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SPECIAL COMMITTEE TO REVIEW THE
**FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY ACT**

Vancouver

Wednesday, January 21, 2004

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Chair: * Blair Lekstrom (Peace River South L)

Deputy Chair: * Mike Hunter (Nanaimo L)

Members: * Bill Belsey (North Coast L)
* Harry Bloy (Burquitlam L)
* Jeff Bray (Victoria-Beacon Hill L)
* Tom Christensen (Okanagan-Vernon L)
* Ken Johnston (Vancouver-Fraserview L)
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* Sheila Orr (Victoria-Hillside L)
Barry Penner (Chilliwack-Kent L)
* Gillian Trumper (Alberni-Qualicum L)
John Wilson (Cariboo North L)
* Joy MacPhail (Vancouver-Hastings NDP)

* *indicates member present*

Clerk: Kate Ryan-Lloyd

Committee Staff: Jacqueline Quesnel (Committee Assistant)

Witnesses: Brian Campbell (B.C. Library Association)
Rob Carnegie (City of Chilliwack)
Ms. Derksen
Ralph Dotzler (United Association of Injured and Disabled Workers)
Lorraine Fralin
Maurizio Grande (President, Cambie Boulevard Heritage Society)
Eleanor Hadley
Gloria Hansen
Volker Helmuth (B.C. Association of Municipal Chiefs of Police)
John Hunter
Roderick Louis (Chair and CEO, Patient Empowerment Society)
Barbara Jo May (B.C. Library Association)
Devon Page (Sierra Legal Defence Fund)
Darwin Sorenson (Injured Workers of B.C.)
Edward Swetleshnoff
Norman Trerise
Stanley Tromp
Sal Vetro (Unity Party of British Columbia)
Peter Westwood
Tim Wittenberg

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6. The Committee adjourned at 4:19 p.m. to the call of the Chair.

Blair Lekstrom, MLA
Chair

Kate Ryan-Lloyd
Clerk Assistant and
Committee Clerk

WEDNESDAY, JANUARY 21, 2004

The committee met at 10:01 a.m.

[B. Lekstrom in the chair.]

B. Lekstrom (Chair): Well, good morning, ladies and gentlemen. I would like to welcome you this morning to the Special Committee to Review the Freedom of Information and Protection of Privacy Act. My name is Blair Lekstrom. I am the Chair of the committee. As well, I am the MLA for Peace River South in the north-east part of our province.

Our committee has been asked by the Legislative Assembly to review the act as per the act itself with the requirement that every six years the act receives a review by a special committee of the Legislative Assembly, an all-party committee. That is what we are in the process of doing. We are holding public hearings as well as accepting written submissions on this subject. Today we have a great number of presenters. We will run between now and 5 p.m. this afternoon.

What I would like to do is start off by introducing our workers with us here today. Everything that is said today will be recorded and transcribed by our Hansard staff, and with us we have Amanda Heffelfinger and Virginia Garrow over to my left. At the back we have Jacqueline Quesnel, and to my immediate left is Kate Ryan-Lloyd, who is the Clerk Assistant and Committee Clerk.

Prior to hearing from the first witness, I would ask each of the committee members to please introduce themselves. I will begin on my right.

H. Bloy: Harry Bloy from the riding of Burquitlam.

J. Bray: Jeff Bray from Victoria-Beacon Hill.

T. Christensen: Tom Christensen from Okanagan-Vernon.

M. Hunter (Deputy Chair): Mike Hunter, Nanaimo.

S. Orr: Sheila Orr, Victoria-Hillside.

K. Johnston: Ken Johnston, Vancouver-Fraserview.

H. Long: Harold Long, Powell River-Sunshine Coast.

G. Trumper: Gillian Trumper, Alberni-Qualicum.

B. Belsey: Bill Belsey, North Coast.

B. Lekstrom (Chair): Thank you, members.

We have been asked to review this. We are mandated by the Legislative Assembly to report back no later than May of this year to the House. At that time we will submit a report with the considerations of the committee and recommendations on how to improve the act itself. When you look through the act, it's quite an in-depth document. We've heard from a number of

British Columbians already about the use of the act, how they have been involved in it, and their concerns and ideas on how to improve it. That's what we hope to hear today as well.

With that, I'm going to begin the proceedings. What I would like to do is follow a format. There are 15 minutes allocated to each presenter. We try to go about 12 minutes for the presentation and then allow a number of minutes for questions from members of the committee, if there is any clarification needed on what was said during the presentation itself.

Again, I would like to thank you all for coming. I know everybody has a busy schedule, but this is a very important piece of legislation for all British Columbians, I think, on how we access information as well as look at the protection of our privacy through the public bodies. About 2,200 public bodies are covered, and it says a lot about openness and accountability when government is concerned.

Our first presentation this morning. I will call on the United Association of Injured and Disabled Workers, Mr. Ralph Dotzler. Is Ralph with us? We are going to allow Ralph some time to get here. I will call on our second presenter this morning, Mr. John Hunter. Good morning, John, and welcome.

[1005]

Presentations

J. Hunter: Good morning. Thank you for the opportunity to be heard.

Ladies and gentlemen, I haven't used FOI very often and only in a municipal context, so my remarks are based on that limited experience. My concern with FOI revolves around the potential — and I emphasize potential — use of FOI denials by political and civil service officials to protect not their municipality but their political or professional reputations or their personal pocketbooks, as opposed to using privilege attached to legal opinions to protect the assets of whatever government they are in.

Put another way, I fear that FOI exclusions can be used to hide evidence of wrongdoing and illegal acts by officials by concealing unfavourable legal opinions paid for not by the individual but by the municipality.

Well, let's take a hypothetical case. I emphasize it as hypothetical at least in the sense where I hypothesize that this official knew his act was illegal. In fact, I do not know that whatsoever. That is pure speculation, and in that sense it's a hypothetical case. Let's assume a municipal official knowingly executes a contract with a third party that is illegal under the Local Government Act. As a result, he may be held personally liable under section 338 of the act for moneys improperly spent. If you know that section of the act, there are certain defences such as having sought proper advice, having been advised by your lower-level officials it was okay to do so, etc.

In any event, under this hypothesis, this fellow knew it was illegal and did an illegal deal that was prohibited under the Local Government Act. When the possible illegality became public, the official gives an

interview to a local paper that implies that the council knew the deal was offside with the act when it was done, but nevertheless it was done with the best of intentions. Upon later legal review, the municipality's new lawyers confirm the deal is illegal, and the possibility of a section 338 ratepayer lawsuit against that official arises. The official then writes a letter to the newspapers denying foreknowledge of the illegality and denying he had previously admitted foreknowledge — in effect, claiming he was misquoted.

In that letter, the official claims to have an opinion from the municipality's previous law firm and reveals the gist of that legal opinion: that such an agreement — and I emphasize such an agreement; it doesn't say "that agreement," but "such an agreement," which may mean a generic agreement or the actual agreement — was legal and within council's authority. The official further states that he relied upon that advice in doing the deal. The municipality refuses an FOI request for the opinion on the grounds of client-solicitor privilege. If citizens want to pursue this matter further through an FOI inquiry or through the courts, there's potentially a big cost to the citizen. Although you don't have to have a lawyer, you'll typically want a lawyer to argue your case before the inquiry, so you're taking a significant financial exposure.

In a case such as this, the official is clearly conflicted because he could be personally financially liable if he is found to have committed this thing. Secondly, he could lose his office under section 338 of the act, so I think it's pretty clear he's in conflict of interest.

Where reasonable suspicion exists that an official acted contrary to the act and where the official revealed the gist or a key portion of the alleged opinion — or his interpretation of the gist of the opinion — and he's done this, in my view, to defend himself in the court of public opinion or perhaps to forestall a lawsuit against him under section 338, I believe that official should be deemed to have waived privilege over the entire opinion.

Put another way, officials suspected of impropriety should not be able to claim: "I did nothing wrong because I had a legal opinion about this specific deal — given and acted upon by me before we did the deal — which states that the deal was legal and within our authority, but that opinion is privileged, and you can't see it." If this can be done and disclosure thwarted by FOI rules, it simply encourages selective disclosure or outright misrepresentation of legal opinions, something far more likely to occur where the official is personally at risk than where the municipality is at risk — and probably insured, by the way. At least, that's my opinion. The use of FOI exclusions in such a case undermines the purpose of the act, in my opinion — the accountability, openness and transparency — and in my view violates the fairness-and-consistency doctrine, which governs waiver of privileged documents.

The case is somewhat analogous to *Hunter v. Rogers*, where a defendant in court, as a defence tactic, reveals the supposed gist of an opinion. In that case, he was deemed by the courts to have waived privilege.

I have in my paper there a possible middle ground. I won't discuss it in the interests of time, but there may be a way to handle this through a middle ground.

[1010]

Ladies and gentlemen, I'm not suggesting here fishing expeditions. I appreciate that legal opinions have to be confidential. In this case, had that opinion been paid for by the individual involved, I wouldn't be sitting here. But these opinions are paid for, in this hypothetical case, by ratepayers. I think in this special case where an individual has a conflict of interest due to his risks under section 338 of the act.... In such a case where he has revealed a portion or the gist of the opinion, I believe that the act should provide for a deemed waiver of the entire opinion. Otherwise, the ratepayers just can't hold their officials accountable. Thank you.

B. Lekstrom (Chair): Thank you very much, John, for your presentation here this morning. I will look to members of the committee to see if they have questions.

J. MacPhail: Thank you, Mr. Hunter. Is it a coincidence that the *Hunter v. Rogers* is a Hunter, or is that you?

J. Hunter: There's also a Hunter who drilled 110 dry wells in Alberta before the Duke discovery. It wasn't us either.

J. MacPhail: Okay. MacPhail is a rarer name than Hunter, but not that much.

J. Hunter: I'm not part of the baseball clan, unfortunately, either.

J. MacPhail: Thank you for that.

Have you had a chance to look at the Community Charter to know whether this provision is carried forward under that?

J. Hunter: I actually did look at the Community Charter but for other purposes, so I can't answer your question.

B. Lekstrom (Chair): I'll look to members of the committee if there are any further questions.

T. Christensen: Thank you, Mr. Hunter. Are you suggesting that the exception in the act that allows documents to be withheld, because they have solicitor-client privilege, needs to be interpreted narrowly so that there's a real look at who in fact is the client?

J. Hunter: That's an interesting way to put it. I guess all I can say is that if privilege is invoked to protect the assets of the municipality, as I say, I wouldn't be here. If the people who handle FOI, on the other hand, determine or decide that the opinion is being used to protect individuals, then I have a problem. How you alter the

act to address this issue I'm not quite sure. You could either make the act narrower in the sense of exclusions can only apply in a narrower focus, or you could add to the act a section which says that in cases A, B and C these exclusions just don't apply. I haven't thought through the mechanism, in other words.

T. Christensen: Are you aware of whether a situation like your hypothetical situation has been addressed by the FOI commissioner? Has he been asked in a situation like that to look at, okay, who is the client in a particular solicitor-client relationship that a municipality or some other public body is trying to invoke the exception for?

J. Hunter: When I worked with the FOI folks on my hypothetical case, they sent me a number of documents discussing many court findings on this issue. Now, I do not know that they sent me all court findings, but the ones they sent did not contain a case of this type with one exception — *Hunter v. Rogers*. It is a court case where a gentleman, I believe, is accused of a criminal offence. Apparently, in order to forestall prosecution or as a defence against prosecution, he said: "Well, I had a legal opinion that said X, Y and Z, so open the door and let me out of here." But that was not a municipal type of thing; it was a criminal case, if my memory is right.

I'm not suggesting in any way that there was something criminal here, but the parallel I saw was that there was somebody accused of a criminal offence. He'd done something illegal, and he'd tried to defend himself by revealing the gist of an opinion or part of an opinion. Here's a hypothetical case where somebody may have done something illegal under the act. He's revealed the gist of an opinion to defend himself either from a lawsuit or in the court of public opinion, and we can't get the opinion. Now, we haven't gone to an inquiry yet. That's a too expensive process if we want a lawyer to represent us, and of course, that's out of citizens' pockets.

I'm just saying that this act inadvertently, I think, in some ways could allow people to protect themselves at taxpayers' expense where they have done something illegal by accident or deliberately.

[1015]

T. Christensen: But that would depend on.... I guess where I'm a bit fuzzy here is whether the information and privacy commissioner, who's ultimately charged with interpreting the exceptions in the act where a public body does withhold information, has been asked in a situation like yours to consider the interpretation of that solicitor-client exception. It may be that if the commissioner was asked to make a decision around that, the commissioner would come back and interpret it in such a way that the problem you're suggesting wouldn't be there.

J. Hunter: Very fair point. I have contacted the commissioner's office on a certain case, and I revealed a litany such as I have in here on this certain case. I received

a letter back saying that under the way FOI works, it is highly unlikely that we would be successful. Now, that doesn't mean we wouldn't be. We could go to inquiry, hire a lawyer, go to inquiry and so on. As you can appreciate when one is putting one's own money forward, it's a little discouraging to attempt that.

T. Christensen: That's helpful, though. Thank you.

B. Lekstrom (Chair): I'll go to Gillian Trumper.

G. Trumper: I'll pass.

B. Lekstrom (Chair): Okay. Are there any further questions from members of the committee? Seeing none, John, I would like to thank you for taking time out of your day to come and present to our committee. I can assure you that everything that's presented to the committee will be given due consideration in the development of our report, so I thank you.

