owns because a private owner is treated differently than a not-for-profit society that's running the charter.

Ms Shane: Absolutely. The right of access is much more limited under PIPA – you're only allowed to ask for your own information – whereas that universal default right of access under FOIP, subject to specific limitations and restrictions, is much broader.

Ms Blakeman: Thank you.

Ms Shane: Does that help?

Ms Blakeman: That's what I was looking for.

Ms Shane: Okay.

The Chair: Thank you very much. We appreciate your time and your effort.

By the way, our committee clerk has informed me, Ms Shane, that you helped our Legislature Librarian, Sandra Perry, develop the three-volume centennial collection that all of us enjoyed very much.

Ms Shane: Yes. I was contributing author, the first author on the Premiers' book, and it was an extraordinary experience in very many ways and something I've greatly cherished. I sound like such a smarty-pants at work now. I can tell you anything you'd like about any of the Premiers in the most excruciating detail.

Anyway, thank you very much for your time. We appreciate the opportunity to have this dialogue with you.

The Chair: Thank you again.

Dr. Clintberg: Thank you, Chair.

10:00

The Chair: We'll just take a couple of brief moments while we're vacating one seat and filling it with the Law Society of Alberta for the next presentation, please.

I think we're ready for the next presentation, and we will do as we've done in the past. We'd like to welcome the Law Society of Alberta for the third presentation this morning. For the record we'd ask that you give us your name, your title, the group, and then we're going to introduce ourselves to you as well. You'll have 15 minutes for your presentation, which will allow us some time to ask questions, and we'll let you proceed from there.

Mr. Penny: Thank you. My name is Michael Penny. I am the director of policy and research with the Law Society of Alberta.

Ms Blakeman: Welcome, Mr. Penny, and welcome to my fabulous constituency of Edmonton-Centre. My name is Laurie Blakeman, and I'm delighted to be here today.

Ms Notley: Good morning. My name is Rachel Notley. I'm from the riding of Edmonton-Strathcona.

Mr. Vandermeer: Good morning. I'm Tony Vandermeer, the MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good morning. Fred Lindsay, Stony Plain.

Ms Pastoor: Bridget Pastoor, MLA for Lethbridge-East and deputy chair.

The Chair: Barry McFarland from Little Bow. I chair the committee.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Good morning. Dave Quest, MLA, Strathcona.

Mr. Horne: Hello. Fred Horne, Edmonton-Rutherford.

Mr. Olson: Good morning. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Good morning. Raj Sherman, Edmonton-Meadowlark.

Dr. Massolin: Good morning. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from Calgary.

Mrs. Forsyth: Hi. I'm Heather Forsyth from Calgary-Fish Creek. Thank you. Welcome.

The Chair: You're more than welcome to proceed now, Mr. Penny.

Law Society of Alberta

Mr. Penny: Thank you, Mr. Chairman. I should begin by saying that my appointment as director of policy with the Law Society of Alberta is relatively recent. Prior to that, I spent 26 years in private practice and had to deal with issues of confidentiality and disclosure in a practical way, and I think that has given me some insight into the importance of at least one of the topics I'm going to be speaking to today.

You will have seen Mr. Thompson's June 30, 2010, letter, which addresses the two aspects of FOIP that I wish to address today. In both cases we are not asking for any change. I am here to support the legislation as it currently stands and, in fact, to endorse the importance of it in that the legislation as it currently stands, in the view of the Law Society, furthers the public interest in the appropriate administration of justice in the province.

I should begin by clarifying a couple of things about the Law Society of Alberta that often our own members, the legal profession of the province, don't fully understand. The first is that the Law Society regulates the legal profession in Alberta by licensing lawyers and enforcing standards of conduct and practice. It is entirely funded by the lawyers it licenses through their annual fees. It receives no public funding and is not a public body. I realize I'm now the second representative of a nonpublic body to appear before you, but I think our concerns are still quite serious.

The Law Society of Alberta is not an advocacy body on behalf of lawyers. There are some very capable advocacy bodies on behalf of lawyers, like the Canadian Bar Association, the Edmonton Bar Association, and so on. But we are the regulators, and it is not our aim to further the interests of lawyers except insofar as it furthers the public interest. That is our mandate. We express it in just about everything we do, in my view. Our submissions are therefore directed at serving the public interest by reinforcing two aspects of the FOIP Act, which assists to promote the administration of justice in Alberta.

The first aspect of the act is solicitor-client privilege. I can tell you that when I was in private practice, much of my work was in the area of insolvency. I had many clients who were in distress, nobody to talk to, and nobody to turn to. It was important that they felt confident that they could tell me what I needed to know to give them advice. It was just as important that they knew it would be kept secret and that they did not have to divulge the advice I had given them except under certain very strict exceptions. Solicitor-client privilege is the absolute right that clients have to control the privacy of their communications with their lawyer and the advice they receive from that lawyer. It is central to the role of the lawyer as adviser and the need of the client for that advice.

The Supreme Court has recently said in their Blood Tribe decision:

> Solicitor-client privilege is fundamental to the proper functioning of our legal system. The complex of rules and procedures is such that, realistically speaking, it cannot be navigated without a lawyer's expert advice.

Frankly, listening to some of the submissions on privacy, I don't pretend to be an expert on privacy, but I would go to a lawyer to get advice on privacy. It all sounds very complicated to me, and I'm not always sure of the vocabulary that's being used. Some of it doesn't even sound like English, but I'm sure it is.

In any event, it is said that anyone who represents himself or herself has a fool for a client, yet a lawyer's advice – this is the Supreme Court speaking, by the way – is only as good as the factual information the client provides.

> Experience shows that people who have a legal problem will often not make a clean breast of the facts to a lawyer without an assurance of confidentiality "as close to absolute as possible."

And then they quote precedent and finish by saying that "it is in the public interest that this free flow of legal advice be encouraged." Without it "access to justice and the quality of justice in this country would be severely compromised."

I emphasize that the right belongs to the client, not the lawyer, so the choice to waive it also belongs to the client. That is the member of the public that the act is designed to protect in respect to solicitor-client privilege. The actual protection is set out in section 27. We note that it applies not only to privileged information for which the public body itself can claim privilege but for which a person other than the public body can claim privilege. That is important. We are not aware that the committee is considering any derogation from this position, but we know that the entire act is under review, and our submission is that there should be no watering down or exception to the current section 27 as it stands as a current statement of an absolute right that a member of the public in Alberta has.

Thus endeth the sermon, I think.

In any event, the second point that the Law Society wishes to make relates to advice from officials, which is covered by section 24 of the act. This one is perhaps not so clear cut, but we are also in this regard submitting that the act not be changed. Section 24 protects the privacy of advice from officials to a public body, and those officials do not have to necessarily be employees or staff of the public body.

The Law Society has expertise and experience in justice issues and occasionally provides advice and recommendations on those issues. It is also often invited to consult with members of a public body on the administration of justice issues. More often than not, that advice is given in a public forum, so this issue doesn't arise very often. There is no expectation when the advice is given in that public forum. But there are circumstances, perhaps, sometimes when the advice is given with robustness. That was a term that Mr. Thompson included in his letter. Sometimes you need to be honest with your friends. We do believe that we have friends at Alberta Justice, and we certainly speak to them a great deal.

Sometimes we are setting up policy options that are not fully matured, require further discussion, contain several options, and it would be inappropriate that those different options be out there in public before a final decision has been made. The public interest is not served by such early disclosure before the final policy decision is made. But as I suggested earlier, the current provisions of section 24 cover these circumstances and, in our view, do so appropriately.

10:10

I remember, when I was a young lawyer, a judge telling me: be upstanding; be brief; be gone. So now I'm gone, but I thank you very much for the opportunity to make these submissions. Thank you for your time and consideration, and I'd be pleased to answer any questions you may have.

The Chair: Thank you very much, Mr. Penny.

I will open it up on a brief note, with the first question from Ms Blakeman.

Ms Blakeman: I understand the points that you're making about the importance of confidentiality in the advice that's given to policy development. My experience as a member of the opposition is that that clause in 24 is used frequently as a way of denying us access to information that would either allow transparency or help us understand what other options were not followed through. I find the provisions of 24 far too wide. Could you offer an opinion on that? Do you see any reasonable limit to what is in there now, or do you prefer it to be as wide open as it is, which is never-ending, frankly, with a few exceptions?

Mr. Penny: Sure. I would say on behalf of the Law Society that although it is wide open, we very, very rarely seek the protection of those provisions simply because most of the dialogues we are having with Alberta Justice, the courts, or other organizations involved in the administration of justice have to be public, and they are public.

We know that going in. But every so often we do run into circumstances where there may be sensitivities – they may be recognizable as involving particular clients or particular rights – that, really, we'd like to comment on, but we can't go public with it until some kind of final decision has been made.

Ms Blakeman: Which is never made.

Mr. Penny: Well, we like to think that we do promote decision and require decision, and sometimes, in many of the circumstances that we're involved in, decision has to be made; there's no question about it. I think, for example, of the work that the Law Society of Alberta is doing with various other justice officials related to the access to legal services for disadvantaged lawyers. That's not something that's going to go – sorry. Disadvantaged lawyers: there's an interesting slip. Disadvantaged Albertans. You know, that is going to have to be dealt with, and the submissions with regard to it are going to have to be open to public debate. There are a series of options that can be pursued. Not all of them can be pursued. There just isn't the money; there isn't the time. But they have to be on the table at some point. In the early stages, while those options are being developed – I refer to some of the things that Dr. Heth was saying about university research, and I'm aware of the questions you were asking him about that as well. Sometimes things are just inchoate, and it would be almost misleading if it got out in public at that stage.

I hope that assists you.

Ms Blakeman: It doesn't convince me.

The Chair: Thank you, Ms Blakeman.

Mr. Lindsay, please.

Mr. Lindsay: Thank you, Chair. Thank you for that excellent presentation. I don't have a question, just a comment. I want to say that it's refreshing to hear from a learned society that the FOIP legislation actually works for you and meets your expectation and approval. Again, thank you for your presentation.

Mr. Penny: I'm not saying that we don't have very fruitful discussions with your commissioner from time to time, but, no, we're not seeking any amendment to the legislation.

Thank you.

The Chair: Thank you.

Ms Notley, please.

Ms Notley: Yeah. I have to say, notwithstanding the quality of your presentation, that I also have some concerns around what you're suggesting with respect to the appropriateness of the current exemption for policy advice, and I'm a bit taken by, you know, the phrase: well, we have our friends in the Ministry of Justice. As I'm sure you know if you follow politics somewhat, I mean, some people might argue that not all Albertans have friends in government corridors. Of course, the whole idea around FOIP legislation is to ensure transparency for those Albertans who don't actually have relationships built up over 40 years of the same people being in place. So I guess that's a concern.

With that as my sort of introduction, you mentioned, you know, that you rarely seek the protection of this section, that you don't feel that you need to, but if you were to know that the government itself seeks that protection in 60 or 70 or 80 per cent of public interest FOIP requests that go forward to try and find out what is being discussed before it's dumped on people as a done deal, would you still think that that's an appropriate application of that clause?

Mr. Penny: Let me first clarify the use of the word "friends." As Mr. Olson will know, when you're in court and you have your opponent, they are your learned friend, so it's a little bit of a cover. We don't agree with Alberta Justice all the time, and they don't agree with us all the time, so please don't read too much into the use of that word.

Ms Notley: I was being somewhat facetious with that, anyway.

Mr. Penny: Yes, indeed. But we do have discussions with them. No question. I mean, we have to. We regulate the legal profession; they deal with the courts and many aspects of the legal profession that are of vital interest to us. All I can say is that we are not the public body involved, and we can't necessarily have an opinion as to what the public body does with the material that we give them. There is a provision in the act – I'm trying to remember; section 30? – that if our rights are affected when a request is made of a public body for disclosure, then we are consulted, and even those consultations are very rare. Again, at the moment I'm speaking largely theoretically. We would like the ability to give policy advice. We would like the ability to remain frank about it and robust, to use Mr. Thompson's words, and we think that section 24 gives us that right.

Ms Notley: I guess my concern would be: ultimately, how robust is it if there are only two or three people in the room? Nonetheless, I think we're going to have to agree to disagree on that one.

The Chair: Thank you, Ms Notley. I'd turn it over to Dr. Sherman, please.

Dr. Sherman: Well, thank you very much for your presentation. I'd just like to make a comment, and I have a question. I appreciate the solicitor-client privilege protection. It's akin to a doctor-patient relationship. That's probably the most sacred conversation that you have, along with the conversation you have with your priest. With respect to advice to officials, is there any other province that says under FOIP that advice to officials should be made public?

Mr. Penny: I'm not really sure I understand your question, Dr. Sherman.

Dr. Sherman: Ms Notley and Ms Blakeman as members of the opposition feel that this should be subject to FOIP. Is there anyone that actually allows that to happen under FOIP?

Mr. Penny: Not that I'm aware of, no.

Dr. Sherman: Thank you.

The Chair: Dr. Sherman, thank you.

Mrs. Forsyth, have you any questions?

Mrs. Forsyth: No. I'm fine. Thanks, Chair.

The Chair: Are there any other questions?

Ms Blakeman: Are you familiar enough with other FOIP legislation to be able to answer his question?

Mr. Penny: No. In fact, I discounted my expertise on privacy law at the start of my submissions. I'm familiar just in the practical

sense that I've had to deal with it from time to time. Of course, the Law Society was through the Federation of Law Societies an intervenor in the Blood Tribe case, which involves the federal PIPEDA legislation. I don't pretend to be an expert on FOIP legislation as such. The gravamen of my submission, frankly, relates to the solicitor-client privilege.

Ms Blakeman: Thank you. A follow-up question. The government has proposed two amendments relating to privileged records. I'm wondering if you're aware of what they've proposed and if you have a comment on it.

Mr. Penny: I'm aware of one of them, and I do believe it's an amendment that reflects a change that was already made to the PIPA legislation with regard to the preservation of privilege in the event that the commissioner comes into possession of privileged information either through what we call a limited waiver or perhaps even through misadventure. Certainly, sometimes privileged information is accidentally released. We see those provisions as extending and enhancing the protection of solicitor-client privilege, so insofar as we have a view – and we try to avoid having views on legislation other than our own Legal Profession Act – we are not opposed to it.

10:20

I will explain – and I come back to this, and I keep coming back to it – that the privilege is the right that belongs to the client. Only the client can waive it, and the client is entitled under certain circumstances to waive the privilege for a limited purpose. They may choose to waive it just to allow a judge to review something, or they may choose to waive it to allow the Privacy Commissioner to review something. But it has always been understood at the common law that even though a client will give that limited waiver, that's not a waiver for all purposes. Just because they're allowing one other person who ordinarily would not be enabled to see that privileged information to see it, they're not letting the public see it.

The one amendment that I am aware of essentially addresses that point and just says that it affirms that if the waiver is limited, it must remain limited and that the solicitor-client privilege is preserved.

Ms Blakeman: Good. Thank you.

Mr. Penny: I'm not sure I know about the other amendment.

Ms Blakeman: I'd have to go look it up.

Mr. Penny: Okay.

The Chair: Well, thank you very much for your time and your presentation and your candour, Mr. Penny. I appreciate that you've taken time to make your presentation to us orally as well. It will certainly help in our future deliberations.

Mr. Penny: Thank you, sir, and your committee for your time as well.

The Chair: Thank you.