J. Hunter: Well, thank you very much, ladies and gentlemen. I'm pleased to see this effort.

B. Lekstrom (Chair): We will move to our next presentation this morning, which is from the United Association of Injured and Disabled Workers. With us is Ralph Dotzler.

R. Dotzler: I'll pass this letter. I'm sorry I don't have a copy for all you people.

B. Lekstrom (Chair): Certainly.

R. Dotzler: This is basically my presentation, and I'm another injured worker that's having massive problems. I won't go into great depth. You've got the letter. I hope this isn't just an exercise. Injured workers were allowed to get full disclosure out of a court case with the *Napoli v. the Workers Compensation Board*. They say that there's a 30-day clause that we can have our freedom of information and that all this information is available. Well, it's been hidden and destroyed. When you go to hearings, which are supposed to be equally balanced, they're not. That's one of the parts of the presentation that I want to make quite clear.

Most of the MLAs here I know, so I'm going to read some of this stuff. The first thing I'd like to ask is if this is just an exercise and nothing gets done. For 13 years I've been going to committee, committee, committee, and nothing gets done with that compensation board.

The issues at hand are with the information on how WCB of B.C. collects on every individual in B.C. The WCB profiles everyone, which it states under the law is illegal. Justice Bouck in the *Napoli case v. the Workers Compensation* allowed injured workers access to the information, but it seems the only way injured workers can get all the information is in the court of law.

WCB is an information and privacy part of the.... It's by itself. It's not regulated by you people. If it is, it's

to a certain point. One of the main criteria that we have is around medical evidence. The medical evidence is not ever put into a claim file — because I represent injured workers, and it's not in there. The diagnosis isn't in there. The treatment is not in there. If there's negligence, it's covered up. In the WCB the information and privacy office seems to be protecting WCB from suit, especially from malpractice when it comes under the medical given to claimants by authorized doctors — or unauthorized.

In a case where a medical professional states in a claim that the claimant is a candidate for arthroscopic surgery, then a psychologist comes along and changes the medical procedure by saying: "You're a candidate for acupuncture." They do the treatment, and it's not recorded anywhere.

Something's got to change with this system. I've been to the NDP party and asked them to change it 13 years ago. Nothing's been done. I've worked with the Liberal Party about getting it changed. Nothing gets done. I can't even meet with the Minister of Labour. Why?

Something's got to be done here, fellows. We're tired. We hurt. We're broke. Something's got to be done. Simple. That's my presentation.

B. Lekstrom (Chair): Thank you, Ralph. Possibly I'll take the opportunity to answer your first question. This is much more than an exercise. We have been commissioned by the Legislature to go out and listen to British Columbians and accept written submissions, as I indicated earlier in my opening remarks. I don't believe anybody is here for anything other than to listen to British Columbians and see if we can improve on the legislation we've been asked to review, which was the FOI act of British Columbia.

With that, I will look to members of the committee to see if they have any questions regarding what you've presented here today.

[1020]

M. Hunter (Deputy Chair): Mr. Dotzler, thank you. Can you just tell the committee a little bit about your association? How many people are you representing in your concerns with WCB?

R. Dotzler: I represent about 450 people, and that's continuous over a ten-year period. Every year I change 450 people. I've been doing this since 1993.

M. Hunter (Deputy Chair): Okay. Do you...?

R. Dotzler: Do I represent claim files? Yes, I do. I'm an advocate for injured workers on their behalf. Do you know that to get their files is just like pulling teeth?

M. Hunter (Deputy Chair): Do you work with the workers adviser?

R. Dotzler: No. What good is it? There's no representation. That's representation without representation.

M. Hunter (Deputy Chair): Can you explain that?

R. Dotzler: Well, first of all, I'll give you a prime example. A claimant goes to work. His adviser — i.e., for assistance — workers advisers.... It's still today, even in a review board to WCAT, which is the new procedure. Under the old procedure we had a part 1, a part 2, an appeals division, and we had MRP. Now we're down to review, WCAT. There's only the two, which has been changed, which is okay. But the problem is that we're getting the same old garbage. They're not getting the files out. Workers advisers, as far as they go — where's the representation?

I went to them in 1990, and to go in front of a review board, which is your so-called arbitration hearing, the workers adviser wouldn't even show up for the hearing. There was no representation. They asked me: "Where's your part 2? Where's the written submission?" Well, there's a simple layman or a worker off the street. How many knew about a written submission to a review board? It wasn't done.

We're seeing guys come out and act as consultants doing the same thing — charging \$1,500, \$2,000 and \$2,500 — and not even doing the level of appeals.

M. Hunter (Deputy Chair): Does your organization have a record of contact with what was the WCB ombudsman?

R. Dotzler: Yes — Peter Hopkins.

M. Hunter (Deputy Chair): Can you talk about your relationship with Peter?

R. Dotzler: Again, nothing overturned. And nothing — I mean nothing. I mean, he goes: "Well, we'll see what we can do." The same thing exists. There's never any conclusion to a file. WCAT are now saying they're going to have these claims done within a two-year period. No way. We're backlogged right now because of a Supreme Court decision that came out on October 3. We're still waiting to see what the Minister of Labour is going to do with that decision.

Now, the whole WCAT is on hold. The whole system is on hold — and the policy bureau.

M. Hunter (Deputy Chair): Thank you.

B. Belsey: Thank you, Mr. Dotzler, for your presentation. We do appreciate you spending the time to share with us your concerns so that we are a better committee and can move forward with some of these concerns.

You brought up, certainly, an issue that we've heard in the past. That is, doctor-patient privilege. We've heard from the previous speaker of course about lawyer-client privilege. It is an area that seems to present challenges to the act and to those that are trying to work through the freedom of information and balance that, of course, against protection of privacy.

I'm curious, though. In the applications you've made for certain bits of information from the WCB, when in fact you do receive the requested information, do you consider it complete? Or is there a lot of information that's deleted, left out and leaving you still with a lot of unanswered questions?

R. Dotzler: Well, I'll give you a prime example. There was another guy who couldn't come in with me; he's tied up finding parking around here. What it is, is that we put in a freedom-of-information request. We use a four-page, drafted letter that's done by one of the community legal assistance lawyers. We use it off the Internet amongst all injured workers throughout this province. There are different associations that we all try to entwine with.

We try to represent injured workers with no money, which is.... That's the key. There's no funding for injured workers groups. If there is.... Well, I won't get into a discussion on that, but I will say that as far as the information that comes to the file, it's misplaced. It's not in the file. It's destroyed by the compensation board. They say they don't have it.

I'll give you a prime example. We went to a review board hearing at WCAT, and the guy had sent, in June, all his information from a rehab consultant. The information came to WCAT. "Well, you don't have all your information regarding your job search." Not one form was placed on that file.

[1025]

WCAT says: "Well, I don't think you tried looking for work." Now they've suspended the hearing until such time as this guy gets all his MSP reports and everything else from when he faxed all these documents in and copies of his documents. The board should have those.

The same thing when you.... You know, you turn around, and a specialist or a consultant tells you you've got to go for arthroscopic surgery. All of a sudden a stupid psychologist from the board — the incompetent garbage that they have — tells the guy: "Well, you can go for acupuncture." They do the acupuncture, and the FOI comes back and says: "I'm sorry. You're not entitled to the information, because there was bruising and swelling noted by the nurse but no nurse's reports put in the file."

When is that third party, when you're consisting of, i.e., a tribunal such as...? There's no law. There are no lawyers. How is that person to access that information to go and represent himself at a hearing?

If the lawyers want to play with the board, okay. Fine. Then let's open it up to the courts; let's open it back up to the lawyers. Laymen do not have an opportunity to put their claims in at that point. That's what it's gone into. It's gone into a legal wrangling, and it's a bunch of garbage. If you're going to put to simple laymen, then get the lawyers out of the board — all 66 of them. Every time there's an act change, they manipulate it. We're tired of the manipulation.

B. Lekstrom (Chair): Are there any further questions from members of the committee?

Ralph, I see no further questions from members of the committee. I thank you for taking time today to come and present to us, and I can assure you that your presentation, like all of the others, will be given due consideration.

R. Dotzler: Well, you'll be hearing from another colleague this afternoon, so we'll see. Okay, thanks.

B. Lekstrom (Chair): All right. You have a good day.

I will call our next presenter here this morning. With the city of Chilliwack, Mr. Rob Carnegie. Good morning, Rob, and welcome.

R. Carnegie: Good morning. I want to thank you for hearing me this morning. I don't represent any municipal organization or anything here. I work for the city of Chilliwack in the capacity of city clerk and just took it upon myself to come down and voice my opinions and my experiences with the FOI Act. I've been working with it since 1997. I've been the head of our organization for responding to requests since that time.

I guess I've seen a reasonably good number of requests come and go for local governments. Election years are always busy years for requests. They don't always necessarily relate to anything that local government is doing, but for some reason people just get it into their heads to ask questions at that time.

The city's experience — Chilliwack anyway — with the existence of the act, particularly in recent years, has not been really troublesome. I'm not here to tell you that it's a total disaster and has to be rewritten or anything like that. Generally speaking, we can cope with it fairly well. From our organization's perspective, it doesn't really change that much the way we would do things ourselves even if there were no act. We've always believed in open government, and our council is generally in favour of releasing information as long as it doesn't interfere with the operation of government.

I guess the point in coming, though, was to point out a few things that we are looking to have this committee consider with respect to how the act works. One of the concerns we have is that it's our understanding of the purpose of the act that it's primarily for government accountability or public body accountability to its constituents and to provide an open and visible government. What we've found, though, is that there are a couple of peripheral effects of the way the act works and the way we respond to information that make it fairly useful for other purposes.

One of the ones we experience in Chilliwack — and I'd be surprised if it's that much different in other local governments — is insurance claims. It turns out that even though a property owner came to the counter and asked for a copy of, say, a fire report they were looking for, for insurance purposes, or even the insurance company comes and proves they have some interest in it, we would probably just hand that information over without making them fill out a request. But generally,

they like to go through the FOI process. They prefer it because of the fact that along with the copy of the fire report, what they get is a letter from the head or the city clerk describing the information and describing the completeness of what's been severed and so forth. Apparently that makes it somewhat more useful as evidence in court matters related to insurance claims.

[1030]

What we're finding is that we're to some degree operating kind of a discount discovery house, so to speak, for the court system. I've been told by lawyers that it's a bargain compared to the other processes that are available for collecting evidence for such court cases. Even at that, I mean, it's not that big a deal. We'd be photocopying those reports for them anyway. I guess the only difficulty we have is with the idea of it being a bargain, in that it's a bargain on the backs of all the other folks in Chilliwack who aren't making claims or aren't asking for information and are essentially subsidizing that process.

That kind of leads me into the next aspect of it, which is that the way the fees are structured provides, I suppose, an opportunity for people to get access to information regardless of their means. but it also produces somewhat of a burden on local governments, in that there's no fee associated with making a request as there is in the case of the federal act. People can make requests to their heart's content, and there is really no restriction on how they break things down. As a result, we get some of the more, I think, knowledgeable repeat requesters who will creatively break down their requests into small blocks, so that they ensure the search time never exceeds three hours. As you know, we don't charge for the search time associated with searches that take any less than three hours.

Then the other thing. Because there's no fee associated with making their request, not even a nominal one, there are times when we get bombarded with requests by e-mail. We have been reluctant to receive and process requests by e-mail, although in discussion with the commissioner's office there are really no grounds in the act on which we can say no to a request by e-mail. Our reason for doing so was that sometimes we're just not really sure if that's what they mean or if it's a serious request or not. It's so easy to blast an e-mail out. It's just as easy to blast 50 e-mails out as it is to send one out. So we've generally preferred to try to contact them by phone and this sort of thing.

For the most part, we think that's consistent with what the commissioner's office is doing as well. They're not accepting requests for service by e-mail either. But it's not very clear in the act. I think if somebody wanted to make a real fuss about that, if somebody wanted to make a campaign of essentially abusing the system by sending out e-mails — even using some automated method — they could essentially rely on the fact that there is nothing in the act that describes what constitutes a valid request, other than that it has to be in writing. I suppose it could be argued that an e-mail is in writing.

I guess the other issue related to cost recovery is the fee that we're allowed to charge as a maximum in the fee guide associated with a search time. The fee has been the same for some period of time. I think it's \$7.50 per 15 minutes. That, I think, when it first came in was barely enough to cover the cost of the lowest-paid CUPE position — in our organization anyway — to do the search, which is what we tended to try to do.

Frequently we can't really complete a search using that type of labour. There simply isn't enough expertise at that level to necessarily identify the records that are consistent with a request. So we find ourselves, with our overhead, in situations where sometimes we're paying somebody \$60 an hour to go through a whole, huge stack of records to identify the ones that match the request, and at the same time charging an amount that essentially puts us in a bit of a financial bind over the period of a year, particularly in a year when we have a large number of requests, because we just don't have the means to go out and hire additional staff to do the work that this person might be doing otherwise.

I guess the main gist of my presentation that I would like to make is that some consideration be made to provide public bodies with the ability to put some controls on vexatious or repeat requests, particularly those that come in via e-mail. I'm not suggesting that public bodies have the authority to independently ignore vexatious or repeat requests, but simply some sort of a fee that discourages people from making a frivolous request and then some attention to the maximum fee guide to reflect current labour rates.

That's pretty well all the topics I intended to cover. Thank you for listening.

B. Lekstrom (Chair): Thank you very much, Rob, for presenting here this morning. I'm going to look to members of the committee for questions. I will begin with Jeff Bray.

[1035]

J. Bray: Thanks very much for making the drive in for the presentation.

I've got a couple of questions for clarification from a practical sense. The example you give of the fire report. Presumably my apartment, my house, has a fire. I walk in and say that I would like a copy of the fire report. Are you under obligation if in fact there's no question as to...?

I mean, it's simply sitting in a file. You're physically going over or the clerk's going over, physically pulling the file and saying: "Here you go." If that's the process, are you under an obligation nonetheless to actually go through an analysis of that information and provide this form and this feedback to the lawyer who can have that certainty? Or are you going through the process of double-checking that there is the third-party information and whether or not anything needs to be severed, and therefore that act of review is what triggers your need to complete that assessment?

R. Carnegie: It depends on whom we're getting our request from, of course. In some cases it's coming from an adjuster working for some insurance company. We don't know whether the property owner is in agreement with the request necessarily. Generally, we'll advise them that unless we can obtain a letter of support from the property owner authorizing an unsevered request.... In some cases we're going through and severing substantial amounts of information.

The commissioner has ruled on details like the interiors of buildings before, for example. These things typically involve large quantities of photographs usually of the interior of the building. Those might all be severed or partially severed, and then descriptive information quite often includes details of the person's lifestyle or their personal activities that resulted in the fire.

If on the other hand we've got the support of the property owner or it's the property owner making the request, unless it's an investigation that resulted in some criminal considerations, which is generally quite rare in the case of fires out in Chilliwack anyway, we're generally going to release the entire content of the report. Even in cases where it's suspected that there may have been a crime, we generally still do.

J. Bray: So are you under an obligation then, if it's just me coming in and saying: "I'd like the fire report on my premise"? Are you required to do that analysis, or can you just simply hand over the form and not incur the cost of that certainty that you're saying the lawyers like and you're sort of doing advance discovery for insurance purposes?

R. Carnegie: If the person just comes in and makes a request verbally or just in general, we'll gladly hand it over, but that's not the type of request we're getting.

J. Bray: Okay. It's usually....

R. Carnegie: The bulk of the requests specifically mention the Information and Privacy Act, and they're looking for a response that's consistent with the act and a response specifically from the designated head.

J. Bray: So that's why you're being.... Okay.

My other question is with respect to fees. You use the example of people using some advance planning and breaking down — as you say, segmenting — their requests so they can get in under the wire. Have you got a ruling from the commissioner on whether or not you can appeal that and say: "Clearly, there's a continuous..."? You know, these are not individual records that we're getting from Jeff Bray. Every week we get one for another two and a half hours' worth of investigation, which clearly seems to be the same tack. Can we in fact consider that a continuous request and apply the fee schedule appropriately? Have you got a ruling from the commissioner on that?

R. Carnegie: Not directly from the commissioner. I'm not sure what's appropriate to say here because the commissioner, as you know, was a lawyer practising privately prior to becoming the commissioner. I guess I could say I did get his opinion, but he wasn't the commissioner at that time. I'm not inclined to think his opinion might change as a result of becoming the commissioner.

J. Bray: Okay, but as commissioner you haven't got a response from him that says yes, you could or no, you can't.

R. Carnegie: No, not as commissioner.

J. Bray: Okay. Thank you.

B. Lekstrom (Chair): I'll go to Joy next.

J. MacPhail: Thank you, Mr. Carnegie. The commissioner may be the same person, but the law has changed. The current government changed the law recently to say that spurious claims or untoward claims can be challenged. Have you had a chance to exercise that recent change in law?

R. Carnegie: Yeah, we have spoken to our current solicitors about that. We haven't challenged it per se, but we've been told by our current solicitors that the number of requests has to be quite substantial. Remember, this is Chilliwack versus Vancouver, so "substantial" by Vancouver numbers probably represents our entire list of requests in an entire year. But that's what we're told — that in order for our government the size of the city of Chilliwack to get relief from something like that, it would have to be in the order of 30 or 40 requests, or something like that.

[1040]

Somebody who takes a single request and breaks it into three or four isn't going to be somebody we're going to get relief from. They send them in sequentially as opposed to sending them in, sort of, all three in the same day.

J. MacPhail: Again, this current government changed the law for a reason, and I suspect your solicitor isn't accurate in saying that the law was changed just to meet the needs of a city the size of Vancouver. I objected to the change at the time, but nevertheless the change is there. I would certainly suggest that you pursue that.

I'm unclear as to what the lawyers are saying when they're saying you're a bargain-basement group. How would it occur if you didn't exist? What would lawyers have to do?

R. Carnegie: I don't know exactly. I'm not a lawyer, and I haven't been through one of these processes. But I understand that it's typically the documents that they get as a result of an FOI request, which are equivalent

to something that they might obtain from part of an examination for discovery of documents. If all of the documents that they're looking for are in the hands of the same local government, an FOI request apparently has been satisfactory in the past and continues to be.

J. MacPhail: Okay. What I was going to say was that part of the reason why the FOIPP Act exists is to allow for easy resolution to disputes on the basis of the provision of information. I would suggest that lawyers who make that gleeful claim, or jealous claim, really need to examine their own practices. It's not an issue of you being hard done by as a city, and it sounds like you're actually meeting the law every day, which is good. But in those particular cases where lawyers are jealous of the information received by a defendant or a plaintiff, it's their problem. Perhaps they need to look to their own practices.

R. Carnegie: Yeah. I guess the only concern we have with that — and it's not a major concern because, as I say, we would photocopy the information and hand it to them anyway — is just that they're choosing to make an FOI request, which involves somewhat more effort on our part, in the interest of having the letter that accompanies the FOI request from the head designated by the public body that essentially certifies that this is the information that matches the description you've given us. That, I understand, is what's resulted in it being somewhat more valuable than what you might get by coming to the counter, asking for the same information and being handed it.

G. Trumper: Thank you for coming, and I've certainly heard your concerns raised elsewhere. You stated that you are actually the head of the association?

R. Carnegie: Well, I'm the designated head. The head is the term the act uses to describe the person who responds to requests.

G. Trumper: I understand the issue of e-mail requests. Every one of us probably understands that in different contexts. I certainly would be interested in hearing from you, or even you just writing to us, on what you think a solution is to these issues that... I don't know how you draw a line as to what is frivolous and what isn't. I can certainly think of circumstances where we've had an individual go that route, in a previous life of mine. I'd be interested in maybe getting from you or from the clerks some recommendations as to how you think that might be addressed at some point.

R. Carnegie: Yeah. I guess from our point of view, we're addressing it by simply choosing not to accept an e-mail request, but we're doing so against advice from the commissioner's office that there are really no grounds in the act to do that. So if somebody was to really challenge us on whether or not we have a right

to demand that the request come to us on a piece of paper — in our case we also ask that it be signed — we wouldn't be on good grounds to do that.

G. Trumper: Is that just Chilliwack or generally?
[1045]

R. Carnegie: I have spoken to a number of local governments. Some of them have done the same thing as we have, and others are accepting them by e-mail. There doesn't seem to be any sort of clear pattern. I think it's more a matter of their own experience. In our case we've had one or two people who have rather preferred e-mail and sent us requests for everything, and in some cases they've even made FOI requests for things that you can pick up on the counter in our city hall. We're not really sure why they're so insistent on doing things by e-mail. Upon insisting that they make their request in writing, on paper, they have balked. They've resisted that but in the end decided it wasn't really worth fighting for.

I guess the issue hasn't necessarily ever come to the point where the commissioner is going to have to decide it, but you know it's certainly out there. It's certainly a possibility that somebody could essentially create — I don't know if you've heard of spam, for example — a spam engine that cranks out e-mail requests on a certain topic for a sort of attention-getting purpose and sends those out to local governments all over the place. If we were compelled to respond to those, I can assure you that requests would come in much faster than we could ever hope to respond to them.

G. Trumper: Thank you.

H. Bloy: Thanks, Rob, for your presentation. I was curious to know what training you were provided to handle this and what training you provide your staff to handle the requests.

R. Carnegie: Generally, most of the requests are handled in the city of Chilliwack by either myself or another manager who works for me. I have a background in information systems, and that includes information ethics. For the most part, other than that, I've taken advantage of the training run by the Municipal Administration Training Institute, which is focused on providing training on a broad variety of matters specifically for local government people. That's generally the training source that we rely on for all of our staff.

H. Bloy: So they've taken the training as well as yourself.

R. Carnegie: That's correct.

H. Bloy: Okay. Thank you.

T. Christensen: Thank you very much for the presentation. I'm concerned about the issue of documents

that it sounds like you would otherwise routinely disclose, yet you're feeling compelled to follow the FOI process. The act was never intended to impose a scheme on information that's already been disclosed. It was intended to protect privacy but also to provide access to information that government or public bodies for whatever reason didn't want to provide access to before. It seems to me — in your example of insurance companies wanting to have a letter from the city to sort of make it official — that if those are documents you would routinely disclose anyway, you're not compelled to give them that letter.

R. Carnegie: Yeah. I mean, that's very straightforward, where somebody's making an FOI request for, in some cases, an annual report that you can get at our counter. We simply tell them: "Look, you can just walk in and get it." But in a case of a request like that.... You know, some of them are legitimately FOI requests. In some cases where it's coming from an adjuster, on querying the adjuster, we find out that he has no contact with the property owner. He may have been contracted by the insurance company, or at least he says he has been.

If that were the whole request and somebody was making that over the counter, we probably would not give them the document. It contains a lot of information that the property owner may or may not want disclosed, and we don't have any way of knowing whether they do or not. What typically comes out of it through some process of dealing with the adjuster is that we find out that they have support from the property owner or the insurance company for the release or part of the release of the information. So we're kind of down the road on an FOI process with them anyway by the time we really figure out what the status is.

T. Christensen: You're not able to sort of categorize...?

R. Carnegie: Yeah. I mean, I suppose if we would just say that we'll provide these requests to property owners and to no one else, then we'd be able to do as you suggest. Of course, somebody who's not a property owner theoretically has a right to make a request for that same information and has a right to receive a separate copy of it. It's discovering who those people are versus who's essentially acting on behalf of a property owner that takes us down that road, so to speak.

B. Lekstrom (Chair): One final question from Mike Hunter.

[1050]

M. Hunter (Deputy Chair): Thanks, Mr. Carnegie. I just want to follow the e-mail versus the current requirement for written requests. I don't know how sophisticated Chilliwack is in terms of e-government, but can you give us a recommendation on that issue? For example, I think in my own case in Nanaimo, where

they've gone a fair distance down the e-government route, we can make application for all kinds of things — not by e-mail but by an electronic form that you have to fill out. The electronic form avoids spam, and I can understand that concern.

Do you have a recommendation? Should we be looking at the fact that since the act was last reviewed, the population does use e-mail? I assume you and many municipalities are going down an e-government route. Can we — if not today, later — come up with some thoughts about how we might deal with this apparent conflict between electronic submission and written requirement that is in the act now?

R. Carnegie: Yeah. We're definitely similar to Nanaimo in a lot of respects. In fact, we had some partnerships with Nanaimo on some of the technology initiatives that our local government is engaged in and have done some of the same things. I guess the dilemma with respect to something like that is that there are requests we accept electronically that typically have a fee associated with them — a request for, say, a tax certificate or a compliance letter. There is a fee associated with it that is typically paid for upfront at the time the request is made, and it helps, anyway, ensure that all of the requests are legitimate requests that a person definitely intends to follow up on.

In the case of the information privacy requests, what we found, for example, is that at the point where we first started getting requests by e-mail, it seemed like they were just coming from somebody who was an enthusiast, and we were willing to accept them. We would process them, and what we found was a higher incidence of people who never came to pick up the information. We would do the labour associated with complying with the request, making a photocopy, and it would essentially sit on the shelf. Not to say that everybody who made a request that way did that, but it was much more likely that would happen than if somebody sent us a request on a piece of paper.

As a result, we have not encouraged people. We haven't created a transaction mechanism that encourages people to make those requests electronically because in the absence of some kind of a nominal fee that represents a gesture of faith or consideration on their part — they actually want this, and it is not just sort of a whim — it leaves us concerned that we might wind up putting the effort in and having it never appreciated.

M. Hunter (Deputy Chair): Thank you for that insight.

B. Lekstrom (Chair): Thank you very much, Rob, for coming in today to speak to our committee and bringing your views about what can be looked at to try and improve the act. I appreciate you taking time out of your day to do so. Thank you.

R. Carnegie: Thank you for receiving me.

B. Lekstrom (Chair): For our next presentation this morning, I will call on the B.C. Library Association. With them is Barbara Jo May and Brian Campbell. Good morning and welcome.

B. May: Thank you very much for giving us the opportunity to address the committee. We will be making a longer written submission to the committee. We found the time line rather quick from our notification to today. We do have quite a few points that we want to make, and I realize that there are lots of people waiting to make submissions. So, Mr. Chair, I won't be offended if you give me some kind of signal to go a little quicker or to wind up.