While we're setting up now for the city of Edmonton, Stephanie LeBlanc has some information in response to Dr. Sherman's question. Maybe you could share it with us.

Ms LeBlanc: Thanks, Mr. Chair. Within the cross-jurisdictional comparison there is an examination of the advice from officials exemption. On page 17 the exemption chart looks at seven different jurisdictions, and you can see that all the compared jurisdictions have the advice from officials exception. Then if you continue on to the following page, page 18, there's an analysis: "(1) What is exempted from disclosure? (2) Does the information have to be disclosed if the record has been in existence for a certain period of time? (3) What information is not included in the exception?" There's just an analysis of those seven different jurisdictions.

If you don't have copies, I'm sure we can make them available. Thank you.

The Chair: Thank you for the information, Ms LeBlanc.

To the city of Edmonton, welcome. I noticed that you came in, and we've got this little routine that takes a few minutes, so please bear with us. We're going to ask that you identify yourselves with your full name and your title for the *Hansard* record, we're going to introduce ourselves to you, and then you will have 15 minutes to make your presentation to the committee. Hopefully, it gives us another 15 minutes to have some dialogue back and forth with you folks from any of the committee members.

I'm going to back up just one second. We also have one of our committee members on teleconference, so she'll identify herself after the rest of us have.

Would you please proceed?

Ms Sinclair: Thank you, Mr. McFarland. I'm Alayne Sinclair. I'm the city clerk with the city of Edmonton, and I have with me here today two others, who I'll ask to identify themselves.

Mrs. Giesbrecht: Hello. My name is Aileen Giesbrecht, and I'm the director of governance and legislative services with the office of the city clerk.

Ms Mann: My name is Kate Mann. I'm the corporate FOIP analyst with the office of the city clerk.

Ms Blakeman: Good morning and welcome to all of you. My name is Laurie Blakeman, and I'd like to welcome you to my fabulous constituency of Edmonton-Centre.

Ms Notley: Good morning. My name is Rachel Notley, and I am the MLA for Edmonton-Strathcona.

Mr. Vandermeer: Good morning. I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: Good morning. I'm George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good morning. Fred Lindsay, MLA, Stony Plain.

Ms Pastoor: Good morning. Bridget Pastoor, MLA for Lethbridge-East and deputy chair.

The Chair: Barry McFarland, chair, MLA for Little Bow. Good morning.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Good morning. Dave Quest, MLA, Strathcona.

Mr. Horne: Fred Horne, MLA for Edmonton-Rutherford.

Mr. Olson: Good morning. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Good morning. Raj Sherman, Edmonton-Meadowlark.

Dr. Massolin: Good morning. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from Calgary.

Mrs. Forsyth: Hi, everyone. I'm Heather Forsyth, Calgary-Fish Creek. It's difficult to see when it's ending, so thank you.

The Chair: Thank you very much.

We welcome you now to proceed with your presentation.

City of Edmonton

Ms Sinclair: Thank you, Mr. McFarland. We welcome the opportunity to share the input from the city of Edmonton today. I think it's important to say first that the city of Edmonton is committed to an open and accountable government. Our goal is that most information that citizens seek will be readily available to them and, at the same time, that we fully protect the privacy of individuals.

In 1999 we embraced the spirit and the principles of FOIP, and we implemented a corporate FOIP program and trained all our staff. Our FOIP office regularly provides assistance and guidance to other municipalities in the region. We maintain a good relationship with the office of the Information and Privacy Commissioner, and I believe it's fair to say that we are respected for the standard with which we apply the act.

Like many municipalities we find it increasingly difficult to deal with the expanding number and increasing complexity of FOIP requests. Over the years FOIP has become better understood and is now often used as a prelitigation research tool. The number of annual FOIP requests the city of Edmonton receives has increased from eight in 1999 to an expected 200 this year. Our resources to respond to requests have not increased accordingly. Each year we find it more difficult to meet the legislative requirements. In our letter of June 30 we provided suggestions that we feel will maintain the intent of the legislation and allow us to provide the appropriate access to information that citizens expect.

Our suggestions fall under four main categories. First is paramountcy. Section 5 of the act makes FOIP paramount over most legislation, but section 17(2) provides that disclosure is permitted if any other Alberta or federal legislation requires or authorizes disclosure. Citizens expect that their information is protected under FOIP, but they may not know there is a blanket exception. It is not possible to do a comprehensive review of all Alberta legislation to determine essential restrictions on privacy rights of citizens and whether previously enacted disclosure provisions are necessary. A blanket exemption does not require other legislation to contain clear and express wording that it operates within FOIP, and it undermines the rights protected by section 5 of FOIP.

The second topic we mentioned in our letter was improving access to records. We do not want to prevent a citizen from accessing information that should be available. The act prohibits disclosure of information that would be an unreasonable invasion of privacy. Most public bodies would choose to err on the side of caution, which may mean information is unnecessarily withheld. We suggest these provisions could be clarified to give public bodies more objective criteria to guide decisions on when to disclose information.

Our third topic area is about making the act easier to administer. As I have said, the increasing volume and complexity of FOIP requests make time frames tighter each year. We have become increasingly reliant on the 30-day extensions in order to process requests that involve a large number of volumes.

We suggest three changes to help us manage citizens' expectations in this changing environment. One is to extend the response deadline to 30 working days or 45 clear days. Although we can meet most requests in 30 calendar days, this extended deadline would help us deal with more complex requests as well as statutory holidays, vacation periods, and so forth. Two, allow public bodies the option of extending the time limit for responding to multiple concurrent requests without making an application to the commissioner. This extra step slows an already complex process even further. Three, legislation should set a standard for the reasonableness of the search for electronic records. The city of Edmonton has developed its own processes, but citizens should be able to expect a consistent approach from all public bodies.

Our fourth main subject area is about harmonizing the act with other legislation. FOIP is the gold standard in access and privacy legislation. Citizens are already well served. We believe harmonizing all provincial privacy legislation would dramatically increase the complexity of our work and would serve only to add new barriers. Again, this would create an unnecessary burden to already tight resources.

The purposes behind the three provincial privacy acts are different. PIPA seeks to control the private-sector entities, including credit-granting agencies, which are often in the possession of detailed client financial and personal information. Mandatory breach reporting is useful in that context. The HIA regulates the health industry to ensure patient records are retained at the highest level of security and that the minister can audit how physicians and others provide provincially funded services. Making the collector of resources the custodian for all purposes makes sense in those circumstances.

These considerations do not extend to public bodies such as the city of Edmonton, which is governed by FOIP. We collect and retain different records for different purposes. The city, for example, collects a fragment of information for registration and recreation programs and would often not have sufficient information to reach the participants to comply with the mandatory breach provisions. The city of Edmonton collects health information, primarily in its role as an employer or as an outreach provider, when it is necessary for determining eligibility for employment or administering benefits or city programs. We do not generally provide information-based services or collect volumes of personal medical information. The information we collect is already protected by FOIP, and the amount and scope of this information does not begin to compare with the information collected by the health authority.

10:30

Finally, we have two suggestions concerning the modernization of the act. First, the FOIP Act should provide some guidance on the acceptable collection, use, and storage of biometric information. The increasing prevalence and affordability of biometric technologies will lead to more opportunities to adopt these kinds of security practices in facilities and IT applications. This type of information

is irrevocably tied to an individual. Retinal scans, handprints, and the like cannot be replaced if stolen or lost, which makes their use potentially problematic. The city of Edmonton would like to request that the FOIP Act be amended to provide specific guidance on acceptable collection, use, storage, and disclosure of biometric information.

Second, we would like to standardize the procedures for releasing electronic records. We are concerned that the existing technology does not provide a good way to predict redacted pieces of information within an electronic file. Old notes, changes, or metadata can easily be recovered, and it can be information that has already been redacted. We do wish to make the FOIP experience easier for citizens, but until better technology is available to protect the types of hidden information, we would like to request that the electronic disclosure of records not be required by the FOIP Act.

The city of Edmonton would also like to be part of any future discussions related to electronic disclosure of redacted records.

Again, thank you for the opportunity to provide these brief remarks. I would be happy to respond to any questions you have.

The Chair: Thank you very much, Ms Sinclair.

Some of the first questions would be coming from Ms Blakeman.

Ms Blakeman: Thanks very much, Chair. You've answered a number of the questions that I had, but one of the ones I'm curious about is with one of your harmonization points. You appear to be saying that you don't like the idea or feel it's unreasonable to require a public body such as the city of Edmonton to report a privacy breach because it seems like you feel you'd have to go back to the individual, but mostly what's in there is reporting a privacy breach to the commissioner. Could you explain why you think it's unreasonable to report a privacy breach from the city of Edmonton to the Information and Privacy Commissioner?

Ms Sinclair: We already report privacy breaches under FOIP to the commissioner. Also, we don't collect, often, sufficient information to go back on it.

If you want it a bit further, I might ask if Kate Mann could expand my comment.

Ms Mann: Certainly. Really, the city of Edmonton has no objection, I'm sure, to reporting privacy breaches to the Information and Privacy Commissioner. The problem is that very often the information that we have about citizens is fragmentary, and we really don't have a comprehensive database that would enable us to tell the commissioner definitively that this person's information has been breached and to know who to go back and notify. We have little pieces of information about a lot of people, but it's not really organized in a manner that would allow us to identify even who the individual is. So while we have no objection to reporting it to the commissioner, any kind of order to report that breach to the individuals whose information was breached would be difficult or impossible for us to actually perform.

Ms Blakeman: Okay. You didn't include the first part in your submission, so thank you very much for that explanation.

The multiple concurrent requests. Oh, sorry. That's a second question. Can you put me back on the list?

The Chair: Certainly.

Mr. Olson, please.

Mr. Olson: Thank you, and thank you very much for the information. I just have a quick question. You know, just sitting here listening to you makes me realize the commitment that the city of Edmonton has put into this whole area. I'm wondering if you can tell me a little bit about your budget. What's your total budget for dealing with FOIP issues?

Ms Sinclair: I'm sorry, Mr. Olson, but I actually didn't anticipate that question. I would tell you that it's not large. We have one dedicated staffperson in my office. We have another supervisor over that individual who probably spends about 80 per cent of her time on it. I have one clerical staff whom we have recently moved to spend probably 80 per cent of her time on it.

Then each department has an individual who on the side of their desk does FOIP, so as part of another job FOIP is part of that. We probably have eight or nine other individuals who on a part-time basis do FOIP.

Mr. Olson: So there's not a line item in the budget for FOIP initiatives?

Ms Sinclair: No. It's just part of my budget.

Mr. Olson: Yeah. Okay. Thank you.

The Chair: Mrs. Forsyth, do you have any questions?

Mrs. Forsyth: No. I have no questions other than, I guess, that Ms Blakeman brought up the fact about the harmonization point and the reporting of the privacy breaches, and they indicated they had a problem with their database. What's the solution to that, then?

Ms Sinclair: It's actually not a problem with the database. It's just that when we do our personal privacy information assessment, we collect only the data we need. So when you're registering for a recreation facility, we may collect very little data, and it's in that department's database. If another department collects the tax assessment database, they only collect the private information that is required in that one. The two databases are separate, and we don't have any intention of merging them. We don't want to merge.

Mrs. Forsyth: So is the problem the reporting of the privacy breach?

Ms Sinclair: By no means. No. We would be happy to report privacy breaches. As I said, I think that currently when we have a privacy breach, we have reported them to the commissioner's office. We have no problem with reporting, but the fact of the matter is that if we were told that we had to go back and tell people about it, it may be difficult to find some individuals, depending on what the privacy breach was.

Mrs. Forsyth: Is that because it could be contained in a different department?

Ms Sinclair: It could be. Or that it's very limited data that we have on the individual: they just happened to register at a rec facility for a yoga class, and we have their name and a phone number, and the phone number may not be relevant anymore.

Mrs. Forsyth: Oh, okay. Thank you. Thank you, Chair.

The Chair: You're welcome.

Ms Notley, followed by Ms Pastoor, please.

Ms Notley: Yeah. I'm just looking at item 3 in III of your submission, talking about the reasonableness of search for electronic records. You talk about how you would be seeking some objective criteria with respect to what amounts to a reasonable electronic search. I'm just wondering if you have any idea of what that might look like.

Ms Sinclair: We've developed a bit of a guideline. I wouldn't say that it's a corporate administrative directive, but we have a guideline that directs. I don't know if we would wish to, but I could provide the committee with a copy of a process to which individuals would be directed on how they could search their Word documents, how they could search their e-mail documents. Of course, with the expanding types of technology this becomes bigger and bigger. This doesn't include directions on how to search any stored data on a BlackBerry or an iPhone. Of course, this applies to anyone's laptop.

When you're looking for data, it becomes quite an extensive task to decide where you're actually searching. We've given a guideline to our department, and we'd be happy to leave that with the committee. I only have one copy.

The Chair: Thanks, Ms Notley.

Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. You spoke about harmonization and harmonization with other privacy legislation. I'm particularly thinking of the Health Information Act. The employee custodian may be obliged to put some health information collected for employment purposes such as drug tests or, in particular, perhaps medications that they would be using into the electronic health record, which can be accessed by other health service providers. I think there are other public bodies that think that this change would have a negative impact on their operations, which would probably give them little gain.

Public bodies may require separate information systems for the custodians that they employ, and the custodians may not be able to disclose health information for programs for the public body that would involve employees in different disciplines. This wouldn't necessarily apply to you in terms of nurses, social workers, those sorts of things, but they certainly would I think apply to people in your HR departments. Could you explain how you expect that the changes in the scope of the Health Information Act may affect the city of Edmonton?

10:40

Ms Sinclair: Ms Pastoor, I think you've actually summarized it very well yourself. It would be the requirement of actually setting up a new database and maintaining that information separately, and in an organization of 14,000 employees that's quite a huge task and a huge economic disadvantage to our city. We already maintain the information, and it's already protected under FOIP. We don't believe there's any need for us to be part of HIA and would prefer not to be.

If you want any more specifics, I don't know if Kate could provide anything else.

Ms Pastoor: No. I guess it's just me that is very concerned about the Health Information Act and electronic health records.

Ms Sinclair: If we weren't clear enough – and I apologize if we weren't – it is a huge concern for the city of Edmonton, and our human resources department is quite concerned about that section.

Ms Pastoor: Are you anticipating setting up something very separate? I mean, I'm looking at huge costs here.

Ms Mann: We will do everything we have to do to comply with the HIA if, in fact, the city of Edmonton is brought under it. That said, the extent to which the city of Edmonton would be brought under HIA would depend on how the regulations were amended. We really haven't seen what the HIA regulations would look like or the proposed amendments to that, so it's very difficult to speak specifically. However, I'm sure that if the regulations give us wide coverage into the HIA, the burden could be tremendous. In addition to the databases, we may also have to set up different people to be HIA co-ordinators, and it's staff, it's resources, and it's time and money that I think the city just doesn't have at this point.

Ms Sinclair: Just to clarify Ms Mann's comment there: HIA co-ordinators as we would have a FOIP co-ordinator. It may be that instead of someone doing it off the side of the desk in their department, we will have to have dedicated individuals. Again, at this moment in cutbacks it is a difficult time to suggest that we would have those resources in the city to do that.

Ms Pastoor: Yes. Thank you for that. Certainly, anything that would apply to the city of Edmonton would apply to all municipal governments, so it was sort of a global question. Thank you for answering it.