B. Lekstrom (Chair): Terrific. We are trying to run on 15-minute intervals, but I definitely will. Thank you.

B. May: I thought I would start and tell you a little bit about our association and then go into why libraries and librarians are interested in this act and interested in the issues that arise in consideration of this act. Then there are number of specific aspects of the act I'd like to comment on, which I'll talk to briefly. But as I said, we will be making a longer submission.

The British Columbia Library Association is a not-for-profit, independent, voluntary association. It represents 800 librarians, library employees, library trustees, publishers and other folks who are interested in libraries in this province. It represents corporate libraries, government libraries, school libraries and public libraries, which is where both Brian and I work.

[1055]

The B.C. Library Association has a long history with this act. We were part of the initial consultation for this act, which, as you are aware, had quite a comprehensive consultation process. We also submitted a brief to the earlier statutory review, which took place in 1998-99. At that time an education campaign on the importance of the act was conducted through public libraries.

Why are we here, and why are librarians particularly interested in freedom of information and privacy? Libraries are the only institutions whose purpose is to assure access to the widest range of information, knowledge, ideas and culture for people. Access to information is one of the absolute core values or tenets of our profession. We also are concerned, of course, with protection of privacy for our users and for people generally who are using information, whether it's in the print world or whether it is, increasingly, in the digitized world.

We also recognize that governments are one of the main producers of information and, indeed, create information that is funded by the public. Government information is what allows all of us to kind of monitor the activities of government and evaluate where we're all at in terms of building a better society.

People come to libraries as one of the main places to get government information. We work daily with the public in terms of how people go about accessing information, whether it's through the Internet —

which, of course, has been the big-C change for all of us and certainly people in our profession as well — printed sources or through specialized information sources like government information. Librarians get to understand how people seek and use information for all kinds of purposes — to educate themselves, to improve their work circumstances, and just to understand and comprehend better the world around them. It's from this stand that we're making these comments on the act.

One of the basic issues for us is that we believe the core issue of this review is the fundamental issue about open and accessible government and that it's not about the cost of implementing the act. One of the things we would urge the committee to think about and perhaps do some deliberations about would be some statements around the routine release of government information. It's our belief that the spirit of the act is to encourage this routine release of government information and that this should be, as far as possible, widely disseminated. We believe the government will get a better return. There will be an economic gain in the investment the government has put in to collecting and creating information, if as far as possible information is routinely released. Then individual requests through the act are economically and sometimes socially inefficient and should be regarded as a last resort.

In the original consultations for this act, BCLA recommended the creation and retention in the act of a library government depository program. A small and often underfunded program was implemented through public library services and was subsequently ended in December of last year. This was to provide a small number of core government documents free of charge to public libraries. The B.C. Library Association has been looking into the impact of this change and will be writing some correspondence to government after consultation with 47 publicly funded libraries. Some of the recommendations in that letter will ask that core B.C. government publications continue to be provided in print format to publicly funded libraries and that most B.C. Stats data be provided again to publicly funded libraries.

[1100]

There are another couple of issues that relate to this. One huge issue for librarians and for anyone interested in information management is the issue of archiving of on-line information so that once something is on the Internet, we can go back and find these documents, so they don't disappear into some kind of black hole of cyberspace when you need to find these documents again.

Related to that is the archiving of government information and the penalties for destruction of documents. Oftentimes government information does become available on the Internet, but it is sometimes difficult to find even when you are used to searching the Internet regularly. It sometimes disappears quickly, and sometimes it's dated.

We recommend that the act be amended to require the archiving of on-line information produced by government departments and agencies, and we also rec-

ommend that stable URLs, the uniform resources locators or the addresses for finding electronic information and file structure, be required within government so that we can easily find government information. We also recommend that B.C. follow both the federal and the Alberta governments in outlawing the destruction of records for the purpose of blocking freedom-of-information requests or obstructing or possibly misleading the commissioner, and that documents should only be destroyed in terms of being part of a proper records and information management system.

What I think I will do, because I'm aware I've probably used up most of my time, is highlight some of the other points in our speakers notes. One of the things we would like to make a comment on is the aspect of public interests being paramount. We think it is important to have something strengthened in the act that compels the release of information when there is the possibility of significant harm to health, safety or the environment and when the release of the information is clearly in the public interest. We agree with the B.C. Freedom of Information and Privacy Association that this does need to be strengthened.

We also would like to make a quick comment about the role of the information and privacy commissioner's office and their budget. We believe that a lot of the responsibilities of the commissioner's office are very important, and we're concerned about how those responsibilities might be affected by the proposed budget cut to that office. We would like to see the funding restored to the commissioner's office and increases added for additional responsibilities that have been taken on by that office, including the consultation process on legislation and the new Personal Information Protection Act that was recently implemented.

We have several comments relating to sunshine and whistle-blowing legislation that we'll add more comments on in our written submission. We would also like the committee to do some work on the statutory exemptions from the Freedom of Information and Protection of Privacy Act. We're aware that there are a number of agencies and public bodies — the Ferry Corporation, the 2010 Olympic organizing corporation, the B.C. Transmission Corporation — that aren't covered under this act. It seems that the activities of some of these bodies are of a lot of interest to the general public, so we would like to see a full list in review of these exemptions made and communicated to the public.

Lastly, we would like to make some comments about the work of the committee and the public participation aspect of this review. The initial creation of the act and the earlier statutory review in '98-99 had broad public consultation, and there were consultations made with particular sectors and more public meetings. It's our feeling that the statutory review of this act should match if not exceed that original consultation process.

[1105]

We see this act as sort of the keystone piece of legislation when you talk about open and transparent gov-

ernment. People need to know that this act is here and what it means and how it relates to government.

I think that much of what we want to urge is to open up the process to ensure that people in B.C. know about this act — know it is there — and also urge government to make as much government information routinely available to the public as possible, with, of course, all of the commonsense things about people's personal information and harmful information to business interests noted.

We also would like to say that libraries can play a role in terms of helping people understand this act, understand the role of government, in that we would be pleased to help this committee and help government in general participate in that communication process with the people of B.C.

I think I'll leave off there, and we would be glad to take questions from the committee. As I said, we did find the time line rather short on this. My understanding is that some of the invitation lists for these hearings came from some government conferences that have been held in the last year. Just a little point. Often those government conferences are very expensive for individuals, and even sectors like librarians cannot afford to attend those conferences. So with that sort of little whiny note, I will say thank you.

B. Lekstrom (Chair): All right. Well, thank you, Barbara. Possibly, if I could just address a couple of your questions.

The issue of funding. There is a recommendation by the Finance Committee that has been presented to the Legislature to increase funding as a result, I believe, of PIPA falling under the arm of the commissioner.

The issue of the public hearing schedule and so on. It was interesting you raised that. We actually, as a committee, yesterday cancelled two public hearings in both Kelowna and Prince George. We had one individual who took interest in Prince George and two in Kelowna. The cost was about \$14,500 for the committee to mobilize and tour up there. In the best interests of the taxpayers of British Columbia, it would seem that there must be a better way. We've contacted those people, offered options for them to address the committee.

We also during the information session or to notify people.... All people who participated previously in the last review were notified, as well as full public advertising to allow people the ability, if they couldn't attend a public session, to submit written submissions.

I guess it is a balance trying to make sure that, as important as this piece of legislation is, we act wisely on behalf of the taxpayer as well.

B. May: I understand that. I'd like to say our invitation arrived December 23.

B. Lekstrom (Chair): December 23?

B. May: Yes.

Interjection.

B. Lekstrom (Chair): I was going to say, that's.... I will go to Joy first and then Jeff.

J. MacPhail: Thank you. A very interesting presentation.

It's interesting to note that the previous speaker, the city of Chilliwack person, said that people often come forward and ask for routine information such as annual reports. I think it's important that we examine how we keep the library government depository program going. What happens now to libraries? With the cancellation of that program last month, how will libraries get regular government documents?

B. May: I can answer, for example, for the library I work at. Some documents we'll buy in print form. They're the kinds of documents that may not be available on line or that you do need in print form. Not everyone is able to use computers. There are some people that have that basic skill set, but there still is a core group of government documents that people do want in print form.

J. MacPhail: Will you have to take that out of your own budget now?

B. May: We would.

J. MacPhail: And this is a new expense?

B. May: Yes.

B. Lekstrom (Chair): I'll go to Jeff.

[1110]

J. Bray: I look forward to the written presentation. You've certainly got lots of points there.

I wanted to go to your whistle-blower legislation comment here. Before being elected, I was a public servant. I could have been on both sides of this issue, if you will. Let me go back. You say: "...requires that its employees be able to release information required by the public when hidden from or distorted in the public policy debate process." I wonder if you would expand on how you see that working. What actually are you referring to when you say "information" and being "distorted" or "hidden from"? I was just wondering if you could.... Whistle-blower sounds logical, but I'm wondering if you could expand a bit on what you picture that as.

B. Campbell: There have been some examples — for instance, recently at the federal level with biotechnologists and researchers in the health field and the tobacco industry releasing information that was not planned to be released, giving the results of medical research. There's a case where certainly the public has a right to know.

For another example, if there was research conducted on, say, fish farms, and that had important in-

formation in terms of the environment or in terms of health, and that information wasn't released by the government, but it was appropriate for the debates of the day that were going on and it was important information, then there should be.... There's the moral obligation on the civil servant to make that information available to the public if the government doesn't see the moral obligation.

I think there are many nuances in here, as we all know, as public servants. So there would probably be the requirement for hearings to flesh out how this legislation would actually operate. But there are many jurisdictions, especially in the United States, that have whistle-blower legislation and sunshine legislation. It's not a cutting-edge or radical concept to suggest that.

B. Lekstrom (Chair): I want to thank you very much. I know 15 minutes is a difficult time frame to put everything in, but in order to try and hear from as many people as we can, we've had to limit it to that. I, too, look forward to your written submission and going through it. With everybody's busy schedule, I know it's sometimes difficult to get out. I thank you very much, both Barbara and Brian, for coming here today.

We will move to our next presentation this morning, the B.C. Unity Party and Mr. Sal Vetro, who is the Vancouver regional director. Good morning and welcome, Sal.

S. Vetro: Good morning, ladies and gentlemen, members of the committee.

Freedom of information. Alive and well — or is it? Gordon Campbell, in his victory speech in May of 2001: "I promise to run the most accountable, open and democratic government in Canada." We've seen anything but that. This past year, the information and privacy commissioner's office was cut by over 35 percent. Is this what Premier Campbell meant by complete openness and transparency? Why is it, then, that an FOI request takes between four to six months to complete and in some cases even longer?

Are the B.C. Liberals intending to water down the FOI Act so that it is unworkable, thereby making it possible to remove the FOI legislation? As sitting Members of the Legislative Assembly, may I please have a show of hands from those of you who have consulted with your constituents in any way, shape or form to receive input and feedback regarding this revisionary process of the FOI and Protection of Privacy Act?

B. Lekstrom (Chair): I think what we'll do, Sal, is go through your presentation, and then if we have questions, we'll ask. I think it would probably be, at this point, a different dialogue if we were to get into a show of hands. But we're more than happy to hear your presentation.

S. Vetro: Well, that was a simple question of a show of hands of who had consulted with their constituents. That's all I was asking.

[1115]

B. Lekstrom (Chair): I guess the time frame would be a question. Have they done it? Have they been in their constituencies? Are they touring with the committee now? And do that at a later date.... Please continue.

S. Vetro: The 2010 Olympic Winter Games. In February of 2003 I attended the last public forum before the Vancouver plebiscite vote on economic sustainability of the 2010 Olympic Winter Games. I went up to the microphone, and I asked them: "If Vancouver is awarded the 2010 Olympic Games, will OCOG, the organizing committee for the Olympic Games, be set up and structured to operate as a public body, allowing Joe Average Citizen to scrutinize any detailed financial information about the games?" No. 2: "Will it fall under the guise of B.C.'s Financial Information Act, which requires public bodies — including Crown corporations, school districts and municipal governments, colleges and universities — to release an annual statement of financial information that lists total payments to individual suppliers, individual salaries of employees and each employee's expenses?"

Furthermore, under B.C.'s freedom-of-information and right-to-privacy act, citizens can file requests for additional records such as contracts, minutes of board meetings and detailed lists of expenses, including restaurant and hotel bills. However, this may be a moot point for Joe Average Citizen, as the government will probably make it too cost-prohibitive.

Mayor Larry Campbell liked my recommendations so much that he made it point No. 1 in his executive summary report to the Premier under economic sustainability: "Urge the organizing committee for the Olympic Games to operate under the B.C. Financial Information Act and the B.C. freedom-of-information and right-to-privacy act, to ensure maximum public confidence in budgeting and management."

Donna Humphries of OCOG stated to me on January 19 that OCOG was registered in September of 2003 as a private corporation under the Canada Corporations Act and registered in B.C. under the Society Act, thereby making OCOG a private corporation with no obligation for financial disclosure to the public whatsoever, even though billions of taxpayer dollars will be invested into the 2010 games. Were the citizens of B.C. told about these facts? If not, why not? Don't they have a right to know, and shouldn't they have a vote on it? It's our money, isn't it?

It leads one to believe there will be no checks and balances to the awarding of any and all contracts associated with the 2010 Olympic Games. Any and all cost overruns will be borne by us, Joe Taxpayer. I can understand the reluctance of sensitive information being withheld before the bid, but now that Vancouver has been awarded the 2010 games, should it not be open, transparent and totally accountable to the people of B.C.?

The disability review process. In August of 2003, I filed an FOI request regarding the disability review

process, a questionable exercise at best. Estimated total expenditures were in excess of \$5 million and counting. My initial request was for full financial disclosure of all relevant documents, memos and costs associated with determining the eligibility for people with disabilities receiving government assistance. On October 3, 2003, the requested material I received contained more questions than answers. I had to restate my initial questions for more specific details, which included a further 25 specific questions. This exercise took another month to complete. On November 12, I received a reply, which stated that seven parts of my request were referred to Steve Mullen, director, health assistance branch, Ministry of Human Resources, and that he would be in touch with me regarding my request.

After 60-plus days, I placed a call to him on January 17, 2004, and was told my file was on top of his desk. In his own words, the information I requested was necessary but not a priority. If I hadn't been in touch with him, who knows how long it would have taken for him to get back to me.

[1120]

On December 8, I received a letter asking for an extension of time to my second request. On January 17, 2004, the information and privacy analyst told me that my FOI request might not be completely finished till February 17, 2004, at the earliest.

From the start of my original request it will have taken over five and a half months to complete. Is this freedom of information or holdback of information? The FOI Act, section 25, states that public interest is paramount. Information must be disclosed if in the public interest. Subsection 1(b) says: "...the disclosure of which is, for any other reason, clearly in the public interest." Subsection (2) says: "Subsection (1) applies despite any other provision of this Act."

Proposed solutions for the Freedom of Information and Protection of Privacy Act:

(1) All communications and public information should be readily available for public perusal and discernment, along with a direct vote on issues of major importance and concern to British Columbians via the Internet and the \$18 million Premier's portalized computer system, as reported by Vaughn Palmer of the *Vancouver Sun* in April of 2003.

(2) All publicly tendered documents should be readily available on this website with the click of a mouse.

(3) There should be a link from the Premier's website to a B.C. politics website, where the people of B.C. can register as voters to have their say and voice their opinion on all aspects of government.

May I please have a show of hands from all people in this room who have Internet access? I believe that a lot of people would say yes. We're in a technological revolution. The Internet is here to stay, and the original concept was intended for communication with the masses and instantaneous access to information anywhere, anytime. Currently in B.C. alone, there are over one million people who have access to the Internet.

Don't tell me why it can't be done. Tell me how we can do it. It's in the public interest and for the public good.

Who am I? My name is Sal Vetro. I'm a happily married man for 20 years with three wonderful children and am Vancouver regional director for the B.C. Unity Party. I am a professional handyDART driver for people with disabilities and a hard-working stiff who's trying to make a difference in the world for the benefit and betterment of not only myself and my family but all British Columbians.

Freedom of information can be alive and well. It's in your hands. Thank you.

B. Lekstrom (Chair): Thank you very much, Sal, for your presentation here today. I'm going to look to members of the committee if they have any questions. I will begin with Joy.

J. MacPhail: Thank you, Mr. Vetro. Just some information for you. The issue around lack of access to freedom of information for the organizing committee of the Olympic Games was raised by the opposition, so there is dialogue around that. But your point is exactly the same as was raised in the Legislature: there is no access to freedom of information.

Having said that, though, the auditor general has agreed to follow the money, basically, for the Olympic Games. So I hope you'll be in touch with him as well — Mr. Strelieff, the auditor general — to make your point about the importance of that.

Of course, the other issue around the disabilities review is also subject of an investigation by the auditor general. Several people, including the opposition, asked for a review of those expenditures. Perhaps, just to assist you, you could contact the auditor general to seek the information you're looking for.

B. Lekstrom (Chair): I will go to Tom Christensen next.

T. Christensen: Thank you for your presentation, Mr. Vetro. I was concerned in terms of the five and a half months, I think you said, that you've been waiting for certain information. Has any of that been appealed to the commissioner, because certainly there are time lines in the act or processes to be followed. Part of the commissioner's role is to get involved when public bodies aren't responding to those time lines.

[1125]

S. Vetro: Well, funny you may say that. When I received the letter, it's not specific when the 30 days start and end. Just like I received on December 8 when she said: "Well, we're applying for an extension of time." I figure I didn't have a choice. I had to. "Otherwise, you can apply to the commissioner." Might as well give them the benefit of the doubt. But I said: "Where does it start? Does it go 30 days from when I first applied or the second request for more information?" She said: "Well, that's a very good point. It's not

very clearly stated in my letter." I said: "How am I supposed to determine it if you don't know?"

That's where I get so much information. I request memos. I request documents specific to my FOI request. Afterward, I'm given information where it says that \$225,000 for five companies is included in his other extra costs. How do I know what the extra costs were? How do I know what the services were that were provided for and for how much? Was it worth it? Was it in the taxpayers' interest? It just seems to give a big ballpark figure, so I requested more. I asked them 25 more questions — specific, because that's what she wanted.

I never heard back from Mr. Mullen until I phoned him: "Oh, it's very necessary, but it's not a priority." I said: "You've had 60-odd days. I mean, I realize you're busy, but I'm still a taxpayer. I have a right under the Freedom of Information Act to request this." But it seems like I'm never given the opportunity to know when to appeal because it always seems like they're asking for an extension of time. Or: "This is why we can't get this, because we have to consult with third parties." When they explain it to me, okay, I can understand that. She said in the last conversation I had with her this week that it will probably take until the middle of February. That's where you get five and half months. It's ridiculous.

T. Christensen: Certainly, I'm sympathetic to the concern about time limits. There's a reason there's a 30-day time limit within the act. There are also reasons that can be extended in certain circumstances. My concern is where there's a situation that you feel the time extensions aren't reasonable, then certainly the way the act is set up now is that you can appeal that to the commissioner. If you have suggestions as to a better means of enforcing the time line rather than having an independent commissioner review what's reasonable, I'd certainly be happy to hear that.

S. Vetro: Also, in the act it doesn't state.... Thirty days from what date? From the day you first started? From what date, I asked her, because I got the letter on December 8. I said: "That ends January 8, basically." "Well, it's not that date. You have to go back to the original date, the reason being because of this." She sort of talked me out of applying to the information commissioner because she never suggested once: "If you don't like what we've done, we've had to consult...." Then she explained it in such a way that they had to consult with third parties, these companies that I was requesting individual breakdown and detailed information from. She said: "Because of them, within the act, I'm allowed." I figured that overrode the 30 days. Otherwise, how do I know?

B. Lekstrom (Chair): Sal, I do want to thank you. I'll just point out that the time issue is something I think should be important to all British Columbians, and I thank you for raising that issue. I don't think it's unreasonable, after a request, to expect a response to

that. The act is written that the 30 days begin upon request. Under part 2, division 1, section 7, that refers you back to section 5 of that. That part, I believe, to me is quite clear in the act — that if Blair Lekstrom puts his request in and submits it, the 30 days begin then. If there is a problem there that it isn't being adhered to, definitely that's something we will as a committee discuss and see if we can improve that.

S. Vetro: I don't think it's very defined, Mr. Lekstrom, exactly when the 30 days start. My last request I started on November 12, I believe it was, so to me it ended December 12. On December 8, I get a letter asking for an extension of time.

B. Lekstrom (Chair): Now, I'm only....

S. Vetro: Then I go: "Well, okay, from December 8 to January 8."

J. MacPhail: He's talking about the extension period.

B. Lekstrom (Chair): Yeah. Okay. Not the original.

S. Vetro: It doesn't say where the original was. But my main point was that a lot of people in this province and in this world are Internet-accessible. That's where government information.... Just a click of a mouse. What is the government trying to hide here? All those publicly tendered documents should be right there. Joe Average can't come to these meetings — I had to take time off work — but he can just go at night at the end of his day when the kids are asleep to the government website. Boom. There's the information you requested. It saves the taxpayers a hell of a lot of money. Thank you very much.

B. Lekstrom (Chair): I thank you for taking time and coming to address our committee today.

[1130]

We will move on to our next presentation this morning, which comes to us from the Sierra Legal Defence Fund. With us is Devon Page.

Good morning, Devon. Welcome.

D. Page: Thank you. Sierra Legal will file a written submission as well, but we just wanted to reiterate some points at this opportunity.

First, I'd like to provide some context for my submissions. Most of the members of the committee will be familiar with the work of Sierra Legal Defence Fund in the context of our legal cases or our public advocacy on environmental issues. Our organization makes numerous requests under the Freedom of Information Act in support of our work, and this has resulted in precedent arising from the commissioner's office that specifically acknowledges the value of our contribution to political debate.

I wanted to read a quote from order 293 of 1999. It was then Commissioner Flaherty: "...applicants, such as the Sierra Legal Defence Fund, make such a fundamental contribution to the political process in this province by acting as surrogates for individual members of the public in trying to hold the government accountable for its actions." It's in this context that we make these submissions — that we're one of many surrogate organizations that seek to add to the political process by acting as surrogates for individual members, and we have several tens of thousands of members — in trying to hold the government accountable for its actions.

It's our position that the act has been amended or is being applied in a manner that frustrates the purpose and intention of the act, and this is hampering the ability of the public to participate in the democratic debate and is defeating the spirit of the act, both as it was intended and as this government promised it would be applied in ensuring that they'd be held accountable to the public.

At this point I want to make three points. We'll expand on our written submission, but for the purposes of today.... The first is that responses to requests under the Freedom of Information Act are characterized by delay. The second is that the spirit of the act must be honoured by enhancing access to information, and the third is that the cabinet secrecy exemption must be eliminated.

The first: the response to requests under the act are characterized by delay. In Sierra Legal's opinion and in our experience, where laws are being breached, access delayed is effectively access denied. It's our experience that responses to FOI requests routinely exceed the time limits provided in the legislation.

A typical scenario is this. Section 7 provides 30 days within which the FOI office must respond, and as a matter of course they do, saying they need another 30 days, and they use the criteria of section 10, other than a large number of documents or that they must consult with third parties. They have only once, in my experience, in three years made a request that the commissioner extend the time to provide the documents, and that just happened in December. More typically, at some point after that time, we receive the documents anywhere from six weeks to six months. Or when we receive the documents, what we receive are not a large number of documents that justify the original reason to ask for the extension, or we don't receive the documents at all.

The findings of Sierra Legal were recently confirmed in a study by a Syracuse University professor. You've probably been made aware of that. Alasdair Roberts did a December 2003 study where he analyzed the freedom-of-information database. This revealed to us — and it was unknown at the time, although we had some understanding — that the B.C. government has created a central database for tracking FOI requests. Each of the requests gets two evaluations for political sensitivity. The minister receiving the requests evaluates sensitivity, followed by a central review. The data-

base is searchable by all ministries to determine who made the request and when they made it, and I think there is an insidious undertone to that, but I'm just going to deal with delay on that.

[1135]

The report concluded that the majority of the time, the requests are not responded to within the time limits provided by the act. Highly sensitive information is released months after deadlines for the majority of these requests. The study also found that most traditional institutions enforcing accountability are most likely to have their requests deemed highly sensitive. For example, media requests get the designation 72 percent of the time and political parties 89 percent. I would suspect that Sierra Legal would be in the higher bracket, for higher sensitivity.

Highly sensitive requests often — 25 percent of the time — get the response if there are no documents. That only occurs 10 percent when the response is low. I want to anticipate a question early: do we take advantage of the appeal options with the commissioner? Of course we do. You're between a rock and a hard place. Do we try to accept the 30-day, 30-day and eventually we'll get the documents? Or do we appeal to the commissioner, and then we're involved in a 90-day extension period, where a mediation can occur? What do you do? In the context of tight resources, more often than not we can't afford to expend the time going to appeal.

Back to the issue of disappearing documents, it's our experience that that's quite common. As one example, we're presently before the Court of Appeal on the issue of whether or not we should release grizzly bear kill data. In the context of that hearing, we sought release of a map of grizzly bear habitat that took biologists two years to prepare. "It was destroyed in a move" was the response we received to a request.

At any rate, it's just worth stating that for our purposes, access delayed is access denied. Problems with access to information might have been anticipated when the act was originally brought into place, but ten years later we have the capacity to make the information freely available in a timely fashion, and it's not occurring presently. Those are my comments on the timeliness of the information.

The second thing. The point is that the spirit of the act must be enhanced and honoured by freeing access to information, enhancing access to information. In jurisdictions around the world, access to information is being enhanced directly by making information available on the Internet. In fact, there's a striking difference between our approach to making information available and that in the United States. To a certain extent, we'll expand on that in our written submissions.

What we know is that B.C. has computerized the freedom-of-information process, and much of the government is now computerized. Much of it is on computer databases. If we are to honour the principle that freedom of information promotes citizenry participation in democracy, the next step is to make that information available on the Internet. We do in some cases

— for example, water licences. But why don't we do it throughout?

The other point under that, in honouring the intent of the act, is that we are moving. Maybe we can agree that B.C. got into the freedom-of-information game behind some of the other jurisdictions I turned to, for example — so superior systems. Having said that, we've embraced the computer system fully now, and we have the capacity, with the exception that computer databases in some of the ministries are being designed to frustrate access to information. I give, for example, the compliance-enforcement database in the Ministry of Forests office. A recent decision arising out of the commissioner acknowledged they had designed that database in such a way as to frustrate access to information, because it hampered their ability to sever confidential information — which we weren't trying to get — to the point where we couldn't access what would otherwise be routinely releasable information.