The Chair: Thank you.

Mr. Quest, please.

Mr. Quest: Thank you, Mr. Chair. Just on some of your requests for more time to process these. You're asking for this extension of 30 days and then an extension for multiple and concurrent requests. I'm just wondering, because we've had other presenters say that 30 days is too long, if maybe in some discussions with counterparts and other municipalities this is common.

Ms Sinclair: I would say that for the majority of requests in the past, for the first seven or eight years that we did FOIP, 30 days was ample time. We've found in the past two to three years of FOIP requests that the type of the request has changed, and it's almost impossible for us to meet the 30 days. If we had 30 clear days, we probably could do it. It's sometimes that we have, as I say, people preparing for litigation, so we have one side asking for the FOIP materials and then the other side asking for it. You're sometimes dealing with copying two files at the same time, so you have to sort of work on one without working on the other till you're finished one and then work on the other. You don't want to lose your records; you don't want to mix them. You've got to get them properly.

It has been onerous on us given the resources we have. I would say that we probably have required the 30-day extension more often in the past two years than we ever have in the past eight years. I'm not sure on my numbers, but Calgary and Edmonton probably have the largest number of FOIP requests in the province, the other areas having much less. I think they will find the experience that we have found as the years move on.

Mr. Quest: Okay. Thank you.

The Chair: Thank you.

Dr. Sherman: I'd like to thank you for your comprehensive presentation. I really liked the part about the biometric collection and modernizing the act and moving towards the future because,

really, we need to prepare this act for the next 10 to 15 years, until the next review.

We're faced with this decision of the timeliness. Just building upon what Mr. Quest said, on the one side, for the people who want access to information, you know, access delayed is access denied. That's the issue that they have. For the ones that are providing the information, I appreciate your challenges just because of the resourcing and the number of requests you have. What would we say to those who want access and are telling us that the longer you delay our access, you're basically denying the access? What can we say to that side if we were to actually consider increasing the days to 30 business days?

Ms Sinclair: One of the things that we tell our departments consistently is: if this is information that the public should have, let's get it out there. For example, recently in a major issue we've just placed a full contract for the head lease of the airport on the web. Instead of people having to make the FOIP request on it, it's on the web. So the more and more information that we can put available to the public, we're trying to do so so that it will reduce the number of FOIP requests we get. I guess we're trying to anticipate the information people would like. As you know, our council minutes are the council records. Recently, in the past few years, the records of the Subdivision and Development Appeal Board are available on the web. The more we can put on the web, the more we are.

I guess that's our counter, that we are trying to provide as much information as we can. When people come to us, we want to make sure we're giving them the proper record and we are properly protecting privacy. You know, we want to follow the rules of FOIP. We're not trying to deny their access; we're just trying to make sure that we protect privacy as well. It's a balance. It always has been. We try to meet the dates.

Dr. Sherman: Thank you.

The Chair: Mr. Groeneveld, please, followed by Mr. Vandermeer.

Mr. Groeneveld: Thank you, Chair. And thank you for your presentation this morning. I think it's great to have representatives of a municipal government here. As you know, sometimes other sectors of government get a little skewed, maybe, on party basis, but hopefully that doesn't happen with the city of Edmonton. It probably doesn't.

The fact of the matter and, I guess, the question I have. It would appear to me that you're not having that much difficulty with the act itself; it's more some of the mechanical issues that should be streamlined. Am I reading that right?

Ms Sinclair: I believe you're correct, yes.

Mr. Groeneveld: Okay. Thank you.

The Chair: Thanks, Mr. Groeneveld.

Mr. Vandermeer: What would you say is the majority of your FOIP requests, and would you consider some of these frivolous?

Ms Sinclair: Any citizen request, of course, is never frivolous.

Our majority of requests fall under a category that we call general, but the next one is personal requests, probably about 25 per cent of our requests. Ms Mann, is there anything you can comment on the general?

Ms Mann: Well, the general requests are typically about just about anything you'd read in the newspaper. If it's about the city and about tax dollars and about money, typically there's going to be a FOIP request made for it either before the newspaper story or afterwards.

Requests are also increasingly common from businesses that want information from us because they believe that getting information from the city could enhance their own business practices. So we're seeing an increase in commercial requests. We're also seeing a tremendous increase in requests where there is litigation involved. The city may or not be party to that litigation. A lot of times we are not party to it. It's just the various factions in the court case that are trying to get information from the city.

Some of the files for the general requests typically can be up to 2,000 pages. We've seen requests that are up to 7,000 pages go out. So it can be a daunting amount of information, particularly from the corporate requesters and the requests that are related to litigation.

Mr. Vandermeer: Do you charge them for this information?

Ms Mann: We charge them as is required under the act, but the charges, of course, do not come close to actually recouping the costs of the amount of work that the city puts into the requests.

Ms Sinclair: As you would know, as well under the act if it's a not-for-profit organization or if it's a matter of general public interest, we can reduce our fees, and we have on several occasions.

Mr. Vandermeer: Thanks.

The Chair: Thanks, Mr. Vandermeer.

I'd like to pose a hypothetical to you because of the size of your operation. There are two parts to it. Is it still possible for a citizen to come in and view the assessment roll once a year?

Ms Sinclair: Yes. We even get it at our office still, I think. Yeah.

The Chair: Second, if you had a community group that wanted to do up a history book or a historical profile of their community and they wanted to come in and see who actually owned the land at a previous point in time, would you allow them to have access to that kind of information in developing this historical book? At the same time would they be able to see who currently owns the property so they could have a before and now scenario?

10:50

Ms Mann: If we had the information about landownership, and it was landownership that showed a company owned certain land or a store building or whatever, we could certainly give that out. I don't even believe that would require a FOIP request. If an individual owned it, like John Smith owned the saddle store along Stony Plain Road, we would have to be more careful, and it would depend on if that individual was still living or dead or even if we had that information.

The Chair: Just out of ignorance, why the difference if it was an individual owner that's historic?

Ms Mann: Well, individuals do have privacy rights, so we would have to look at whether or not releasing the name of the store owner or the name of an individual was an invasion of their privacy. It would just have to be considered. Whether it would be or not, I don't know.

Ms Sinclair: The city archive records in a historical aspect provide a huge amount of research capacity for people. So if someone came to our office, I'd probably first refer them to our city archives. If they weren't of help, then we would try to find it elsewhere in the corporation. Then if they needed to, we would ask them to do a FOIP request.

The Chair: Very good.

Back to our second list now, we have Ms Notley, followed by Dr. Sherman and Ms Blakeman.

Ms Notley: I just have a quick question. We heard a lot yesterday about issues around cloud computers. I'm just wondering what the practices are at the city with respect to the storage of data. Are you storing it in Alberta, out of Alberta? What sort of contracting practices do you have in place right now?

Ms Sinclair: The majority of our information is within the city of Edmonton and is stored within our own computers. There are two systems that are out of country. One is in the U.S., and one has recently moved to Amsterdam. In a cloud situation, as I gather, you know, the server is elsewhere.

Ms Notley: Right. Do you have contracts for each of them that inject the FOIP standards?

Ms Sinclair: Yes. As you know, we're required under the legislation to do a privacy impact assessment, and assessments were done on those prior. I believe we even communicated with the commissioner's office on one of them as well.

Ms Notley: Okay. Thank you.

Ms Sinclair: It's something that we've worked very hard with our chief information officer to ensure his understanding of it, and he's very supportive of FOIP.

The Chair: Dr. Sherman, followed by Ms Blakeman, please.

Dr. Sherman: Thank you, Mr. Chair. I just want to build upon a couple of the other questions that were asked on access when it comes to fees. I'm a numbers guy. From your 200 cases – I'm going to throw a couple of questions at you here all in one – how many did you comply with, and how many did you refuse? Of the ones you complied with, what's sort of the average cost to the person making the request, and what's the average cost from your budget per request? Of the ones that were refused, how many just went away, and how many went to the office of the Privacy Commissioner?

Ms Sinclair: Is that some information that we could provide to your committee after this meeting? We could provide that information to you.

Dr. Sherman: Sure. Absolutely.

Ms Sinclair: It may be in the commissioner's material.

Ms Blakeman: Yeah, it is. Some of the stuff you mentioned today is in here.

Dr. Sherman: Of the ones that you refused, how many simply went away and how many went to the office of the Privacy Commissioner? Of the ones that went to the OIPC office, how many were dismissed? In answering Mr. Vandermeer's question about frivolous complaints, I'd just like to get a sense. We're going to have a lot of these issues coming up in the future, and there's going to be a burden on every agency from every profession to every regulator to every city to every municipality. In complying with the request, you're going to have resourcing issues, and for the public, they want access to information. So I'd just like a sense of what the numbers are here and the costs.

Ms Sinclair: As a brief summary – but I would be happy to provide more information if the committee wanted it – by December 31, 2009, 18 requests had been carried over into 2010. Of the 144 requests closed in 2009, information was partially disclosed to 71 requests, information was fully disclosed on 40 requests, five requests were abandoned, 12 requests had no records for us to give to them, six requests involved the office of the commissioner and generated no reports, seven requests were consults – that's, I believe, with the commissioner's office – and three requests had no records disclosed.

Dr. Sherman: Thank you.

Ms Sinclair: If you wish more, we could certainly provide that information.

The Chair: Thank you very much for that.

Ms Blakeman, please.

Ms Blakeman: Thanks. I do want to put on the record the admiration I have for the city of Edmonton and your commitment to FOIP. I can say that I've been able to get information through the city of Edmonton FOIP process when I have been refused the same information through the government of Alberta process, so thanks very much to you.

Specifically, I want to address what you've got under the multiple concurrent requests section. Now, you've referred a couple of times to litigation. Is that where this is coming from, or can you provide me with some other examples of where the city got these multiple concurrent requests and why you think it's necessary to extend that time limit? The time limits get extended so much already for an individual. What I'm hearing is that the individual actually isn't applying very much anymore. It's a whole other sector that is causing you – I'm wondering if we need to differentiate somehow between the individual and these kind of corporate requests. If you can answer my question about what these multiple current requests are.

Ms Mann: Multiple concurrent requests that we're receiving, the ones I have seen anyway, are made by people that are involved in advocacy groups or community groups that are interested in something the city is doing. For example, the issues around Lucy the elephant were the subject of numerous multiple concurrent requests by one group of people and probably others that are loosely or more closely allied with them. Also, we had an issue of multiple concurrent requests for people that were requesting information. They were members of a community group that were opposing a gravel pit in southwest Edmonton.

The issue wasn't that there were a lot of records or that we weren't supportive of those FOIP requests – we always are; we think it's important that people should be able to access that information – but when we get five or six FOIP requests for very similar information and they all come in within a week of each other, just administra-

tively it becomes very difficult for us to process all of those requests within the 30-day time limit. Especially since oftentimes they're requesting similar information, we have to look at the same files and pull different documents for different requests.

We also received multiple concurrent requests for information related to the Rossdale urban aboriginal burial ground and the Fort Edmonton Park, again a very important issue. It's important that that information goes out there, but it's just administratively challenging for us to be able to meet those deadlines.

Ms Blakeman: The tests that are available for the definition of a vexatious application: are those not of use to you in these cases?

Ms Mann: No. Most of the time when groups of people get together and they start requesting information, they phrase their requests so each one is slightly different. They're probably pushing in multiple requests so that they can avoid fees because, of course, each individual request gets a certain amount of work for free, right? They're smart enough to make multiple requests, and they're slightly different.

Ms Blakeman: So they don't meet that test.

Ms Mann: They just don't meet the test.

Ms Blakeman: Okay. Thank you.

The Chair: Thank you very much for a very complete and thorough presentation. We appreciate all the answers you provided to the committee.

Without any further ado I'd ask the committee – we have to be back for the next presentation promptly. It starts at 11:30. If we could just retire across the room for 29 minutes, I'd appreciate it.

Thank you.

[The committee adjourned from 10:59 a.m. to 11:32 a.m.]

The Chair: Welcome back, everyone. I just want to double-check and make sure Heather from Calgary is still with us.

Mrs. Forsyth: Oh, yes.

The Chair: Very good. We're happy now to have the first presenter for the second part of the day's presentation, Alberta Universities Association. Would you please join us at the table? I'm not sure if you folks were here when we did the routine before, but we will ask you to give us your full name, your title for *Hansard* record, and then we'll introduce ourselves to you as well. You'll have 15 minutes for your presentation, and hopefully then that allows us some time to have a little dialogue and questions with you folks from any of the committee members. At this point now I'll ask you to commence by introducing yourselves, please.

Ms Munn Gafuik: Hi. I'm Jo-Ann Munn Gafuik. I'm the access and privacy co-ordinator for the University of Calgary.

Dr. Davis: I'm Harry Davis, access and privacy co-ordinator for the University of Alberta.

The Chair: Thank you.

Ms Blakeman: Welcome. My name is Laurie Blakeman, and I'd like to welcome you both to my fabulous constituency of Edmonton-Centre.

Ms Notley: Hi there. Thank you for coming. My name is Rachel Notley, and I represent the riding of Edmonton-Strathcona.

Mr. Vandermeer: Good morning. Tony Vandermeer, Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good morning. Fred Lindsay, MLA, Stony Plain.

Ms Pastoor: Bridget Pastoor, MLA, Lethbridge-East, and deputy chair.

The Chair: Barry McFarland, MLA from Little Bow and chair.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Hello. Dave Quest, MLA, Strathcona.

Mr. Horne: Hi. Fred Horne, MLA, Edmonton-Rutherford.

Mr. Olson: Good morning. Verlyn Olson, MLA, Wetaskiwin-Camrose.

Dr. Sherman: Good morning. Raj Sherman, MLA, Edmonton-Meadowlark.

Dr. Massolin: Good morning. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: We also have the one committee member, please, from Calgary.

Mrs. Forsyth: Hi. I'm Heather Forsyth calling in from the wonderful constituency of Calgary-Fish Creek.

The Chair: Thanks, Heather.

Alberta Universities Association

Dr. Davis: Great. Thank you very much, and thank you for the opportunity to come and speak to the presentation material that was tabled with the committee on June 30 through the Alberta Universities Association. That paper was prepared in collaboration with the four universities and through the provosts of the universities with the input of the people in our positions in the four universities. That's the origin of it. We are going to speak briefly to five of the 13 items in there. We'd be pleased to take questions on any of them as we move forward.

Just by way of background, Jo-Ann and I have been colleagues in this business since the act was extended to postsecondary bodies in '99. Between us I think we have 22 person years of working with the act and through a couple of revisions at this point.

Some of the issues that we've raised in our paper are issues that confront us operationally and policy matters that we'll speak to. I would turn to Jo-Ann to present the first one in the supplemental material. I'm not sure if members have the supplemental material. Yes. Okay. Great. Thank you.

Ms Munn Gafuik: Okay. The first issue that we'd like to address is the definitions of custody and control. Right now the act applies to records that are in the custody or under the control of the public body, and the terms "custody" and "control" are not defined in the legislation but have been interpreted by the office of the Information and Privacy Commissioner to mean, for custody, the physical possession of the record and then, for control, the authority of the public body to manage even partially what is done with a record. Now, this has proved problematic in the university environment, an environment which we will admit is quite a complex organization.

The concept of control works for what we define as the business records of the university, those records, whether they're in electronic or in paper form, that relate to the operation of the university and its various programs and support services and so on. But the university employees, as all of you know, are also required to do research, teach students, and provide service to the community. They pursue these interests without the direct oversight of department heads or the university per se and have autonomy over the creation and retention of the records that result from those kinds of activities.

If they choose to discard a record or to create a record, where they store it and how long they keep it are totally up to them. They may use the university account, and they do. They will use a university filing cabinet. They'll use the ucalgary or the ualberta e-mail addresses when they correspond with research partners or an outside agency, but the university has no business interest in the record nor any right of access to the records for business purposes. The act recognizes that research data and teaching material are outside of its scope but misses this service element in particular.

The university also provides infrastructure support to other associations such as the students' union or the faculty association as well as independent research institutes. The university has custody of these records because they're sitting on our servers or in our buildings, but we only have a limited ability to manage the records from a technical point of view, as in they're sitting on our servers. We have no business interest in the record, and again we have no right to access the data. Nevertheless, the current interpretation of the concepts of custody and control would suggest that they are subject or potentially subject to FOIP.

Finally, the university occasionally has extra server capacity and has entertained requests from outside research agencies, particularly if there is a relationship between the researcher and some outside researchers, who may be interested in storing data in a university location. We have been unable to pursue these interests so far because legal advises that it could be interpreted as being in the custody or even under the control of the university. So we haven't been able to go down that road even though it may mean that we could earn a little bit of extra money with that kind of project.

We therefore ask that section 4(1) of the act be amended to read that the act applies to all records under the control of the public body and that control be defined as records that are generated, received, or maintained in the conduct of the business of the public body. In the alternative, we ask that section 4(1) be amended to read that it applies to all records in the custody and under the control of the public body and that custody be defined to mean the physical possession of the record and control, again, as records that are generated in the course of business.

11:40

Dr. Davis: The second item in our supplemental paper relates to the requirement under section 10(2) to create a record from an electronic record. As the electronic world has emerged and moves forward, the management of information in the electronic environment becomes a bit of a parallel to the old paper way of doing it, but one of the things that's emerging is the requirement to search backup tapes that has occurred in various situations where individuals have asked for information, and public bodies have been asked more frequently to search backup tapes.

It's the position of the universities in this situation that backup tapes exist only for situations of disaster recovery and do not constitute a record in its own right. In the supplemental material I've provided the committee a number of case law and judicial review matters that you may take under consideration where it has been determined in those situations that backup tapes do not constitute a record, and therefore there's no requirement to go to that source in respect of an access request, that they exist only for disaster recovery.

The other situation is that in the implementation of 10(2) as it's currently recorded, at times where we will look for records that are other than in a backup tape, the search and the creation of another record presents onerous workload on the universities and is quite a budget draw in that sense, then the other aspect being that the creation of a record from other information may not reflect the intent or integrity of the original record because now you're creating.

The act generally in its philosophy does not require the creation of a record; it requires the retrieval of records and the production of records that have original integrity and validity. So we would submit that section 10(2) be changed in wording, that the words be changed from "create" to "retrieve," and further that a section be added that information that exists only in a backup system which is maintained for disaster recovery be exempted from the requirement of source to create a record.

The next item relates more, again, to the world of management of information and the use of outsourcing to service providers in the housing and management of information of public bodies, in particular the universities. In Alberta under the act we're not prevented from entering contractual relationships with service providers in companies outside of Alberta, outside of Canada to undertake services managing our information resources. We do, although it's not required, undertake privacy impact assessments when we're planning to do those kinds of things, and we do take serious guidance from the Service Alberta documents on managing contracts under FOIP and establishing relationships with the service providers.

One of the issues that's coming up more and more and affecting these contractual relationships is definition 1(e), which includes the fact that a contract or agency is considered as an employee of the public body, and that employee-employer relationship becomes something that the third party pushes back on because they're saying: we're not your employee; we're your contractor, and we'll work with your contractual matters, but we don't want to be considered for all of the other things that go with the definition of an employee.

Again, we would suggest that section 1(e) of the act be amended to remove contractors or agency relationships from the definition of an employee and create a separate definition for contract or agency in respect of matters to do with the processing of information of public bodies and, further, where the concern comes in the risk on that, that section 38 be expanded to add thoughts that public bodies in effecting these external contractual relationships must inform those using them and storing information on third-party systems as

to the conditions of such risks and arrangements and recognition that the third parties must comply with their obligations to assist the public body under the public body's obligations under FOIP. So those are a couple of revisions there.

One other point is from the governing boards of the universities at this point. There have been questions of late as to what they may hold meetings about in camera, in the absence of the public. The reference to that is a list of items in section 18 of the act, which lists what topics a public body may hold a meeting on in the absence of the public. The questions now coming forward are: what is the connection between some of the information that may be withheld under the specific exceptions of part 1, division 2, of the act vis-à-vis what we may discuss in the absence of the public?

For example, right now things like discussion as to strategic plans as to possible changes in programs and services of the university is not one of the excluded items for boards to discuss in camera, recognizing, again, that universities want to be transparent about the decisions they make. But they also need to have some consideration of the decision-making process and to be able to hold meetings in camera to discuss advice from officials, matters such as that, where those documents indeed themselves may be withheld under the act, but curiously the boards cannot meet in camera to discuss those items, so they could not exclude the public. What's being asked for is revisions to regulation 18 to update it as to concertedness between records that may be excluded from disclosure, giving consideration to what may be discussed in camera as that moves forward.

Ms Munn Gafuik: Okay. The final one is internal audit documents. This has been an issue that has affected both, I think, U of A and U of C. Internal audit departments of the university investigate items of policy or operational matters and make recommendations for change to the administration or to the board audit. The processes and findings of the audit need to be protected from access in the same way that the processes and findings of the Auditor General are held in confidence. The final reports of the internal audit committee can be made public, and any recommendations for change in some cases can be made public, but the actual findings need to be considered a confidential document. So we suggest that section 6(7) be changed to include the chief internal auditor of the public body and that section 24(2.1)(a) and (b) include a reference to the chief internal auditor of a public body as well.

Dr. Davis: Thank you. We can answer questions.

The Chair: Thank you very much.

Mrs. Forsyth: I have a question, Barry, if you could put me on the speakers list, please.

The Chair: You've got it. Go ahead, please.

Mrs. Forsyth: Oh, thanks, and thanks for your presentation. One of the things that you talked about is the idea of management of information. You said that under the act it says that you can go outside of Alberta or in fact you can go outside of Canada and the definition has to be changed. We had presentations yesterday from an IT and a FOIP authority, also the deputy minister. Both of them, especially the deputy minister, indicated that it was his feeling that the information should stay within Canada. Do you have a suggestion on if we should clearly put that in the legislation about the housing of information?

Ms Munn Gafuik: I think that for the universities if you said that information had to remain in Canada, it would be a troublesome decision. That's because there are multilevel, multi-institutional, international groups that get together and do work. We have a campus in Qatar, for instance. Those kinds of relationships transcend the borders.

I do think that we need to be mindful of where they're stored, who could potentially have access to the information, and so on. I'm not averse to any kinds of restrictions or comments around how or where information is stored, but to say that it cannot be stored outside of Canada would be, I think, problematic.

11:50

Mrs. Forsyth: May I, Barry?

The Chair: Go ahead, please.

Mrs. Forsyth: Okay. The challenges of facing what they call cloud computing, I think that's one of the things. You know, on your reference in regard to where it should be housed, et cetera, I just want to ask once again: you don't believe that there should be any restrictions?

Dr. Davis: I don't believe the legislation should restrict it as it has in other jurisdictions, the reason for that being that a number of the services and the products that could be provided are very sophisticated developments by international companies. They provide these services, again, in terms of storing data. The words "cloud computing" really just mean that the data can be stored on servers in a number of different locations around the world.

I think the most important part is the front end. Any public body needs to undertake in entering that relationship an extensive privacy impact assessment as to how their information is going to be processed, transmitted, stored, and dealt with through the service provider. Through the work that the commissioner's office has done in terms of criteria for privacy impact assessments and the diligence that is required under the act of public bodies to undertake that kind of analysis, if in the end the privacy impact assessment is complete and accepted by the commissioner's office – and that does not mean approved; it's accepted – I think the public body then through contractual arrangements looks at protecting that information and regularly reviews it. That's ongoing.

It's partly driven by facility. All public bodies don't have the facilities to manage this on their own. It's economics. But if you attend to the front end, I think it can be done properly.

Mrs. Forsyth: Thank you very much.

The Chair: Ms Blakeman, please.

Ms Blakeman: Thanks. I'm going to continue in the same vein. I have to say that I find all of the recommendations that you've made would weaken the FOIP Act. While they may well work for the university, which of course is your primary concern, applying it to the FOIP Act has much wider repercussions. I am very much against expanding the scope of exclusions, for example.

Specific to this idea of outside contractors, particularly existing outside Alberta, I understand that the University of Alberta, for example, has already contracted with Google. This is incorrect?

Dr. Davis: If I might, we have completed a privacy impact assessment of the sort that I mentioned. We are currently under contract discussions with Google, but it has not been signed.

Ms Blakeman: Okay. You're moving in the direction and are in contract discussions with Google to have your e-mail system, I understand, run by Google, which of course is located not here. To me that has huge risks for Albertans in that we have no custody or control over that. What assurances can you give me and anyone involved in that system? What factors are you taking into consideration relating to access and privacy when you contract with this particular source?

This concerns me a great deal. To me this is Walmart economics: in going for a good deal, I'm sacrificing privacy and control of Albertans' information. So the challenge is out there for you.

Dr. Davis: Do you want me to speak?

Ms Blakeman: Yeah. Go.

Dr. Davis: I mean, it's very difficult to speak in terms of the specifics here, but I think that, again, through the privacy impact assessment we've looked at the information that will be transmitted and used in that system, we've looked at all of the risks of it going astray, and we've used all of that risk analysis to enter a discussion over contractual requirements from a service provider. It would be regardless of who we went to that those contractual requirements are there and the guarantees of international standards would be met in terms of protecting the privacy, that our information is segregated from any others and it's under our control. Those are discussions that we are managing through the contractual negotiations and the ongoing implementation of the system if, indeed, we finally agree on the contract.

Ms Blakeman: Okay. Without going into the specifics of the contract, we've been given to understand from other presentations that the international providers of services like this are very unwilling to negotiate individual contracts. It's sign their contract; press "agree" or not.

Ms Munn Gafuik: It hasn't been our experience at U of C. We've got a number of contracts, particularly around recruitment and hiring and so on. Those companies have been very willing to come into the Canadian market to negotiate different terms for Canada and also to locate servers in Canada. One company put the server in Toronto; another one put it in Calgary and is trying to attract other business. That wouldn't be a Google. These are smaller companies like FranklinCovey and so on who are trying to get a toehold into the Canadian market and are willing to abide by Canadian law. Since we indicated that it's very easy to put the data in Canada and a problem for us to have it located in the States, they said: then, we'll put a server in Canada.

We have an outside service provider for our whistle-blower anonymous line. That service provider – we deliberately chose an Alberta company – has now been sold but still is a Canadian company with the data located in Canada. So even if it is an American firm, some of these companies are very willing to make amendments. We negotiate contracts all the time to change the clauses so that they apply better in our market.

The other thing, too, is that when Harry is talking about locating data with Google or any other company, even if it's outside of the province, we don't lose control over it. That's part of the contractual negotiations, that wherever the information is located, it's still our data. We have the right to control and manage it to determine when it's destroyed, who has access to it. If they receive a request for access, they're always told that they don't deal with the request for access. They refer that to us, and we deal with it. All of that is placed into the contract, and they agree to those terms quite willingly. We haven't had any issues around that.

Ms Blakeman: From smaller companies, but we don't know about the big ones.

Ms Munn Gafuik: Well, I haven't had the experience that Harry has had, so he can speak to a bigger company like Google.

Dr. Davis: What I would say on that is that it's taken us now six to eight months in discussions with changes to a contract. I'm not going to argue with the fact that some of these larger multinationals come in with a boilerplate and want you to sign it. We did not. The discussions have been ongoing now for quite some time to ensure that the clauses we need to be compliant with the act are in place.

The Chair: Thanks, Dr. Davis.

Dr. Sherman: Thank you very much for your presentation. We all learned something about cloud computing, and there were clouds in the sky yesterday. We were reassured that we had amongst the best legislation in the world in Canada and one of the best data storage systems and protected systems for the government of Alberta, at least, in this province.

I can appreciate that somebody from the university – the academic environment is a unique environment. Just on the health system side everything we're doing is evidence-based medicine. Many of these studies require international co-operation with many centres across the planet. If we have one guy that has a study done somewhere else, that isn't medical evidence. In fact, that must be replicated, and the evidence must be critiqued by others from around the world. So I can appreciate the needs of the academic community to have the flexibility to have the system you want.

My question is: should we change the rule, or should we have exceptions? Maybe you should be an exception to the rule. What's your position on that? Instead of our changing the law, because we do have to strengthen legislation to further the protection of the public and to ensure that Albertans' information is protected on Canadian shores, should you maybe just be an exception to the rule with the strict guidelines that you have mentioned?

Ms Munn Gafuik: That's entirely possible. It says in the legislation that the research and teaching information of employees of a postsecondary body are excluded from the legislation, so the kinds of testing that you're talking about, the data from somebody undergoing a medical study, would not come under the scope of the FOIP Act. It's possible, I suppose, that that would work, that the act would have a better recognition of what is the work of the academic staff member and therefore under their IP and outside of the scope of the business interests of the university.

12:00

The Chair: Thank you very much. Our time has flown by, and on behalf of the committee I do want to thank you for your presentation and for answering the questions that have been posed to you. We appreciate it, and we'll take it into consideration as we move forward.

Dr. Davis: Thank you.

The Chair: The next presenters will be the county of Thorhild.

Good afternoon, gentlemen. Thanks for coming in. I see that you've taken in quite a few of the presentations, so you know what to expect now. You've heard the routine a little bit. I'll invite you now to introduce yourselves to us, we'll reciprocate, we'll hear from Calgary, and then we'll turn it over to you for 15 minutes of presentation. I'll let you start right now.

Mr. Newell: Thank you, Mr. Chairman. My name is Charles Newell. I'm the reeve of the county of Thorhild.

Mr. Small: Good afternoon, Mr. Chairman. My name is Dan Small, and I'm the county manager, county of Thorhild.

The Chair: Thanks for coming in.

Ms Blakeman: Gentlemen, I would like to welcome both of you to the fabulous constituency of Edmonton-Centre.

Mr. Newell: I forgot to mention that we're just 35 minutes north of here, and fabulous doesn't really describe our area at all.

Ms Blakeman: It's probably God's country, right?

Mr. Newell: It is, yeah, what didn't burn in May. You can thank us for that terrible month there, where all of our smoke ended up downtown.

Ms Blakeman: Well, my name is Laurie Blakeman, and I'm very happy to welcome you here.

Ms Notley: Hi there. I'm glad to have you here. My name is Rachel Notley. I represent Edmonton-Strathcona, which really does speak for itself.

Mr. Vandermeer: Welcome. I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA for Highwood. Good to see you guys again.

Mr. Lindsay: Good afternoon. Fred Lindsay, Stony Plain.

Ms Pastoor: Bridget Pastoor, MLA for Lethbridge-East and deputy chair.

The Chair: I'm Barry McFarland from Little Bow and a former county reeve as well.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Hello. Dave Quest, MLA, Strathcona.