The last point I want to make is that the cabinet secrecy exemption must be eliminated. It's our position that section 12, providing secrecy for cabinet deliberations, is overly broad. In the context of the directions that modern western industrialized jurisdictions are moving to, it could be eliminated entirely. Sierra Legal understands that cabinet must be allowed the opportunity to deliberate in a candid and secret forum, but other than subjective policy discussions and that candid deliberation, the factual basis for cabinet decisions should be made available to the public. That is the essence of public participation in the democratic process and the essence of holding government accountable for its decision-making.

[1140]

Section 12 extends far beyond this. Section 12 on its own, because it has the deliberate secretness — I'm going to look up the particular criteria... "Substance of deliberations" is a criterion applied to determine whether or not there is release. It's far more restrictive than other jurisdictions. What in fact occurs is substantial elimination of access to information that supports decision-making in cabinet that would otherwise be releasable. I have direct experience with that, having recently challenged a cabinet order-in-council on exporting raw logs, being denied cabinet documents for six months through FOI and then subsequently obtaining them only as a result of filing court documents — getting them and learning that people didn't provide them largely because they feared reprisal, not because the documents themselves revealed anything that would jeopardize cabinet secrecy.

In spite of a commitment to enhance the openness of the cabinet process, of course, this government presided over an amendment to the legislation that extended cabinet secrecy to committees. When that was first challenged, the commissioner acknowledged that was inappropriate. So what happened? They went back and rewrote the legislation.

In fact, entirely in opposition to promises, cabinet secrecy has been enhanced. The particular provision

that sets out when a cabinet committee can be designated, of course, does contain some parameters that narrowed it beyond what it was originally, but in our position it's still a much broader exemption for cabinet documents than what would be protected under the common law.

For our purposes, more importantly, it's far beyond what was promised and far beyond what was intended by the act and what is being practised in other jurisdictions. It's our position that section 12 could be eliminated entirely. The act is rife with exemptions, such as policy decisions, third-party information, legal advice, etc., that would protect cabinet. Failing that, they could go to in-camera sessions. Certainly at the time, cabinet characterized its commitment to open decision-making as akin to that practised by municipalities, but of course they do have an open process. Cabinet does not.

Section 12 has been characterized as the Mack truck exemption by political and academic commentators. It's entirely inconsistent with the promises made by this government and the intention of the act.

Those are my comments.

B. Lekstrom (Chair): Thank you very much, Devon. Possibly I could just begin with a question. You've referred to other jurisdictions in relation to your comments on section 12. I'm wondering if you could give an example. I know we do have access to other jurisdictions — the freedom-of-information issue and legislation — and I'd be interested if there's something you could point to that the committee could have a look at.

D. Page: We'll provide some examples of more progressive legislation in our submission, but I can tell you there isn't a jurisdiction we could identify that doesn't have any protection for cabinet secrecy. What they have, for example, are different classes for exemptions, and/or they recognize that other exemptions that already exist in the act protect cabinet secrecy. I wouldn't say to you there's any act out there that doesn't protect cabinet secrecy and the secrecy of cabinet deliberations, but there are fewer acts — in fact, very few — that extend beyond this. For example, many of the jurisdictions in the United States would not have a provision like this. The federal ATI Act doesn't have a provision like this.

B. Lekstrom (Chair): Okay. Thank you.

I'm going to look to other members of the committee.

J. MacPhail: Thank you, Mr. Page. My apologies. I'm not familiar with that Syracuse University study. When was that published?

D. Page: December 2003 is when we received it.

J. MacPhail: So it's very recent.

D. Page: Right.

J. MacPhail: Do you know whether the central system of tracking is FOIable?

D. Page: It is, and I understand the report was prepared on the basis of a submission to FOI.

I should point out that if the committee is not aware of that report, the essence of the report was not only that the responses to the Freedom of Information Act are characterized by delay. It was also a concern that the FOI Act and the central data-tracking base is being used not for the purposes of providing access to information but for the purpose of preparing ministries for potential political hotspots.

J. MacPhail: Is it about B.C. specifically?

D. Page: Right, it is.

J. MacPhail: I'm unaware of the study; I'll have to track it down.

D. Page: We'll provide the committee with a copy.

M. Hunter (Deputy Chair): Mr. Page, thank you. I want to go to the delay issue and ask you what your reaction would be to this. The 30-day limit there now is and was unrealistic. Should we be thinking about extending it to 60? At least that would avoid somebody having to write to you and saying they need an extension. Is 60 days out of the question?

The world is more complicated. Everybody's resources get stretched thinner. It seems to me — at least what's happening now, as you and others have described it — that it's almost... It's not automatic, but it tends to be, and you would submit it. The letter at day 28 is what you get. That takes resources as well. Should we be looking at a longer initial period?

[1145]

D. Page: Absolutely not. I'm concerned that that kind of comment misinterprets why we believe that delays are occurring under the act. They're not occurring because there are massive amounts of information that they have to go through to try to determine what we're seeking. They're occurring because there's a political review process that adds an extra step to whether or not the information will be released, which we believe is inappropriate.

More often than not, when we receive information, you can tell simply from the e-mail train we receive that the documents were accumulated within a matter of hours or days of our request, and when it was obtained by the current review and information officer. Thereafter, it goes through a political process of determining whether or not ministries will be in a position to respond to us when we obtain the document and do what we do with it.

M. Hunter (Deputy Chair): Okay. Thank you.

B. Lekstrom (Chair): All right. I will entertain one more question. I will go to Tom Christensen.

T. Christensen: Thanks, Mr. Page, for your presentation. I look forward to the written presentation, because you've raised a number of important points. I want to follow up a little bit on Mr. Hunter's question. It seems to me that the goal here is to maximize the routine exposure, and I think anybody interested in access to information on government accountability would agree that that should be the ultimate goal.

I'm hoping that in your written submission, you'll point us to some jurisdictions that you feel have been more successful in doing that. My impression from what we've heard today and certainly previous to today is that that remains one of the big challenges — to create a culture of routine disclosure within government so that organizations like yours or individuals around the province don't have to rely on the act so much, because everything is already available.

D. Page: We'll provide examples, but if members of the committee have time, sit down and do a Google search on Senates of the United States. You'll be amazed at the information that they make available. Committee materials would be released almost.... I think they have real-time release of much information now. But we'll attempt to provide examples. Not that we're going to do the committee's work for it, in the context of tight resources, but we'll provide examples.

B. Lekstrom (Chair): Devon, I thank you for taking time to come and present to our committee here today.

D. Page: Thank you for having me.

B. Lekstrom (Chair): As our next presenter this morning, I will call on Tim Wittenberg. Good morning and welcome, Tim.

T. Wittenberg: Thank you very much for having me. Forgive me. I'm a little nervous about this. I'm used to doing things in print rather than live like this, so bear with me.

B. Lekstrom (Chair): Take your time.

T. Wittenberg: I think I'll just give you a short outline of what happened and go from there. You have the material in front of you, so there's no point in me going over it twice with you. Basically, what happened was that I sent an e-mail to the Attorney General's office, to Geoff Plant's office, last year — over a year ago. Upon reply, I got it through — where did it come from? — Stan Hagen, the Minister of Agriculture. What caught my attention on it was that at the bottom.... It was all in regard to the SPCA issues that I had at the time. What I found interesting was that at the bottom, the e-mail was copied to the Hon. Geoff Plant and my MLA. What caught me was the fact that it had also been copied to the BCSPCA. Now, I had not given permission for this, and I found this very disturbing because of the fact that my information may have gone to them.

According to my FOI material, there have been other things happening there, but what has got me kind of concerned is that there are many other people who have also presented material to the government regarding this issue around the SPCA. Has all their private information been passed along to the SPCA without permission? That is very disturbing. Some of those people may not have wanted that information passed on, because of the fact that they probably are working with the SPCA in some way or have other issues and don't want their private information passed on. Yet it has been passed on.

[1150]

What happened was that I took this issue up with Ms. Kim Daum, who is a journalist in Vancouver here, and she took the issue forward to the FOI for me on my behalf. You have the material there.

I understand Ms. Daum is also putting a submission forward, in writing, to the committee, so I'm sure she'll go into more detail with this and probably other issues as well. I don't know what else I can put forward. I'm not so concerned for myself, but for other people who may have put something forward and did not know that their replies or comments have been passed back to this association without their knowledge. This is what I have concerns about.

B. Lekstrom (Chair): Well, Tim, I thank you. I'm going to look to members of the committee if they have any questions regarding what you have put forward here this morning.

G. Trumper: Thank you, Mr. Wittenberg, for coming. You raise a really important issue that has been raised in another context in a presentation to us about where information goes, which has not had the permission of the individual either. That has actually, depending on the context of it, huge implications. Whether it does with this one or not, I'm not about to judge. But I know information — because today we live in an information world — can go to the strangest places, which is quite scary, I would agree. I really thank you for bringing this forward because....

T. Wittenberg: I understand my reply went to the BCSPCA — not my request or submission to the government, apparently. Still, the fact that they received the reply and my name was there and possibly other information.... For myself, I'm not worried so much about it, but I'm thinking of other people who may have also put their information forward. Now the replies are going back to these people with all this information on it, and I am concerned about that for them, for their sake and for their privacy, because if they don't know that this has happened.... I just happened to catch it and brought it forward, and it's gone through. That is what I am concerned about — for them.

G. Trumper: It's a real concern as to where information goes these days with a balance of freedom of information, etc. So you raise a good point. Thank you.

B. Lekstrom (Chair): Tim, if you do have a moment, we do have one further question from a member of the panel. I'll call on Tom Christensen.

T. Christensen: Thank you, Mr. Wittenberg, for bringing this to our attention. I did have a chance to glance very quickly through what you have provided us, and in your case, at least, it appears the Ministry of Attorney General acknowledged that it shouldn't have sent your letter on. Well, not your letter, but....

T. Wittenberg: My e-mail. I had sent it directly to them without having it copied to anyone else, so they shouldn't have....

T. Christensen: Exactly. They shouldn't have sent out a letter that indicated they had gotten something from you.

T. Wittenberg: Yeah. If it had gone to my MLA or to another department within the government, I would have no problem with that. But for them to pass it on to a private organization like that, I think, was a mistake.

T. Christensen: Fair enough. It seems that they acknowledged that it was a mistake.

T. Wittenberg: Yes.

T. Christensen: I'm wondering if you have any suggestions other than that obviously ministries need to be more careful about that type of action. Is there anything you're aware of in the act — a shortcoming in the act — that doesn't provide the adequate protection?

T. Wittenberg: I'm afraid I am not up on this at all. This just came up to me very suddenly, so I'm not into this. I'm sure that through Ms. Daum's written submission, she will clarify a lot more than I could ever do in putting this forward. She was the one who took it all forward on my behalf. I allowed her to do it and went to her, so I had very little to do with it other than notifying her and coming here. That has been my range on this whole issue. I do appreciate being allowed to present it. Thank you very much.

[1155]

B. Lekstrom (Chair): Thank you very much, Tim, for coming here today.

For our next presenter this morning, I will call on Peter Westwood. Good morning, Peter. Welcome.

P. Westwood: Thanks for the opportunity to make this presentation. I do have some submission notes that have been circulated but I'll just briefly reiterate what's in those notes, and I'm open to questions.

First of all, I'm appearing as a private citizen, but my comments are a result of having been a project manager putting in a system in the area of apprenticeship and apprenticeship certification across Canada.

The particular challenge of this is that apprenticeship is in the education field. Therefore it's a provincial jurisdiction, though the feds are involved. But we're putting in a cross-Canada system, so that means it's been unique, and I think we're the first. We have to get the system FIPA-approved or FOIPPA-approved — whatever term you want to use — across Canada.

Before I get into the challenges that we've had, the system does have benefits to the consumer — apprentices. It's a part of this. The way an apprentice gets certified for working across Canada is that he takes an exam. Part of this system is that if the exam had been compromised — which means his buddies had told him all the answers, or the instructors sold him the answers and stuff like that — it could be over a year before a new exam gets in place. That apprentice can't work as a fully qualified journeyman. He gets less money, and he can't move across Canada — things like that. That's one of the major benefits.

Another benefit is that the system will protect the consumer. If a plumber can become a plumber because he knew the answers because his buddy told him the answers, that doesn't really help the plumber. Obviously, in all of these systems, through the use of computers we're trying to save money on administration. There are some good ideas behind this system.

We've had problems, and the problems have been FOIPPA-related. Now, these problems are not unique to B.C.; B.C. is just in there with the rest of it. To the best of our knowledge, we're the first system that's being used. This is a shared database being used by all of the provinces and territorial governments across Canada. So this is the first. I would have thought there would be opportunities to do that further. You know, government services are pretty similar, and people do move across Canada, so there should be further opportunities. It's been a rocky path for us, and those opportunities are not going to come about as fast because of the problems we've had.

What are the FOIPPA issues that we've had to face? Before you can put in a computer system that has personal information in its database, it's got to be FOIPPA-approved. There's something called, in most jurisdictions, a privacy impact assessment, or a PIA. Well, I'm sorry. My experience is that this is a bureaucratic nightmare. When I last looked, the PIA policy and procedures manual was over 500 pages. Well, the act is only 53 pages.

Now in our system, like in all good systems, we've got thousands of pages of specifications. In order to distill that information into a PIA, it finished up being a 400-page exercise. And guess what. There was a lot of misunderstanding and miscommunication during this exercise. This exercise has been going on for nearly three years. We have not yet gotten the necessary approvals across Canada.