Mr. Horne: Hi. Fred Horne, MLA, Edmonton-Rutherford.

Mr. Olson: Hello. Verlyn Olson, Wetaskiwin-Camrose.

Dr. Sherman: Raj Sherman, MLA for Edmonton-Meadowlark.

Dr. Massolin: Good afternoon. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from our eye in the sky.

Mrs. Forsyth: I am Heather Forsyth, MLA for Calgary-Fish Creek, calling from the beautiful constituency of Calgary-Fish Creek.

The Chair: Thanks, Heather.

Gentlemen, please take it upon yourselves to give us your presentation.

County of Thorhild

Mr. Newell: First, we want to thank you for the opportunity to offer our opinions and perhaps help with what you have to do in your job. We basically are very much in support of FOIP, the whole concept, you know, of the ability of people to access information. We've spent a fair bit of resources on training our staff in dealing with FOIP requests, and we have an excellent rapport with the office of information and privacy. Lately for some reason we seem to be in communication with them quite a bit. Over the last couple of years we've had an increased number of FOIP requests. I guess we want to bring to the committee maybe a perspective from a small- or medium-sized municipality and the issues that we have with how the system works at this time.

Actually, the city of Edmonton presentation: we would echo a lot of what they had to say. It's very similar to what our experience has been in dealing with FOIP requests. The problem from a smaller organization's perspective is that we probably don't have the financial resources at times to deal with some of these requests because they're specific to a department, and the people who actually are dealing with that information are the ones that have to be taken away from whatever job it is that they're assigned to to work on a FOIP request. We've found that from a cost perspective we're not even collecting 20 per cent of what it actually costs to find that information, and that seems to be a pretty consistent number. When we look back on the last four or five years of FOIP requests, we're at a disadvantage of probably about 80 per cent. We're just going to talk about pure dollars.

I think that one of the other problems is finding that information. A lot of times people are under the understanding that this information is readily available, like someone can press a button and find it. Then they're disappointed when it doesn't say what they want it to say. One of the issues that we run into a lot of times – and the city of Edmonton alluded to this – is that they'll narrow the scope because they're looking at it from a money perspective also. They'll narrow the scope and only get a portion of what they need in the information. It's worse than having nothing because they don't have accurate information. They're looking for an expense – usually these FOIP requests are around an expenditure – but they don't end up with the information that explains the basis of what that expenditure is.

I guess that's something that we would like to see looked at, how that whole framework is rolled out. We realize this is going to be difficult because you don't want to be punitive, and anybody should be able to access information without worrying about cost. But at the same time, if you're going to play the system, that's not helping anybody.

I'm going to defer to Mr. Small, if he has any other issues along those lines. It's something that you've dealt with more.

Mr. Small: Thank you, Mr. Reeve and Mr. Chairman. I'm the head of FOIP in our organization. We have a FOIP co-ordinator. Her name is Laurie Andrushchyshyn. Unfortunately, she couldn't be here today.

The committee has talked this morning about the 30-day response times and things like that. Generally we meet those. Our staff take a high priority on making sure FOIP requests are answered within the 30 days. In the 10 years we've been dealing with FOIP, I think there's only one where we've had to extend that to 60 days because of the volume involved. So we do take it seriously. Our staff are well trained. We've got good experience on that. Again, sometimes we go through the mediation process with the office, and the mediation, actually, is very helpful a lot of times. Mediation doesn't always work a hundred per cent, but it works remarkably well.

The other thing, too, I want to say is that like the city of Edmonton, like other municipalities we have various matters we deal with, various departments – snowplowing, water, firefighting, a whole bunch of items – and FOIP as well. It's no different; it's part of our jobs. That's the culture that the FOIP access for municipalities has given. Having said that, you know, not just for a small municipality but for a small organization – certainly, the committee knows the number of public bodies that there are. Probably a good number of them are very small, and you can define very small on your own. They all have a FOIP co-ordinator, but that's probably just a small part of their duties. There is an opportune cost of doing this, and as long as the committee, hopefully, puts that in mind when they deliberate and make their recommendations for changing or not changing, that would be great, if they considered that.

Mr. Newell: Along those lines, too, we feel that something interesting to debate is that along with every FOIP request, you know, we have to do an estimate of what the costs are but also at the end of that FOIP request make public what that FOIP request cost, the true cost. Many times in our situation we have FOIP requests that require us to get legal advice because it's dealing with land, personnel, whatever. It's not just a matter of digging up files. It also might require us to go get advice farther afield that we have to pay for.

12:10

At the end of the day, if someone, you know, had a FOIP request that cost $150, but the true cost – and we have many of them that are up in the $1,500 to $2,000 range because it required outside help. Not that we're going to charge that, but the person and the public, I believe, have the right and obligation to know what that true cost was. Whether that helps people think before they do a FOIP request or not, I don't know. Still, when people know what the true costs are, I think there's value to that.

I think that's about it.

The Chair: Very good.

Ms Blakeman, and then I'll check in with Calgary.

Mrs. Forsyth: Calgary has no questions, Mr. Chair.

The Chair: Okay.

Ms Blakeman: I'm really grateful that the county of Thorhild put in a submission to the committee. I have found your perspective very helpful, and I think we would have been lacking had we not heard from some of the smaller municipalities because you are a piece of this puzzle. I'm very aware of the cost pressures that it puts on you. What was helpful from the city of Edmonton was finding out, you know, if the type of FOIP request has changed over time – the answer from them was yes – and then a couple of examples of what they were getting that was typical or problematic. Could I ask you to answer those same questions? Has it changed over time, and can you give us some examples of the kinds of requests that the county processes?

Mr. Small: Basically, number one is, you know, what the city had said before, generally relating to expenditures of the county on projects or county individuals. Certainly, we're public officials, just like everybody around this table. That hasn't changed from even before FOIP was around; there was always that query. Other things that are also in the news. Let's say that if there are development issues in the county and there are strong opinions on both sides of those issues, you'll see applications relating to information that the county has on that. Other things: let's say that if the county is looking at changing a direction in policy, people will want to ensure that all the relevant data the county has is public. One way to do that is through a FOIP request as well.

Ms Blakeman: Is there a reason why you couldn't be publishing more of this information on the web or through your website so that it was readily available, to stop some of the requests or to answer them, in fact?

Mr. Newell: I think that just to add and to carry on with your question, a lot of the requests that we get might be in archive. We have requests on grant applications that went back to 1985. In our municipality our bylaws are contained in four binders. We're in the process of putting that on the web because that is information that people should have. But when you look at the volume of material that we have in storage, that pertains to six or seven departments – and Mr. Groeneveld can probably attest to this. In agriculture alone, you know, for the programs that we've been involved with over the years, every piece of paper that we've ever had to deal with with a grant or a program is there, and at any given time someone may come in and want access to that.

To answer your question, yes, you're right; there is a lot of information that can be. We probably over the last couple of years have done exactly that for that reason, because it's easier just to make it public right off the hop. We have a website where, you know, as soon as minutes are approved, they're there along with agendas and everything and all the pertinent information that goes with those meetings. Going forward 20 years, you may be able to tell somebody: just go back and bring it up on the computer. The information that people are requesting is stuff that we don't even know exists, and I guess that's where the costs really get out of whack. You have people who didn't deal with that issue that have to go hunt for it. I think we do a good job of filing. We don't throw anything away. But, I mean, we've got two Sea-Cans in our public works yard where stuff going back to 1958 is stored, when it became a county in 1955. You know, depending on who walks in the door with their $25, you really don't know what you're up against until you get into it.

Ms Blakeman: A digitalization project would be very helpful to you to put it all on the web.

Mr. Newell: Oh, who's going to grant that?

Mr. Small: Certainly, routine requests, I guess by the nature of their being routine, are pretty easy to do. Nonroutine ones: you don't know what the next one will be. The vast majority of requests, based on our 10 years of working with it, are mainly routine. We can expect what those are. But there are always some that you don't.

I guess that in terms of using the web, we've used the web a lot.

Especially for small municipalities their web presence is a lot bigger and with a lot more information on there, including ours. As time goes by and technology gets better and our staff get better at using it, there'll be more. That's where we see the future, like all the rest of you see.

The Chair: Thank you very much, Mr. Small.

The next questioner is George Groeneveld from Highwood, followed by Dave Quest.

Mr. Groeneveld: Thank you, Chair. I think Ms Blakeman hit the nail on the head when she said that it's good to have small, rural municipalities in here because you represent dozens and dozens, hundreds probably, in this situation, the FOIP situation.

I guess my question to you is: have your people ever sat down at AAMD and C with the urban guys and discussed this? We hear this more and more, the cost factor to you people from the small villages, the small municipalities. It's not only the small ones, but I think it hurts more the smaller you are in a lot of cases. In fact, it can almost put you in a financial crisis sometimes.

Mr. Newell: You're between a rock and a hard place. We would be the last ones to deny someone information because of costs. That's not right, and it's not fair. You know, the smaller municipality: we deal with some of our urban neighbors who have a CAO and a secretary. Well, I mean, if we had a request that took two days to fill, that shuts the place down for two days. There's nothing else that's going to get done. You know, how you pay for those things – it's sad that that's the message we bring. I don't have an answer for that.

I mean, it can't be so punitive. Someone on AISH should be able to come into our office and request information, and the cost of that should not be the issue. They have the right to access information. But at the same time there's got to be some kind of equation that says that a group of people – we call them STPs where we come from, same 10 people. You know, you'll get a group that'll come along and do exactly that. They'll make 10 very distinct, separate requests that can basically shut the place down for a week hunting for information, and it may be pertinent and may not be. It won't change any decision that's probably going to get made. But they've effectively – you want to call it vexatious? Well, that's vexatious. It's so simple to do for a very small amount of money. A group can raise a couple hundred dollars and cause you a lot of headaches and grey hair.

I don't envy you if you're going to wrestle with that part of this FOIP. It's going to be difficult.

The Chair: Thank you.

Mr. Quest.

Mr. Quest: Thank you, Mr. Chair. Also, just to follow up on what the others have said, it is great to have a smaller municipality here to express some of your concerns and difficulties.

How many FOIP requests would you have handled last year?

12:20

Mr. Small: Approximately between 10 to 15 to 20, Mr. Chair. Usually about one or two a month.

Mr. Quest: Okay. Of course, you've expressed concern here about the fees now, and you have mentioned it here. We have heard from others that there should be no fees because fees are an obstruction. So we're obviously hearing both sides here. But I don't think we've heard yet any thoughts on what they should be increased to.

Mr. Newell: Well, I think our thought on that is that it should be brought up to what real costs are and then possibly some formula to back down from that, to say, you know, if you have financial – we heard this morning where commercial enterprises are using that as a source of information. Well, if a law firm comes in and is requesting information in a case, is it fair that they're getting that information for $25 when Joe Citizen comes in and gets it for $25? If you're using that as a piece of your work, if you're gaining information to put together a report that you're selling to someone or you're selling your work, is that right that the taxpayer is footing that bill under the auspices of freedom of information?

Mr. Quest: So you feel like you're working for nothing for the law firm.

Mr. Newell: Well, we're not getting invited to the Christmas party.

This falls back to what I said before, the real cost. Do we have to have a structure that says that for $25 we'll give you an estimate, and we'll do this, and we'll do that, and to do the job, the real cost is this? We give you an estimate that it's going to cost $1,500 to provide you with this information. Your costs, depending on your circumstances, are going to be X.

Mr. Quest: Great. Thank you.

The Chair: Thanks, Mr. Quest.

Ms Pastoor.

Ms Pastoor: Thank you. You may find yourself invited to a lot of parties at Christmastime now.

Actually, my questions were following up on Mr. Quest's, and you basically have answered them. But of those 20 or whatever it is, how many would actually be from corporations, developers, and the other, again, would be that prelitigation free advice?

Mr. Small: From our experience it's mainly citizens. The city did bring up their experience. I can see that experience as more and more people know how the system works, more and more companies doing that, and I imagine that will come elsewhere as well.

Ms Pastoor: Thank you.

The Chair: Thanks, Ms Pastoor.

Dr. Sherman: Thank you for your presentation. For me it is nice. We heard from a bigger village a little bit earlier on, their challenges. They're asking for an extension in time to be able to deliver. Your challenge is the challenge of every smaller village, every hamlet in this province, which is cost. Is time a big issue for you?

Mr. Small: Most of the time our staff have been working there a long time. They know how things are filed. They know how FOIP works. We have senior staff work on these things because it's the access, freedom of information and protection of privacy. We all have other jobs to do as well as this, but we do place a high priority on answering these things, so obviously we will push something aside to do that.

Dr. Sherman: Can you advise us: in order to achieve our goal, which is, one, to allow Albertans and everyone else out there timely access, and so that we don't exclude those who don't have the ability to pay so they can have access to information and to achieve your goals of being able to provide it in a financially sensible way, should

we have different levels of fees, maybe for a business one set of fees and for Joe Citizen another? What would be your suggestion to that solution on the fees side?

Mr. Newell: Like Dan has said, we haven't seen a lot of that from the commercial part of it yet. We're starting to see more development in our area. But as time passes, I think even citizens are seeing FOIP as a tool that they can use. You know, at one time they would phone their councillor and say: well, what's with this? If it's a current issue that you're dealing with, you're just going to tell them. That's how it works.

I think I could see there being in Calgary and Edmonton's case or Strathcona county's, where they're dealing with larger companies and corporations where – but then how do you distinguish who's a company and who's an individual? If I walk into the county's office as Charles Newell and not Charles Newell Project Management working on a development for somebody, how are you going to distinguish if I'm asking legitimately for myself or for some company? I guess that becomes tough to define.

I guess, you know, the fee structure, maybe Alberta can't change it that much. But I think that as long as the public understands that there is true cost and intrinsic cost – in other words, in a small organization you're taking an employee away from their job as a utilities officer or as a bylaw officer or whoever it is that the request is coming to. They are not doing their task that they're supposed to be doing while they are working on your FOIP request. That to us is the real kicker. We don't have a department of 10 of these people. You know, you'll slow the system down. The problem in a small municipality is that you're bringing it to a total halt because that person is the one who has to work on this FOIP request.

Mr. Olson: Thank you very much for the information. I really appreciate your presentation. My question relates to what you've just been talking about. It's obvious that in a smaller municipality you have to have a lot of generalists who can multitask and so on. We've heard some suggestion that perhaps we should be a little bit more deliberate and prescriptive in terms of training and certification of FOIP officers. I'm just wondering if you could comment on what the implications of some further requirement like that would be for you, for a small municipality, where you'd need to have some people certified in some more formal way than maybe what we're doing now.

Mr. Small: Mr. Chairman, you know, I come from a background where I've got education in my career and profession, so education is good, and it's useful if there are programs like that. I do know that there is one offered through U of A Extension right now.

I don't know. Probably the bigger the organization, the more that you deal with FOIP, the more likely it'll be useful to have a thing like that. We're probably more at a general practitioner level, where, certainly, if we have staff members who are very interested in this as a field, we would support them to go get certification in that area. We wouldn't make it a requirement. We do have people who go on the courses that both the province and the U of A provide in this and other areas, but then there are a lot of course opportunities because there's a lot of different work that we do, you know, in various disciplines. The city of Edmonton or the county of Thorhild: we're like a miniconglomerate, and we have lots of little businesses like water, like gas, like snowplowing, like swimming pools, and FOIP. It's great that those opportunities are there. I don't know if we would make it a requirement or not.

Mr. Olson: But if somebody were requiring you to have a certain number of people with a certain level of the certification, what would be the implication for you?

Mr. Small: I don't think we would think that would be necessary. You know, if we were hiring people, we would see if they had that. I would hope that it wouldn't be a requirement for a smaller public body. We think this stuff can be taught and through working with the actual FOIP files as well.

I don't know if I've answered your question enough there.

12:30

The Chair: Thank you, Mr. Small. On behalf of the committee, again, we'd like to thank you for taking the time to come in. Don't put yourself down by saying you're small because when I did the calculation, with a population of slightly over 3,000 in the county and 20 requests, you handled proportionately 30 times the number of requests that the city of Edmonton did in their presentation. So thank you very much.

Mr. Small: Thank you.

The Chair: Just for the record, our committee clerk spent the summer of 1974 working for the county of Thorhild.

Okay. Our next presenter, as soon as our gentlemen friends have left here, is going to be Ms Anne Landry, a private citizen from Calgary.

Ms Landry: Yes. Thank you, Mr. Chair. I'm having difficulty hearing the members. I'm not sure if it's a transmission problem.

The Chair: We're hearing you loud and clear. Now, we'll just double-check that. If you'll introduce yourself, then perhaps when everyone introduces themselves, they'll speak right into the mike.

Ms Landry: Okay. Thank you. Very good.

The Chair: You're going to have 15 minutes for your presentation, and then we'll offer you time for questions from the committee. If you would like, we'd like to introduce ourselves to you.

Ms Landry: I see. Okay. Excellent. Thank you.

Ms Blakeman: I can't welcome you physically to the fabulous constituency of Edmonton-Centre, but welcome on the airwaves. My name is Laurie Blakeman.

Ms Notley: My name is Rachel Notley, representing Edmonton-Strathcona.

Mr. Vandermeer: Good day. Tony Vandermeer, Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good afternoon. Fred Lindsay, MLA, Stony Plain.

Ms Pastoor: Bridget Pastoor, MLA, Lethbridge-East, deputy chair.

The Chair: Barry McFarland from Little Bow, chair.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Hi. It's Dave Quest, MLA, Strathcona.

Mr. Horne: Hello. Fred Horne, MLA, Edmonton-Rutherford.

Mr. Olson: Hi. Verlyn Olson, MLA for Wetaskiwin-Camrose.

Dr. Sherman: Hello. Raj Sherman, MLA for Edmonton-Meadowlark.

Dr. Massolin: Good afternoon. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from Calgary?

Mrs. Forsyth: Hi, Anne. I'm Heather Forsyth, Calgary-Fish Creek, and I'm also on the phone.

The Chair: Please proceed, Anne.

Anne Landry

Ms Landry: Okay. Thank you, Mr. Chair and members of the Alberta FOIP review committee. I greatly appreciate being able to present before you today. I'm presenting via teleconference from Calgary, Alberta, where I live. I present today as an individual who has approximately seven years of experience with the access and privacy legislation in Alberta, the Freedom of Information and Protection of Privacy Act, FOIP Act, as well as the Personal Information Protection Act, PIPA. It is important to note the link between Alberta FOIP and Alberta PIPA. Alberta PIPA defaults to Alberta FOIP at section 4(6) of Alberta PIPA, Application, in regard to conflicts between the two acts.

Today I'll be discussing the following three topics: topic one, introduction, the harm that I have experienced that I wish to avoid with changes to legislation, to enforcement, to oversight, and to leadership practices in Alberta; topic two, two paramount problems, in my opinion the top priorities to be addressed by the Alberta FOIP review committee; and topic three, brief key recommendations for changes to legislation, enforcement, and other practices.

Today I'm speaking for the rights of individuals under Alberta's privacy and access to information legislation. The first topic, introduction. I hope for timely changes to legislation as well as to enforcement, to oversight, and to leadership in Alberta so that the harm that has occurred to me does not occur to others. As you may be aware from my documents and submission to the Alberta FOIP review committee, I have needlessly suffered much harm due to the apparent lack of appropriate enforcement of privacy and securities legislation in Alberta and due to the apparent bad-faith conduct against me of ATB Investor Services, ATB Financial, my former employer and health insurance provider and a Crown corporation of the Alberta government apparently reporting to the Alberta Ministry of Finance and Enterprise.

I lost my job, lost my newly launched career, lost my health, and became over approximately $100,000 in debt. Also, to this date I still do not have access from ATB to much of my personal information although I have served to prove that my personal information exists to the Alberta Privacy Commissioner and the Alberta office of the Information and Privacy Commissioner and in court. Some of my personal information that is apparently missing from ATB can be found on the website regarding my story at www.investorvoice.ca: go to cases, go to broker, go to Anne Landry.

As well, to this date ATB and the Alberta Securities Commission have still not corrected my personal information. Omissions of fact exist at a time that opinions regarding me, really no more than apparently unsubstantiated rumours, exist in the records of ATB and the Alberta Securities Commission, including in the national and permanent database by which mutual fund salespeople across Canada obtain and maintain accreditation to sell mutual funds, NRD, the national registration database.

My case was very simple and should have concluded in August or September 2003 with my direct request to ATB at a time that I was a newly hired ATB investment specialist trainee of five months and starting a new career in the investment financial services industry. Instead, ATB abruptly terminated me for cause at the time of my remarkable, consistent, and very obvious successes in apparent response to my request regarding my personal information. My case reveals how apparently easy it is in Alberta for the Alberta Privacy Commissioner to simply not consider abrupt termination of an individual in response to requests regarding personal information to be an adverse action in breach of section 58 of Alberta PIPA, Protection of Employee.

Note that no mention is made of an investigation under section 58 of Alberta PIPA, Protection of Employee, in Alberta OIPC order P2006-005 regarding my case and authored by the Alberta Privacy Commissioner. My case reveals how apparently easy it is in Alberta for the Alberta Privacy Commissioner to simply decide after many years of unexplained delay that he does not have jurisdiction to deal with key issues, as occurred in Alberta OIPC order P2006-005, in regard to issues concerning offences and penalties, issue (q), and withholding of information by ATB due to legal privilege, issue (i), and due to collection of information for an investigation or legal proceedings, issue (j). My case reveals how apparently easy it is in Alberta for the Alberta Privacy Commissioner to apparently inappropriately disallow the rights of individuals under decisions regarding disregard requests issued under section 55 of Alberta FOIP, Power to Authorize a Public Body to Disregard Requests.

In my case the result was that my personal information that was marked with the word "confidential" was retained in a national database for approximately three years against my will until Alberta OIPC order F2006-017 dated September 18, 2007, by Alberta OIPC adjudicator Lisa McAmmond concluded that my records had been inappropriately annotated by the Alberta Securities Commission, an enforcement body that, in my opinion, should know better. It should be noted that the FOIP co-ordinator who apparently inappropriately annotated my documentation is currently the FOIP co-ordinator not only for the Alberta Ministry of Finance and Enterprise but also for the Alberta Human Rights Commission, the Wild Rose Foundation, the Alberta Ministry of Tourism, Parks and Recreation, and 36 other Alberta public bodies.

My case reveals how apparently easy it is in Alberta for lengthy, seven-month, undocumented investigations regarding offences and penalties that are initiated by the Alberta Privacy Commissioner and that involve Alberta Justice and an investigation of me by a private investigator to simply conclude with a verbal and not written decision that states in 12 words: the evidence does not support a charge and prosecution under section 59, the section under Alberta PIPA regarding offences and penalties. I am left to wonder which

of my approximately 225 pounds of evidence and information that I provided to the Alberta OIPC under an inquiry was reviewed by Alberta Justice, upon what legal basis the decision was made, or what jurisdiction the Alberta Privacy Commissioner had under Alberta PIPA to provide the personal information to Alberta Justice as this jurisdiction seems to have only been granted effective May 1, 2010, this year, with the changes in Bill 54.

My case reveals how apparently easy it is for enforcement bodies in Alberta such as the Alberta Securities Commission to simply deny that they have custody and control of records in a national and permanent database used for accreditation purposes by mutual fund salespeople across Canada when, in fact, the legislation that defines the collection and use of personal information of the individual, multilateral instrument 33-109, apparently clearly identifies the enforcement body, the Alberta Securities Commission, as the overseer of the database in Alberta. Just imagine for a moment what would happen if Alberta Health and Wellness suddenly decided that it did not have custody and control of Netcare and put in limbo the urgent needs for personal information for three years such as apparently occurred in my case involving my personal information as held by the Alberta Securities Commission national registration database.

Greater oversight and accountability of enforcement bodies is required. My case reveals that there is apparently little oversight in Alberta of the decisions of the Alberta Privacy Commissioner and that he can render orders that have apparently little foundation in law or principles of natural justice. Note Alberta OIPC order P2006-005 under Alberta PIPA regarding my personal information as held by ATB, in which the Alberta Privacy Commissioner states at paragraphs 38 and 39 not only that ATB responded "completely and accurately" but that the act "is not intended to create a discovery process or to litigate wrongful dismissal actions."

12:40

Note also in Alberta OIPC order P2006-005 that classes of people are apparently denied their rights to their personal information, including investment advisers at paragraph 48 and sales people at paragraph 42 such as I was. I do not find reference to these exclusions in the legislation itself.

In essence, my case reveals that the three orders regarding my case – Alberta OIPC order P2006-005, dated November 15, 2007, under Alberta PIPA, and Alberta OIPC order F2006-017, dated September 18, 2007, and Alberta OIPC order F2006-022, dated August 21, 2007, both under Alberta FOIP – are apparently orders of opportunity, orders that would apparently fail under judicial review for the apparent lack of carefulness and/or correctness and/or reasonableness and/or fairness and/or objectivity and/or for failing to be rendered within 90 days of my request for review to the Alberta OIPC. It was well established that I could not afford three judicial reviews at approximately $15,000. Consequently, a no-cost appeal mechanism to an adjudicator, a judge in the Alberta Court of Queen's Bench, is required to review and to revise orders by the Alberta Privacy Commissioner.

In essence, my case reveals what I have long maintained: an apparent disturbing lack of natural justice in regard to Alberta OIPC processes. I note that the Edmonton Police Service has also commented on the apparent lack of natural justice in regard to Alberta OIPC processes in their submission to the Alberta FOIP review committee in HE-FOIP-012.

It is more than time to address this issue. My case reveals that Alberta FOIP and Alberta PIPA are apparently being used to deny individuals their rights under the law rather than honour these rights in a timely manner. As my case reveals, the enforcement bodies themselves, the Alberta office of the Information and Privacy Commissioner and the Alberta Securities Commission, apparently allow and apparently abet wrongful practices under law. Are not apparent breaches of the law that the Alberta Privacy Commissioner is tasked with enforcing considered to be cause and/or incapacity under section 47 of Alberta FOIP, Resignation, Removal, or Suspension of Commissioner? They should be.

Second topic: two paramount problems, top priorities to be addressed by the current Alberta FOIP review committee. These two paramount problems are, first paramount problem, apparent breaches of law by the Alberta office of the Information and Privacy Commissioner and/or by the Alberta government and the apparent lack of natural justice in the enforcement processes of the Alberta OIPC; second paramount problem, the apparent lack of meaningful public consultation that is occurring in the current review of Alberta FOIP at a time when the public is apparently the primary user of the legislation. I have mentioned these issues in my submissions and in my news releases, and they are also apparent in the details of my case, as I have stated already.

Please consider the following examples. First example, the apparent breach of law by the Alberta government by failing to call a review of the Alberta Personal Information Protection Act by July 1, 2009, as per section 63 of Alberta PIPA, review of act. This is black and white. There is no denying that the Alberta government did not start a review of Alberta PIPA by July 1, 2009. There is also no denying that section 63 of Alberta PIPA clearly requires that it should. The result was apparently harmful changes to Alberta PIPA effective May 1, 2010, that apparently few are aware of.

Albertans need a government that sets a good example and that abides by the law. Albertans need a government that upholds in action and not just in words godly and family values, basic fundamental principles, including accountability, democracy, truth, justice, freedom, fairness, and respect for people, the principles that are the very foundation of the Alberta Freedom of Information and Protection of Privacy Act.

Second example, the apparent breach by the Alberta Privacy Commissioner of sections in Alberta PIPA and Alberta FOIP that require the Alberta Privacy Commissioner to issue an order within 90 days of the original request or extend for purposes that are reasonable and appropriate. As per my detailed document, dated August 23, 2010, entitled Our Right to Know Should Not Be Limited to One Week in September, it would appear from Alberta OIPC order F2006-031 that the effect of the mandatory nature of this requirement would effectively render in the words of Frank J. Work, Alberta Privacy Commissioner, "all FOIP Act orders of my Office a nullity."

My case is affected by the Kellogg case, as mentioned in Alberta OIPC order P2006-005 at paragraphs 26 and 27. I also note that the Kellogg case issue will apparently be addressed at the Supreme Court of Canada on February 16, 2011, in a case involving the Alberta Teachers' Association. This is an extremely serious issue that apparently affects many lives and that apparently erodes the competitiveness of businesses that rely on Alberta FOIP for key information. It deserves further investigation. How did this happen? Are there no annual reviews of the Alberta Privacy Commissioner and his office? There should be.

Third example, apparent breach of privacy of an individual by the Alberta Privacy Commissioner in the process of enforcement. This is the case involving adjudicator Associate Chief Justice Neil Wittmann. In his decision dated January 30, 2009, he stated to the effect that it would be "absurd" and "chilling" for the Privacy Commissioner not to have oversight of a disclosure of information during the process of enforcement. I agree, especially since my

clearly marked confidential information was allowed to be retained in the national database against my will for approximately three years. More oversight, not less, is required of the Alberta OIPC.

Fourth example, lack of meaningful public consultation in the current review of Alberta FOIP. I have discussed this at length and provided recommendations to address this obvious failing in my submissions to the Alberta FOIP review committee as well as in my opinion that appeared in the *Edmonton Journal* on July 26, 2010. It is time for Premier Stelmach to exert his leadership and restore the government-for-the-people, public-consultation approach to leadership that was evident in the original launch of Alberta FOIP in 1993. It would seem appropriate to do it during this month, September, the month in which Right to Know Week is being celebrated in 60 countries across the world.

Third topic: brief recommendations for changes to legislation, enforcement, and other practices. Key recommendation 1. Adopt international standards and best practices for proactive disclosure and direct disclosure of personal information and public government information. As I have previously mentioned in my brief, Canada has apparently fallen behind international standards, and Alberta has apparently fallen behind other jurisdictions in Canada. The solution will require a new, integrated, proactive response model to access and privacy legislation in Alberta that involves a purpose that recognizes the fundamental basic right of individuals to their own personal information and to public government information that is important to ensuring accountability and transparency of government.

Also, the solution involves public compliance tracking to legislated targets by government bodies and by the Alberta OIPC as well as penalties payable to the individual; no mediation; strict timelines for orders under inquiry with default, at no cost to the individual, to an adjudicator, a judge in the Court of Queen's Bench; no fees, no estimates; and many other recommendations that I'd be happy to speak further about during question period.

Key recommendation 2: increase accountability and conduct ongoing investigation regarding fast-changing issues concerning access and privacy. Initiatives under this recommendation include changing the Alberta FOIP review committee to a standing committee on access and privacy and creating a new Alberta ministry of democracy and public consultation to which the new standing committee reports. As per my document dated August 23, 2010, entitled Our Right to Know Should Not Be Limited to One Week in September, there are many more questions to be asked, and the public needs to be involved.