We do have a lead province working on our behalf. It's not B.C., so we aren't trying to reinvent the wheel in every single jurisdiction. Someone's trying to do the whole thing and steer it through and work with all the

privacy people across Canada. I'm very frustrated. It's been, as I said, a nightmare.

[1200]

Some of the particular problems that we ran into, in addition to the fact that we have to get it approved in 13 different jurisdictions.... I'm not at the front of this. I'm just the project manager. I've got other people doing it. I've frequently run into the attitude, "It can't be done," as opposed to: "This is what you have to do in order to comply with the act." There's a culture of: "It can't be done."

Now, maybe that culture is unique to our situation. What were the elements of our situation that perhaps made it that? Well, we're talking about outsourcing the computer system. B.C. is doing outsourcing all the time, but when we started it five years ago, outsourcing in government was perhaps a bad word. It means when you get a third-party contractor to manage the system.

Obviously, the personal information can't reside in one province. A lot of jurisdictions don't like personal information going outside of the province, and we've got to arrange to share that personal information between jurisdictions. There is a concept of a data-sharing agreement, but as I said, that process has taken over a year.

A couple of jurisdictions, who'll remain nameless, just don't like sharing data with the feds. It's just amazing. This is a national program; this is not a provincial program. The provinces and the jurisdictions.... The feds have been doing this for over 20 years. This is the first attempt at computerization.

I have some recommendations. I don't see why you have to have a preapproval process, the PIA process. My impression of lots of government regulations is that if you break them, you get prosecuted — unless it's a certification. You don't say ahead of time: "I'm not going to be a criminal," or "I'm not going to do this." So why do you have to have that preapproval process? Why can't you replace that with a manual that doesn't take 500 pages to explain how to comply with the act? The act, in my interpretation — and I'm not an expert — is pretty straightforward. I don't see why it needs 500 pages. So replace it with advisory services. You've still got an audit capability.

If you don't want to get rid of the PIA process, at least allow automatic recognition of another jurisdiction's approval so you don't have to go through it again. Now, some jurisdictions, you would argue, have weak FOIPP. Maybe an alternative is that if there's more than one jurisdiction involved, default to using Canada's. I've read things in the paper. B.C. doesn't quite agree with Canada, but it's pretty good. We're trying to save money here.

Allow for good business judgment. This has, as I said, been just a bureaucratic process. I don't think too many people are worried about apprentices' information and whether they've passed an exam, which is public knowledge anyhow. Is that information so critical that you spend that amount of money? You've still got to go through a process. I've compared it to a pa-

tient's records. There's been no business judgment in the whole process.

Last two points. I quickly read the B.C. act. I can't see anything that prevents outsourcing of a computer system and storing personal data in another jurisdiction. Just make sure that doesn't creep in there. I got the impression that other jurisdictions had problems there.

In summary, as it's currently implemented, FOIPPA is costing us more than it needs to. In our case, it's putting citizens at risk, and it's preventing citizens from receiving benefits that are there from government. In this context, obviously, it's got a lot of good things going for it. In our context, it's been very negative.

B. Lekstrom (Chair): Well, thank you, Peter, for presenting this morning to our committee. I'm going to look to members of the committee if they have any questions on what you've put forward.

J. MacPhail: This is certainly coming as an issue that's new to me, so thank you very much for this. Clearly, it's going to be an issue that only increases in importance as we try to resolve the shortage of good tradespeople with TQs, etc. Is there a provision in your system that allows for the individual to provide consent?

P. Westwood: Yes.

J. MacPhail: And that's not enough?

P. Westwood: You know, that's the most simple thing. As soon as he gets into the process, he signs. Yes, it can be used. It's there.

J. MacPhail: And there are still barriers beyond that, which you're coping with?

P. Westwood: During the process we actually haven't had to redesign anything. We designed it right. It's the bureaucratic process.

J. MacPhail: Thank you very much. I think that's probably an issue for us to examine.

[1205]

B. Lekstrom (Chair): Are there any other questions?

G. Trumper: Is this a federal-provincial program?

P. Westwood: Yes, it is.

G. Trumper: It's the Red Seal, isn't it?

P. Westwood: It's the Red Seal program, yes. It's operationally the provincial/territorial government, but the federal government provides funding and planning and is a major partner at the table.

G. Trumper: So are parts of the program in place or...?

P. Westwood: Yes, we implemented all of the system two years ago. That has nothing to do with personal information. We've got half of our benefits. There is another half that's been dragging on.

G. Trumper: So the issue is different jurisdictions and different provinces having different rules.

P. Westwood: Yes. You know, we have 13 legislations across Canada. Sometimes, shall we say, the issue is Canada being Canada.

G. Trumper: Thank you.

B. Lekstrom (Chair): All right, I'll go to Tom next.

T. Christensen: Thank you, Mr. Westwood, for your presentation. You may not know the answer to this question, but where is the requirement for this great preapproval process coming from directly? Is it a matter of a provincial government policy that's saying, "Listen, we're not happy until you get sign-off from various people," or is it...?

P. Westwood: I can't remember any longer, but I presume it's policy.

Interjection.

P. Westwood: Sorry. We're not subject to the federal privacy act at all in this. Even though the feds are a party, they're not a party to the personnel information, so they don't have to be part of this. If they were, I don't think we'd ever get through it. That's because certain provinces just don't want to do business with the feds in certain circumstances.

B. Lekstrom (Chair): Well, Peter, I see no further questions from the members of our committee. I want to thank you, as well, for taking time to come and address our committee this afternoon.

P. Westwood: Thank you.

B. Lekstrom (Chair): I will call on our next presenter, Norman Trerise. This is in addition to our witness list that was received this morning, for the notification of members.

Good afternoon, Norman.

N. Trerise: Good afternoon, and thank you for hearing me. I just found out that this public forum was taking place at 10 o'clock this morning.

I'm a lawyer with Faskin Martineau. I work in the employment and labour department and practise in the privacy area. Sort of following up on the comment that the library made earlier, I found out about this by virtue of an e-mail that came through about 9:40 this morning from the local head of the FOIPPA and privacy subsection of the Canadian Bar Association. So I've come over without having given too much consideration, obviously, to issues.

There are a couple of things that I would want to raise. No. 1 is that I expect, during the course of this review, you'll be considering whether it is necessary or desirable to invoke amendments to the legislation that will parallel PIPA for the privacy side of FOIPPA. I would anticipate that would probably be given serious consideration, and if that is true, I would expect parallels to the consent provisions in PIPA to find their way into FOIPPA more so than currently exist.

[1210]

Of course, we all know there were amendments to FOIPPA to kind of begin that process prior to PIPA coming into place. I would just, in respect of that, urge you to consider that the process in PIPA was a very comprehensive process. There was input in the private sector from a vast category of constituents. From my perspective, I think that legislation has been very well considered. Should you be looking at those kinds of considerations, I would urge you to try and ensure that there is a minimum of difference between the two pieces of legislation.

It's already becoming a bit of a nightmare across Canada on the private sector side that there's legislation in British Columbia, slightly different legislation in Alberta, completely unique legislation in Quebec, and then there's the PIPA, which is different again than all of those. It would be nice, to the extent possible, if the legislation looked the same, and people who are working with the legislation don't have to be familiar with too many different variants.

Secondly, I would expect, if you do go there and look at the privacy side of this, that consent will be one of the things you'll be looking at — consent to personal information being collected, used and disclosed. I would encourage that the exemption language around investigations parallel what is in PIPA, which has been well thought out and has had lots of input from various sectors, including some of the sectors that were represented here earlier. In particular, I would encourage you to follow the model that provides a broad definition of what an investigation is, because one of the difficulties with FOIPPA is that it is confined in terms of its exemptions and so forth to investigations into violation of law and police investigations.

Of course, in all of these government agencies.... I represent some of those. I've made representations for information. I've made representations with respect to and opposing applications for information. All of these — government itself, Crown corporations and so forth — are employers, and employers have to be able to manage their employees. When you get into circumstances, as an example, where you have to ask permission from an employee to conduct an investigation into whether or not that employee is doing something contrary to the employment agreement, then you have completely manacled the employer. That's not a very reasonable situation. I would encourage you, if you're looking at that sort of thing, to look at that PIPEDA legislation closely.

[1215]

With respect to the issue of delay that I heard addressed earlier, I would just throw out as maybe a different voice, as somebody who does represent public sector clients and private sector clients looking for information, that my experience is that the legislation, despite some of the hysteria that went around in 1994 when it was coming into play, works very well.

As has been pointed out by at least one of the panel, when you can't get information or when a public body is asking for an extension — because, for instance, they need to consult with a third party as to whether or not that third party has a voice with respect to whether particular information should be disclosed.... There is an appeal provision set out in the legislation if the applicant has a concern about the amount of extension that the public body says they need. They can go to the privacy commissioner over that. By its very nature, there's no question that if you kick into that process, there's time involved. Overall, it seems to me a good compromise with respect to the issue, because at the front end there's a 30-day period. My experience is, generally speaking, that unless there are issues of complexity of information or of third-party involvement, public bodies do comply.

I haven't had a lot of experience, like the Sierra group, with requesting information from government. I took it that some of his comments related to that. I have a lot of experience with requesting information of public bodies generally, in the education sector and the health sector and so forth, and my experience is that these time limits aren't problems. I just wanted to put that out there.

I guess the final point I want to make, and it's along the same lines, is that section 22(3)(b) of the legislation deals with protection of privacy. It presumes an unreasonable invasion of a third party's personal privacy if the information was compiled as part of an investigation into a possible violation of law, which is quite a restrictive situation. You might at least want to consider the possibility that the concept be expanded to deal with investigations into violation of contract, etc., as has been done in PIPA, bearing in mind the legislation says quite clearly that all of the normal common-law legal access routes to get at information in the event you're in a proceeding of some sort are still available.

If, for instance, a grievor in an employment situation is involved in an arbitration and wants to get at that information, they still can, but what will happen is that an arbitrator or a judge will put into place whatever parameters will surround that. This seems reasonable, rather than a situation which requires you to turn over information that may be quite sensitive during the course of an investigation or before the matter has been heard — holus-bolus, without any protection, without any kind of parameters put on the collection of that information. So I would encourage you to look at that. That's really all I have to say.

B. Lekstrom (Chair): Thank you very much, Norman. I thank you for, on this short-notice hearing, being able to come over and address our committee. We do learn a great deal from the people that utilize this act on a day-to-day basis. It's our job to listen and try and learn and try and see if there are ways to improve the act. That's what we're here to do today, so I thank you.

I do have questions. I will go to Jeff.

J. Bray: Thank you very much. You've obviously got a good perspective on this act from the work that you do. The committee does receive written submissions up to November 27. Written and oral submissions are treated the same, so I'd encourage you, if you would do so, to take the time to prepare as if you were going to come a month from now — to prepare orally — because I think you've got some good information.

[1220]

You're the second person that talked specifically about PIPA-FOIPPA comparisons on the consent side. I'm wondering if you can give me — maybe if you can't now, if you do a written submission — a couple of practical examples of the consent differentials you see that you think need to be closed or eliminated. In other words, how is consent worked when I'm applying for Pharmacare versus the consent when I'm buying a pair of jeans from eBay?

N. Trerise: Sure. Well, for starters, for the most part right now the privacy issues under FOIPPA are confined to applications for disclosure. Obviously, under PIPA consent or the whole privacy issue is a much broader issue. It's protection of privacy on all fronts. There's a prohibition under the private sector legislation from disclosing privacy information unless you have the consent of the individual — from collecting it, using it or disclosing it, generally.

There are also prohibitions from disclosing personal information under FOIPPA. I think it's section 32. They're fairly broad, but there isn't the same kind of... What I'm saying is that I don't see the same kind of sophistication of analysis that has been put into play with PIPA on FOIPPA.

When FOIPPA was designed pre-1994, it was a very different world. I just anticipate that probably these are things you're going to want to look at. When you do, I would personally be dismayed if you went at it with a fresh sheet of paper because of some of the things that I mentioned earlier. It's not desirable. I think most privacy practitioners would agree. It's not desirable to have unique pieces of legislation all over the place dealing with these issues. It's desirable to have as uniform an approach as possible throughout the country, really, but certainly provincially.

B. Lekstrom (Chair): Thank you. We do have one further question. I'll go to Bill Belsey.

B. Belsey: Thank you very much for your presentation, and we do appreciate you coming down on short

notice and providing us the information you have. It's been very useful.

I would like to draw on your expertise and ask a question that has come up in certainly three or four of the presentations, and that is the accountability of those that actually deal with the requests. Certainly, some have questioned the answers they get and possibly the lack of cooperation they may be getting in their public or private requests that go in. I'm wondering: are you aware of jurisdictions that take into account some form of accountability in those that respond and what they're required to do?

N. Trerise: Usually the main accountability is in terms of.... If you wanted public embarrassment.... The privacy commissioner has the authority to write — and does on occasion write — a pretty scathing indictment of the way a particular institution has handled a request. Those kinds of things, that kind of attention, if you will.... The practice in British Columbia, unlike some other jurisdictions, is to name the organization. The commissioner names the organization in this decision. You see which organizations are recalcitrant, etc. It's not a desirable thing to be named in that sort of situation. It's actually quite an embarrassment.