Key recommendation 3: investigate the operations of the Alberta OIPC. Empower the Alberta Auditor General to conduct an investigation during 2010 of the operations of the Alberta OIPC. My document entitled Our Right to Know Should Not Be Limited to One Week in September reveals that there are systemic problems with the Alberta OIPC that need to be investigated further.

Thank you. I look forward to your questions.

The Chair: Thank you very much, Anne. We have, as you're probably aware, the opportunity now for people to ask questions. I throw it open, and I'll first check in with Calgary, please.

Mrs. Forsyth: Thanks, Anne. One of your recommendations, the first one, was actually to adopt international standards, and you made the comment that Alberta has fallen behind other provinces. Can you just elaborate on that a bit?

Ms Landry: Yes. That I referred to in the document that I sent out about a week or so ago entitled Our Right to Know Should Not Be Limited to One Week in September. I just started reviewing what's happening in other jurisdictions, and it became evident that other jurisdictions are more advanced in terms of proactive reporting on compliance of public bodies and on the OIPC itself. If we take a look at, particularly, the Privacy Commissioner of Canada, the Information Commissioner of Canada, and the office of information of Ontario, they struck me as advanced in terms of having online compliance tracking. You can see which departments, which public bodies are actually complying under what time frame.

Mrs. Forsyth: Okay. My follow-up question to that. You also mentioned that the Alberta Privacy Commissioner should be reviewed annually.

Ms Landry: Yes.

Mrs. Forsyth: By whom?

12:50

Ms Landry: That's an excellent question. I think it needs to be established, and I don't think I've got an answer at this point. I've asked it in this document that I sent out both to the Minister of Service Alberta and the office of the Information and Privacy Commissioner with all my questions, saying: what independent oversight exists currently of the Privacy Commissioner and his office? I have a letter back from the Minister of Service Alberta, the Hon. Heather Klimchuk, saying that she does not oversee the processes of the office of the Information and Privacy Commissioner, apparently. So that's my question exactly. Who is to be this body? Maybe there's a role that can be established in discussion to have the standing committee take a part in that role, in that review.

I recommend a new ministry completely focused on democracy and public consultation, so perhaps this ministry, that could be seen to be independent and could be seen also to be fostering proactive compliance amongst all divisions, all public bodies and local bodies – maybe that's a role for that body, too.

Mrs. Forsyth: Thank you.

Ms Landry: You're welcome.

The Chair: Just for clarification, not for debate or argument, the office of the Information and Privacy Commissioner as an officer of the Legislature is not accountable to any of the provincial departments, ministries. It's accountable to all the members of the Legislature and reports annually to the Legislature as well along with the other officers.

Ms Landry: Yes. Thank you for that clarification. I'm losing you a little bit. Your words coming over are spotty.

The Chair: Okay. Are there any other questions at this time for Ms Landry? Ms Notley.

Ms Notley: Thank you. I'm sorry. You had a great deal of information in your presentation, and you were talking very quickly. I understand you probably felt a bit constrained by the time, but as a result I missed a couple of your points. At one point you were talking about the 90-day time within which the commissioner had to render a decision and the implications. Of course, the commissioner himself has raised that issue, as you referenced, when talking to us. I believe his recommendation, if I'm not incorrect, was that we ensure that his decisions not be rendered null and void if they're not issued within the 90 days. I just wasn't quite clear what your position was or what you were advocating in regard to that issue.

Ms Landry: Yes. Thanks for that question. My answer relates to my recommendation for a new model. I don't see the end-all being a 90-day inquiry period. I see a different approach coming forward in terms of proactive delivering of information, but I do see a very strict timeline on orders under inquiry to be issued. Yes, at the end of that timeline there might be a limited option to extend but at the end of that extension option definitely for the Privacy Commissioner to lose jurisdiction and to go to this alternative that I recommend, the adjudicator, the judge in the Court of Queen's Bench.

We should not have the legislation left open to wonder: what is the alternative at the end of the specific time frame? We should be very specific in legislation and state clearly the time period that the Privacy Commissioner has to render an order and any extension if that's possible but then close that down specifically and state the alternative to be a no-cost option for individuals to go to a judge in the Court of Queen's Bench to review and to revise orders or to pick it up from where the Alberta Privacy Commissioner left it off.

In terms of the 90-day format, I'm seeing trends across the country in terms of minimizing time to render orders; for example, with the B.C. office of the Information and Privacy Commissioner. Under their FOIP review the B.C. Privacy Commissioner recommended 90 days, and then the FOIP review committee in B.C. also acknowledged that but with an option to extend.

I'm thinking that an entire new model needs to be adopted in terms of a focus on proactive disclosure of personal information, working with public bodies to make a list of "What is all the personal information that we're collecting, and do we really need to collect it?" and now let's put it on secure websites or make it somehow available to people without them having to really ask for it. That has a lot of impact on different things, including their fees, right?

I hope that answered your question, Ms Notley.

Ms Notley: That and a couple of others, too, yes. Thank you.

The Chair: Ms Landry, I guess you can appreciate that the committee has heard now probably 12 of the presentations in the past day and a half, two days. We've heard quite a diversity on some topics, and we've heard a lot of common ground on others, and at the end of the day we're as a committee going to probably come up with some recommendations that are consequently going to appease some of the questions and probably not address everyone's every wish and want.

I hope you can appreciate that although you may not be currently happy, you may not be happy in the future either. So many of the issues that you've raised are, unfortunately, well documented from your point of view, but apparently there is another side that has been expressed by others and not just the information and privacy officer.

I'm not trying to get you excited or upset here, but the fact is that at some point in time in our lives when decisions are made, we may not agree with them. You may not agree with some of the recommendations that we'll come up with, but we will try to come up with recommendations that will try to do the best job for the vast majority of the people that it affects.

Ms Landry: Help me understand that comment, Mr. Chair, if you could. I just heard you mention, if I understood correctly, that you're going to try to make a recommendation for the majority of people that it affects. How are you going to know that, that it's going to be beneficial to the majority? Are you going to be doing a survey of the people of Alberta on these proposed changes? Will you be releasing a preliminary report with proposed recommendations so that the people of Alberta will be able to respond?

The Chair: This committee is going to prepare a draft report, hopefully by mid-November, and that report will be the subject of debate in the Legislature.

Ms Landry: So you're not releasing it to the public.

The Chair: It will be released as it's introduced into the Legislature, yes.

Ms Landry: Okay. It sounds like that's kind of a final draft. Is that what I'm understanding? At the time that it's released to the Legislature, it is in its final essence and not able to be added to or changed by the public, or do I understand incorrectly?

The Chair: The report itself, no. It wouldn't be changed because it would be a report of this committee to the Assembly.

Ms Landry: Right. That's what my suggestion is today. We need a meaningful public consultation process because it's inappropriate to speak about making recommendations that are reflective of the majority when you really haven't contacted the majority and sought out their opinion. We need to get back to that spot, to exactly how FOIP was introduced in 1993, where under then Premier Klein there was a tour across the province and a release of information so that the public could actually educate themselves on the topic and have meaningful conversation regarding it. I think that's what we need to go to.

This process shouldn't be looked at as being something unattractive or disconcerting for the Legislative Assembly. This process of FOIP review should be looked at as a pot of gold in terms of an opportunity to link back with the people of Alberta regarding what is in their hearts and what is on their minds. This is not just another piece of legislation. It is the very foundation of democracy and life as a day-to-day process as we know it.

1:00

Many people do not even understand FOIP or how it relates to their own lives. This is an opportunity to better educate them regarding how it impacts them in every aspect in terms of access, privacy, security, all these new technologies in terms of social websites and cloud computing, all these things that are affecting them at a fast pace. This is an opportunity for the Legislative Assembly and the government to say: hey, we need to relate more closely with you on this and seek out your opinion so that we can build a solution that is indeed relevant to the majority of the people of Alberta.

The Chair: Thank you for that, Anne.

Ms Landry: Thank you.

The Chair: Believe me, this is an enjoyable experience for all of us here. Our committee is an all-party committee, and I'm really quite happy with how things have progressed from when we first started until we see a working ability as independent members sitting on this committee. Each one of us is a Member of the Leg. Assembly. Each one of us has contact with our constituents as well, so we'll do our best.

Thank you for taking the time.

Ms Landry: Okay. Thank you very much. Thanks to the committee.

The Chair: You're welcome.

Our next presenters will be the Alberta Union of Provincial Employees. While they're taking their places, we have this routine, gentlemen, that you may not be aware of. You're going to introduce yourselves to us and to *Hansard* by identifying yourself with your position, and then we're going to introduce ourselves to you. You're going to have 15 minutes to make your oral presentation to us. Then we'll have some dialogue back and forth for the balance of the time allotted.

Thank you very much.

Mr. Smith: Thank you. I'm Guy Smith, president of the Alberta Union of Provincial Employees.

Mr. Fuller: I'm Tom Fuller. I'm on the staff of the Alberta Union of Provincial Employees.

Ms Blakeman: Gentlemen, my name is Laurie Blakeman. I'd like to welcome both of you to my fabulous constituency of Edmonton-Centre.

Ms Notley: Hello. I'm Rachel Notley, and I'm the MLA for Edmonton-Strathcona. Good to have you here.

Mr. Vandermeer: Hello. I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, MLA, Highwood.

Mr. Lindsay: Good afternoon. Fred Lindsay, MLA, Stony Plain.

Ms Pastoor: Bridget Pastoor, MLA, Lethbridge-East, and deputy chair.

The Chair: Good afternoon. Barry McFarland from Little Bow, chair of the committee.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Good afternoon, gentlemen. Dave Quest, Strathcona.

Mr. Horne: Hi there. Fred Horne, Edmonton-Rutherford.

Mr. Olson: Hi. Verlyn Olson, MLA for Wetaskiwin-Camrose.

Dr. Sherman: Good afternoon. Raj Sherman, MLA, Edmonton-Meadowlark.

Dr. Massolin: Good afternoon. Philip Massolin, committee research co-ordinator and table officer, Legislative Assembly Office.

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Lynas: Hilary Lynas, director of access and privacy with Service Alberta.

Ms Mun: Marylin Mun, assistant commissioner with the office of the Information and Privacy Commissioner.

The Chair: And from Calgary?

Mrs. Forsyth: I'm Heather Forsyth. I'm the MLA for Calgary-Fish Creek.

Mr. Chair, if I may, this is the best audio we've had probably all day as of right now.

The Chair: Thanks very much for that. It came at a good time.

Gentlemen, please proceed.

Alberta Union of Provincial Employees

Mr. Smith: Thank you. Good afternoon. I wanted to begin by thanking the committee for this opportunity to present our views on access to information in Alberta. I believe you have received our written submission. In this brief presentation I'm going to be making today, I'm going to be highlighting some of the major concerns for us coming out of that written submission.

As most of you will know, AUPE is the largest union in the province with almost 76,000 members working in government service, health care, education, public boards and agencies, municipalities, and the private sector. Our members are in workplaces in every corner of the province in major cities, small towns, and rural areas. As a largely public-sector union AUPE frequently needs access to information held by public bodies because this information is necessary to allow us to do our job.

In the first place, we're obliged by law to represent our members in dealings with their employers specifically by negotiating and enforcing collective agreements. Many of these employers are in the public sector, and we often need information held by these public bodies in order to fulfill our obligations to our members. Usually we get this information through an application to the Labour Relations Board or an arbitrator, but sometimes we have to resort to requests for information filed under the Freedom of Information and Protection of Privacy Act.

As a trade union we're also a democratic institution, and we take part in the social framework and the social debates that are a part of the democratic process in Alberta. As part of this advocacy work we occasionally file freedom of information requests to bring out facts so that the public discussion can be on hard information rather than on mere opinion and speculation. So AUPE, its members and its staff, are familiar with FOIPPA and its application in Alberta. We appreciate the goals of the act, and we think we have a good understanding of its limitations.

It's worth remembering that the freedom of information legislation in both the federal and Alberta jurisdictions was originally introduced by Conservative governments. The intent of these laws was to put an end to government secrecy, to increase transparency and accountability, and to foster informed public discussion. Unfortunately, in our view, these laws have failed to live up to their initial promise. In fact, in many ways governments and bureaucracies have become even more secretive since the introduction of freedom of information legislation. It is also unfortunate that the wording of these laws and the ways they are applied help facilitate this impulse to secrecy.

What has our experience been? What happens when we file a request for information with a public body? Well, in the first place, we have to be prepared for years before we get the information we're after. Section 11(1) of the act requires the public body to respond to a request within 30 days. Section 14(1) allows for a further 30-day extension if requested by the public body. In practice this delay can last much longer if the public body asks the Information and Privacy Commissioner for a further extension. It's pretty easy to dream up a plausible justification for an extension, and in our experience the commissioner rarely refuses such a request.

If the FOIP application is for information that the public body

doesn't want to release for whatever reason, they can try to withhold it under the provisions of the various exceptions to disclosure contained in sections 16 through 29 of the act. When that happens, an applicant can ask the commissioner to review the public body's decision to refuse disclosure. When we do so, the commissioner will normally appoint a mediator pursuant to section 68 of the act to try to resolve the dispute. In our experience such mediation almost never leads to further disclosure, but the process can drag on for months and in some cases for over a year. If mediation is unsuccessful, the applicant can ask the commissioner to hold an inquiry into the matter under the provisions of section 69 of the act. Just scheduling such an inquiry can take months, and it can be several years before the inquiry process is completed and the commissioner issues an order.

When we request the disclosure of records from a public body, it's for a reason. Often that reason is to get facts and information that we think are relevant to an issue that is important to the public. If the information isn't disclosed until months or years after our original request, the issue that prompted our request may well be history. In such a case the information will no longer be relevant to public policy debate, and the purpose of the act will have been thwarted.

It's also important to recognize that these kinds of delays often amount to an effective bar to any disclosure. AUPE has the resources and the patience to fight through the months or years of the review and inquiry process. Ordinary citizens often don't and may just give up their application after being stalled for months or years. In short, when it comes to freedom of information, access delayed is access denied.

We should also point out that addressing the problem of delayed access will require more than just tweaking the act. It appears to AUPE that part of the reason for these long, drawn-out procedures is that the office of the Information and Privacy Commissioner has not been given sufficient resources to deal with the demand for disclosure. Until the issue of understaffing is addressed, delayed disclosure will be a continuing issue.

Let's talk briefly now about the exceptions to disclosure that we mentioned a few minutes ago. These exceptions are worded in a way that sounds reasonable when taken at face value. Over the years, however, they have come to be interpreted in ways that make it easy to avoid disclosure. AUPE discussed some of these issues in detail in the brief we submitted to this committee, so we'll just touch on a couple of examples. Section 24 of the act, advice from officials, exempts a broad range of records from disclosure, including "advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council." This exemption is intended to allow public officials to give candid advice to public bodies, including the government, without having these officials be dragged into public political debate.

We agree that this is a useful goal, but we also believe that it should be balanced against the public's right to know the basis on which public bodies make public decisions. In this context it is precisely proposals, recommendations, analyses, and so on that should be disclosed in order to provide a factual basis for public discussion and debate. AUPE submits that section 24 is far too broad in the exemptions to disclosure that it allows. The goal of ensuring candid and objective advice for ministers and the heads of public bodies could be achieved by withholding the names of the officials providing the advice while otherwise limiting the discretion of the public body to refuse disclosure of records.

1:10

Another exemption from the requirement to disclose is contained in section 16 of the act, entitled Disclosure Harmful to Business Interests of a Third Party. This exemption forbids the public body from disclosing information involving the trade secrets or

> (ii) commercial, financial, labour relations, scientific or technical information of a third party,
>
> (b) that is supplied, explicitly or implicitly, in confidence.

Once again, this exemption sounds reasonable. If someone supplies proprietary scientific or technical information to the government, they shouldn't have to worry about it being disclosed to anyone who wants to file a FOIPPA application, nor should a public body casually disclose business information that is given to it in confidence.

The other side of the coin, however, is the right of the public to know exactly how taxpayer dollars are being spent and what value is being returned for those expenditures. Section 16 is of particular interest to AUPE because we are frequently called upon to address issues surrounding the privatization and contracting out of public services. For at least 15 years now our organization has argued that when all the costs of providing a service are properly accounted for, privatization or contracting out does not save the taxpayer money and, in fact, often costs more than supplying these services through the public-sector service providers.

There has been substantial support for this argument in economic and management literature, but for any given privatization proposal the devil is in the details. Only when the services in question have been carefully defined and all the costs have been specified can a proposal to contract out be properly evaluated. As it now stands, this kind of detailed information is routinely withheld under the provisions of section 16.

Not all commercial information is exempt from disclosure. For example, in 2009 the Information and Privacy Commissioner issued an order requiring Alberta Transportation to disclose the total value of a contract with a third party. However, this summary information is of little use to the members of the public trying to evaluate the decision to contract out public services. As it is currently interpreted, however, section 16 of the act bars the disclosure of detailed contract information.

Last month, however, the Information and Privacy Commissioner of British Columbia issued an order on precisely this issue. In order F10-26, released August 16, 2010, adjudicator Jay Fedorak ruled that the Vancouver coastal health authority should release the entire text of a contract for cleaning services with a private service provider. This order rests on earlier B.C. decisions, which ruled that the "information in an agreement negotiated between two parties does not, in the ordinary course, qualify as information that has been 'supplied' by someone to a public body." It is worth noting that the relevant provisions of the B.C. legislation are almost word for word identical to section 16 of Alberta's own FOIPPA. We should also acknowledge that in the B.C. case the public body wanted to disclose the information while the third party objected.

AUPE strongly urges this committee to incorporate the arguments of the Information and Privacy Commissioner for B.C. in Alberta's legislation with one proviso: the public body should not have any discretion to refuse disclosure. In other words, the FOIPPA should be amended to allow information on contracts with public bodies to be withheld only when there is clear and compelling evidence that such disclosure would seriously harm the business interests of a third party and that such harm should be balanced against the interests of the public in full disclosure.

Essentially, we're arguing that companies doing business with the government should have no necessary expectation of confidentiality except with regard to proprietary scientific or technical information.

Details about the kinds of services provided, the performance expectations, and the costs of those services should be a matter of public record.

In conclusion, there is little point in going through a detailed discussion of the other exceptions to disclosure contained in the FOIPPA. These have already been addressed in our brief to the committee. But to sum up, our position on the Freedom of Information and Protection of Privacy Act is as follows. One, while the act has the purpose of compelling disclosure of information held by public bodies, the language in the act has too many loopholes that allow secrecy to persist. Two, the lengthy delays in the review and inquiry process mean that the impact of the act is seriously diluted. In other words, if you try to use the act to actually get access to information, you probably won't be able to get the information, and if you do, you'll get it too late to do you any good.

Finally, we would like to heartily endorse the resolution adopted on September 1 by a meeting of federal and provincial Information and Privacy Commissioners. This resolution called for a proactive approach that would see much more information released by governments automatically without requiring citizens to file access to information requests. This approach combined with some of the reforms we have proposed for the Freedom of Information and Protection of Privacy Act would result in greater transparency and accountability for public bodies, foster public trust in government, and help build a robust democracy in our province.

Thank you again for the opportunity to allow us to talk to you today.

The Chair: Perfect timing. Very good.

We'll just open it right up for questions, please, and our first would be Ms Blakeman.

Ms Blakeman: Thanks very much. I'll apologize in advance. My brain is starting not to work. If you answered this, my apologies. You raised a number of issues around access to information and exclusions that allow withholding of it. Can you give us some examples of the kind of information that AUPE is looking for, is seeking for the purposes of conducting union business that is being refused by public bodies? Where is this happening?

Mr. Smith: Do you want to answer that, Tom?

Mr. Fuller: Sure. Coincidentally enough, I filed a request for information with Alberta Treasury Branches back in the spring. We were asking them specifically for information about people who had been excluded from the bargaining unit, because ATB is covered by the Public Service Employee Relations Act. We asked them for details about who had been excluded from the bargaining unit under the provisions of the act, which is necessary for us because we represent a large number of people who work at ATB. The answer we got back was that ATB is exempted from the coverage of FOIPPA. We disagree with that, by the way. Our interpretation of the provisions of section 4(1)(r) of the act are different from ATB's.

We are aware now that in order to get this information, we will probably be going through an inquiry process for the next two or three years at least. This information relates to applications that we want to make regarding some people that we believe should be included in our bargaining unit. That's an example of the sort of run-of-the-mill, day-to-day part of doing our business applications that we make.

Ms Blakeman: Any other examples?

Mr. Smith: Well, on the more broad spectrum it is the disclosure of contracts between the Alberta government and private or nonprofit service providers. I mean, that's obviously a huge concern for our membership, who may be displaced because of it, but it's also part of the public debate that AUPE enters into in terms of defending quality services to the people of Alberta. We're very concerned about what contracts are out there and the provisions of them, and we're unable to compare apples to apples because we cannot get that information and have an open, honest, and factual debate on it.

Ms Blakeman: Okay.

Can I go back on the list, please?

The Chair: May I check with Calgary?

Mrs. Forsyth: Oh. Hi. Thanks for the presentation. I just would like to get a clarification from you. I think your argument is that you believe all contracts that are done with the government should be made public?

Mr. Smith: That's correct, especially in the areas where they're providing what is deemed public service. Yes.

Mrs. Forsyth: Whether it's an infrastructure contract or any of those, you believe that they should be made public once the deal is complete, right?

Mr. Smith: Yes. I mean, you know, this is public money. This is money that belongs to the people of Alberta, and the government has the right to use it however they wish, but I think the public have a right to know how it's being used. In any contracts with any business or agency the public have a right to know.

Mrs. Forsyth: Okay. Thanks.

Thank you, Chair.

Mr. Smith: You're welcome.

Ms Notley: I just want to go back a little bit just to the whole issue of delay. You said you, of course, have done a lot of requests for information. I'm just wondering. You might not have this information at your fingertips, but I'm looking at, you know, how many, if any, applications that you file are answered to your satisfaction within 30 days, if that's ever happened.

1:20

Mr. Fuller: Actually, again, I've just finished filing a whole bunch of access to information requests. For routine information normally I would expect to get my response within 30 days or, if there's a lot of information, 60 days, and we haven't had a lot of problem with that except in the case of Alberta Treasury Branches.

When we're talking about information relating to contracting out or information relating to decisions taken by the government, those I would expect to drag on much, much longer. In fact, for a previous employer I filed FOIP applications which took more than four years to finally get an order out, and the order was: no, you can't have it. So the more politically relevant and sensitive the information is, the harder time you will have getting access to it and the longer it will take.

Ms Notley: Okay. Just sort of going on to the public advice exception, are there any documents which would, I guess, sort of form the basis of some policy decisions when you're seeking out,

you know, that background to a particular decision that you ever do get? Like is there anything that is not covered by that exception?

Mr. Fuller: I mean, obviously, others may have had a somewhat different experience, but in my experience no. I have filed freedom of information requests with government departments, for example, and eventually got back in one case a thousand pages, of which 700 were blank, stamped with section 24, section 21, whatever; about 150 were memos or e-mails which had everything deleted except the names at the top, and the rest of it was stamped; and about 50 pages which were mostly publicly available documents such as press releases.

Ms Notley: Thank you.

Ms Blakeman: You referenced section 40(1) a couple of times, and I agree that there is confusion here because in 40(1) "a public body may disclose personal information only," and then (e) is "for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment," which would cover a bargaining unit, yes, okay. Then, under (o) information could be released "to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry." So I'm assuming this is around collective agreements, negotiating collective agreements, and grievances. Do you have specific suggestions about how the FOIP Act could be amended to ensure that these two problem areas and confusion areas are working better?

Mr. Fuller: Sorry. It was section 4, not 40: 4(1)(r).

Ms Blakeman: No, earlier. I'm sorry. During your actual presentation you referenced 40(1). If you've got the act in your hand, it's on page 44, I think.

Mr. Fuller: I'm trying to recall where we referenced it.

Ms Blakeman: I don't know. I just wrote it down.

Mr. Fuller: We referred to section 4(1). Section 4 says, "This act applies to all records in the custody or under the control of a public body, including," et cetera, et cetera, except (r) "a record in the custody or control of a treasury branch."

Ms Blakeman: Yep. That was in your example, but in the actual presentation he made, he referenced it, and it is confusing because one section says that there must be consent. The other one says that there has to be something there, and the second one doesn't. So how would you like this fixed? You didn't have specific wording in your presentation.

Mr. Fuller: No.

Mr. Smith: You're referring to the written presentation, I suppose.

Ms Blakeman: Partly, but I was also listening to you, so that's where I picked it up because that's why I looked it up.

Mr. Fuller: I suspect that the way that that issue could be dealt with is that there is a section – I forget the one right now – which talks about the application and other legislation, and I believe it's in the regulation. It lists a number of pieces of legislation which overrule, essentially, the Freedom of Information and Protection of Privacy Act. Adding the Labour Relations Code to that should I think resolve the issue in question.

Let me just see here.

Ms Blakeman: Okay. So it would reference.

Mr. Fuller: Yeah, section 16 of the regulation. To be honest, I didn't write the brief, so you caught me a bit on the hop here. But if it's a question of the application of the act interfering with the resolution of certain kinds of disputes, that could be dealt with by adding to the list under the regulation the Alberta Labour Relations Code and the Public Service Employee Relations Act.

Ms Blakeman: Okay. Well, clearly, you don't have a specific recommendation around the confusion that's created by these two under disclosure of personal information, section 40(1).

Mr. Fuller: Let me check it quickly. I apologize for the delay.

Ms Blakeman: That's okay. If you did have something, maybe you could follow up in writing with the clerk. I won't take up any more time.

Mr. Fuller: Okay.

The Chair: Thank you.

Dr. Raj Sherman, please.

Dr. Sherman: Thank you, Mr. Chair. Thank you so much for your presentation and your printed material. I appreciate having this conversation. I'm just going to ask a general question. Really, the issues here are access, quality, and sustainability, sort of the issues that the national government and provincial governments are all wrestling with in health care. Access delayed is access denied.

Now, earlier on we heard from nonpartisan public bodies, from the hamlets of Alberta to the little villages and the big villages, that two of the key components for access are times and fees: ability to access information and timeliness. From those nonpartisan bodies you heard that one of them wanted more time because their number of requests in 10 years has gone up exponentially, from eight to 200. Our goal here is to make access to information from public bodies easier. I expect that 10 years from now that will go up to 2,000 requests for the city of Edmonton. You heard of their lack of resources, lack of ability to deliver what you want. Some may perceive it as stonewalling and trying to refuse you. They just simply said before us that they don't have the resources. In these small hamlets it just holds up their whole function.

In looking at your request for fees and times, what would we say to those folks in addressing their concerns? We have to make that decision, addressing your concern, which is opposite to theirs. Addressing yours will make their problems, who are already overburdened, already overstressed, already financially stressed, a lot worse.

Mr. Smith: Well, if I can just comment on that, I think the whole initiation of legislation like this is for the public good. As you know, when you put a process like this in place, it hopefully will get used, right? That shows that democracy is healthy and that people are engaged in the democratic process in looking for information. It's not, then, the fault of the public, I guess, who are seeking that information that the information is delayed because of the lack of resources from those that are trying to provide it. The answer to that is that you have to put the resources in place to make sure this

legislation not only says what it's supposed to do but actually does what it's supposed to do.

Obviously, you know, we can identify with the concerns of other groups who have to actually fall under this piece of legislation and the work they have to do. The fact is that it's a piece of legislation that's good for Alberta if it's used properly, and therefore the resources need to be put behind it; otherwise, it becomes meaningless to a degree because information delayed is information denied. You know, we firmly believe that, because you can't act on something after the fact. I can understand those concerns, and I'm glad that you heard those concerns from those bodies, but what they're saying is that whatever resources they need to support the intent behind this act need to be put in place, and we would agree with that.

The Chair: Thank you, Dr. Sherman.

Mr. Lindsay, please.

Mr. Lindsay: Thank you, Chair. In your presentation, when you were talking about requests for extensions on time, you said that it's not difficult for the public agency to dream up reasons for requesting an extension. Would you be insinuating, then, that if the extension is granted, they wouldn't take into due consideration reasonableness and fairness? If that is the case, how would you see that that could be corrected?

1:30

Mr. Fuller: The Information Commissioner and the office of the Information Commissioner have to in fact exercise discretion when they get these. They have the authority to grant extensions or deny them. The process of a review and an inquiry is a legal process, and in fact the office of the Information Commissioner acts like a tribunal at that point. Anybody who's been through tribunals of any kind or who has dealt with legal issues knows how they can drag on and on.

I think we have to look at two things. One is: what are the constraints on the commissioner when he refuses or grants a request for an extension? Well, one of the constraints is the resources of his own office, and it's become abundantly clear to us over the last few years – and this relates to the last question as well – that the office of the Information and Privacy Commissioner is severely strained trying to keep up with the demands for orders and for rulings on disclosure.

We would not argue that the commissioner should not have the discretion to grant an extension. We would I think be reluctant to endorse any call for longer timelines. I think what we're asking for is, firstly, adequate resources for the office of the Information and Privacy Commissioner so that these issues can be dealt with in a timely fashion. I'm not sure we were proposing a specific policy fix. Part of the function here, I think, is to draw to this committee's attention some of the problems we see with the process. Some of the process problems may not be efficiently dealt with by changes to legislation. I think there are a number of ways that they can be addressed. We thought that it was important because it's part of the ongoing problem that difficult and contentious requests for information disclosure routinely take far too long and, in fact, make the whole process sort of useless at the end of the day.

Mr. Lindsay: Thank you.

The Chair: Thank you, Mr. Fuller and Mr. Smith. You may have heard the little beeper go off. Our time has expired, but on behalf of the committee we would truly like to thank both you gentlemen for your presentation and your comments and your suggestions to us as we go forward in our resolutions. Thank you for attending today.

Mr. Smith: Thank you very much. Thanks for your time.

The Chair: To the committee members, we completed the other business portion yesterday, which was the last segment of the agenda.

I'd like to remind you that our next meeting is Monday, September 27, 2010, at 9:30 in the morning. Our committee clerk, Karen, will be sending out an updated meeting schedule after we've finished today's meeting.

With that, I'd entertain a motion to adjourn. Mr. Lindsay. All in favour? Opposed? Thank you, everyone, for attending.

[The committee adjourned at 1:34 p.m.]

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