I would think — I'm not inside, so I don't know — that if a privacy officer for a government agency or a Crown corporation, or so forth, has handled.... I don't know if you remember, but back in the early nineties when this first came into play, there was a big bonfire up at Prince Rupert. A lot of documents were.... That was very embarrassing.

[1225]

I don't know that there's the necessity to get heavy-handed. I think there are strong disincentives right now for abuse on the side of public bodies.

B. Lekstrom (Chair): Norman, again, I will thank you for coming out and presenting to our committee this afternoon. Take care.

N. Trerise: Thanks for the opportunity.

B. Lekstrom (Chair): For our next presenter this afternoon, I will call on Edward Swetleshnoff. Good afternoon. Welcome.

E. Swetleshnoff: Good afternoon. I'm happy to be here and share my ideas with you. I'm also a latecomer to this thing. I only heard about it yesterday.

My background is that I've spent 15 years as an information system auditor, most of those with a couple of the big five firms. In that process I've had a rather unique perspective, because I've done government ministries, provincial, federal, municipal, cities. Because I do information security audits, I'm often dealing with the privacy officers or the freedom-of-information officers. I've also been an adviser to the PIPEDA legislation in Ottawa through the information

association of Canada, so I've had a long interest in this.

One of my observations is that in listening to the complaints here and then going back in my mind — because over 15 years you get to know a lot of different places — one of the main problems I have found is that there's a lack of consistency in application of the legislation at the ground level, at the root level. In talking to dozens of privacy officers or freedom-of-information officers, I have yet to meet two of them who have the same opinion as to the legislation, what it entails and what its requirements are for the people.

Having said that, looking at situations where people say it's taken six months to get a request, it may not be malevolence that's causing that. I've noticed a lot of hostility from people who are presenting, who feel they're being wronged. At one point in my life I might have believed in the malevolence, but I've gotten over it, sadly, to the side of incompetence, which is not saying the people are not motivated to do a good job. They're just not being provided with a tool set, the time allocation, the knowledge and a consistent form of practice in order to be able to do it.

Having looked at that and done a high-level cost-benefit analysis, I worked out that basically a week of training would save the provincial government a fortune. By the time you have to go and start bringing in the lawyers because somebody is complaining every six months or you're having to send.... I mean, you people know it costs about \$150 to send a letter out from the government. It's just the levels of bureaucracy that it entails.

The same thing also goes consistently to where people are defining information as being destroyed or information can't be found. I'm sorry, but that's real life. I have yet to audit a private company — and I've audited *Fortune* 500s — that can find all their pieces of information. It's just the nature of how much information we accumulate that makes it almost impossible, even with the best of intentions, to find it. Yes, information gets destroyed. Was it malevolent, or was it incompetent? I don't know. Ninety percent of the time it was because somebody didn't know what they were doing, and they destroyed it.

There are solutions. I have seen it under the Ontario legislation, for example, where they try to build freedom-of-information access into their own systems. So actually, with key files or flags, they can recall them off the computers or off the indexes in a matter of minutes or maybe a day. That hasn't really been done, necessarily, in this province. There's a lot of segmentation, a lot of people hoarding their own domains and protecting their own information. Again, it's because they're not quite sure what they should release or what's under their control, and nobody wants to take the liability. Everyone's playing CYA. I think that's why most of the observed delays I've seen coming in have happened.

[1230]

I have no problem with the legislation. I've gone through it. I personally prefer the PIPEDA, which is

more rigorous and more consistent, but as a freedom-of-information act and privacy legislation, it's fine. It's competent. It works, but it just isn't being applied consistently. I think that's where a lot of the problem with the citizenry is coming from. It's not a big fix.

[M. Hunter in the chair.]

We were talking earlier with the privacy officer, and he was talking about taking a municipal course on freedom of information. I've taken that course. It's a two-hour course. I was auditing it. It basically tells you where to find the forms. They'll give you the legislation, but they won't give you an interpretation of it or what the responsibilities are to the individual municipalities or department. I guess my recommendation is just to have the legislation applied consistently among the ministries and probably save yourselves a ton of money and problems. That's my comment.

M. Hunter (Deputy Chair): Thanks, Mr. Swetleshnoff. That's an interesting perspective you presented to us. Do any members of the committee have questions?

E. Swetleshnoff: No. Okay. Thank you.

M. Hunter (Deputy Chair): Great. Thank you very much, sir.

The next witness to appear before us is Roderick Louis, with the Patient Empowerment Society.

[B. Lekstrom in the chair.]

B. Lekstrom (Chair): Good afternoon, Roderick. Welcome.

R. Louis: I speak pretty loudly. I presume, gentlemen and ladies on the Special Committee to Review the Freedom of Information and Protection of Privacy Act, you can all hear me. I'm just going to wait until all the paper gets around the table before I begin my somewhat impromptu submission.

First off, what I'd like to say is that in front of you, you have two documents. The salmon document is self-explanatory. It's my summary of recommendations. The double-sided white and black document is sort of an ad hoc, thrown-together submission.

To start off, thank you very much to members of the Special Committee to Review the Freedom of Information and Protection of Privacy Act who have come here today. By that, I mean members who I've listed on the page you have in front of you, and only those members. It's gratifying and confidence-building that the government of B.C. is prepared to have MLAs come and hear submissions from stakeholders regarding their perceptions of the act's function and potentially needed improvements to the act or the facilitation of it in B.C.

Obviously, I'm Roderick Louis. I'm speaking on behalf of myself as well as a psychiatric patient advocacy group known as the Patient Empowerment Society, which is based at Riverview Hospital. We assist others and, as well, members of our group on how to put in FOI requests to a variety of public bodies ranging from the Vancouver coastal health authority to the Vancouver city police to other health authorities to the B.C. Mental Health Society and the Greater Vancouver Transportation Authority, also known as TransLink, and others.

[1235]

Members of the Patient Empowerment Society are concerned — and people we have assisted over the last several years. As a general rule, there is a feeling that creates quite a negative concern that there appears to be a pattern amongst large public bodies of attempting to obstruct and of not responding in a timely fashion or in compliance with the legislation to reasonable requests for access to or copies of records.

The ability of the public to access and obtain copies of documents or records used or created by public bodies such as government is fundamental to instilling confidence in the public in the decision-making processes of public bodies, especially government or quasi-government bodies. A public that is denied reasonably unhindered access to records of public bodies quickly questions, rightly or wrongly, the integrity or fairness of decision-making by these public bodies and their elected officials or employees.

As presently constituted, the B.C. freedom-of-information legislation has laudable objectives insofar as it purports to enable members of the public in B.C. to request and be given access to — or copies of — government, quasi-government and other public body records. Unfortunately, despite clauses in the act specifically delineating duties of public bodies, all too often members of the public, which includes members of government such as yourselves or members of the media and others, are denied access to or copies of records from public bodies without reasonable grounds. What is needed is amendment of the act or its regulations to improve responses of public bodies to requests and to make or create a new accountability structure for public bodies so that their responses to the public can be monitored, at least indirectly, by the commissioner's office.

On the back side of the double-paged document which I've given you — the black-and-white one — point 2 leads into several suggestions from members of the Patient Empowerment Society that we believe would improve the function of public bodies in responding to requests for access to records from members of the public. One of the needed changes to the present process, as point 2 reads, is that there's "a need for the act to be amended to create a structure that would mandate a much broader openness and transparency of the facilitation of responses by public bodies to FOI requests."

How do you create much broader openness and transparency? You change the act so that rather than

every public body that receives an FOI request assigning its own public body tracking number to the request, instead have the commissioner's office assign a tracking number to the FOI request. How would this be done? For example, if the city of Surrey received an FOI request, it would notify the commissioner's office of this request and send a copy to the commissioner's office. In reply, the commissioner's office would assign a tracking number, which is not done now. Presently public bodies that receive requests sometimes assign tracking numbers; sometimes they don't. The gentleman just before me spoke of incompetence. That is rife in public bodies, especially in responding to a public that the public body believes is powerless to enforce their rights.

A uniform tracking number would enable a consciousness in public bodies that they are being watched, at least passively, by the commissioner's office in how they respond to FOI requests. It would also enable a tabulation of how many FOI requests are received every year provincially, which now is not easy to obtain by members of the public.

[1240]

Additionally, what the public body should have to do, which is not being done presently, is fill out what Patient Empowerment Society members call an FOI process chart, which would be a simple, perhaps one- or two-page document with tick boxes. It would be filled out at regular intervals by the public body, stipulating, for example, contacts with the applicant and, when correspondence was sent to the applicant, a summary of the correspondence. If there was a fee appraisal assigned to the FOI request by the public body, that would be noted in this. We're suggesting that an FOI — in other words, a freedom-of-information — process chart is needed.

A copy of this freedom-of-information process chart would and should be sent to the applicant and to the commissioner's office as well. Every time the FOI process chart was updated by the public body, a copy of this updated version would in turn be sent on to the commissioner's office, thereby enabling, in a passive sense, a tracking of every FOI request and the response to it by a public body by the commissioner's office — passively.

If this process were instituted, it would enable a consciousness in public bodies that they're being watched — that if they aren't responding within reasonable time limits or assigning someone to negotiate with the applicant in order to find out from the applicant and assist the applicant with the types of records they want in a quasi-mediation process.... If that wasn't being done, at least there would be a record sent on to the office in Victoria — the commissioner — which would be a way of hopefully encouraging more compliance with the act by the public body.

Point 3 is rather self-explanatory. Members of the Patient Empowerment Society believe that in addition to an FOI process chart, which in effect is having a public body evaluate its own function, there needs to be an

evaluation of the public body's response to the FOI requests by the FOI requester. How could this be done? A simple two-page form with tick boxes should be created — a provincially standardized form that would have to be filled out by the FOI requester, effectively asking that person to evaluate how they view the response of the public body to their FOI request.

Right now, how does this committee, the Legislature or the Lieutenant-Governor know what the views of the public are in terms of how they are responded to by public bodies? Perhaps every public body in B.C. that receives FOI requests is viewed admirably and entirely positively by the public. I believe that's very unlikely, but we don't know. What we hear today, and what I've heard from members of the Patient Empowerment Society and people that we've attempted to assist in the last three or four years, is that there is great dissatisfaction amongst the public who make FOI requests in terms of the reasonableness and timeliness of responses from public bodies. At least have an evaluation process instituted so that there is a record, for the commissioner's office and for the Legislature and others, of the views of the public of the responses of public bodies to FOI requests.

Last but not least, the act needs some teeth. The FOI Act presently is greatly deficient in teeth. It has tremendous, laudable objectives in terms of empowering the public to be able to access public documents, whether it's medical records or contracts of civil servants and others. But if public bodies unreasonably stall, if they unreasonably don't attempt to assist the applicant in defining what their request is for specifically.... Some applicants aren't capable of specifically saying what they want because of age, infirmity or other reason. Public bodies should be encouraged to be able to show they are making a reasonable effort to assist applicants in the facilitation of their request.

[1245]

Put teeth into the act so that if a public body has been shown, through a reasonably balanced process, that is in conformity with principles of fundamental justice.... If a public body can be shown to not have been reasonably compliant with the act, there will be financial penalties assigned to the public body. Some teeth are needed.

That's pretty much our submission. Before I wrap up in 30 seconds or less, I'd like to just give a very quick summation of one incident involving an FOI request recently. No names will be named regarding the applicant, but I'll say it's a woman in her seventies. She has a psychiatric patient who's staying at River-view Hospital and has been there for years. This woman is a feisty old woman — some call her a feisty old bird — who sometimes rubs people the wrong way, but she has very accurate opinions about what should be done in terms of how patients are treated at this psychiatric hospital.

She requested copies of records from the psychiatric hospital of donations to the hospital from movie companies. This hospital, known as the B.C. Mental

Health Society and also Riverview Hospital, receives thousands and thousands of dollars every year — tens of thousands — from movie companies using empty buildings on this hospital site. This patient's relative has asked for copies of annual donation records. Why? Because she doesn't like seeing cookies taken away from patients. There used to be a cookie given to patients every night at the recreation complex. It's been taken away. A snack on the weekends has been taken away. The snack on the weekends used to be a muffin or a Danish. Patients at this large psychiatric hospital could get up late on the weekends and have a snack at Pennington Hall, the recreation complex. They no longer can do that. Pennington Hall was closed for the first time in eight years over Christmas this year.

The excuse for all these cutbacks — taking cookies from patients, taking away a snack in the mornings, closing over the Christmas holidays — is: "Well, we have no money." This relative believes that they do have money, and she's been asking for nine months for something as simple as annual records of donations to this hospital, which is an incorporated society, a charity — the B.C. Mental Health Society. One would assume a charity would keep records of its donations. They won't give them to her. The act needs teeth. Presently this request is in mediation. The hospital has dragged out mediation for three and a half times the legislated maximum, and they're still dragging it out.

I appreciate your patience if I'm a little bit over time. Thank you very much, members of the committee who are here. If there are any questions, I'd be happy to answer them.

B. Lekstrom (Chair): Roderick, I want to thank you for taking time to present to us today. I thought it was very thoughtful. I'm going to look to members of the committee. I will start with Ken Johnston.

K. Johnston: Mr. Louis, thanks for your presentation. It was very well thought out, I thought.

I just wanted to ask you about No. 2, which is "Tracking Structures Needed." I think I recognize some of the recommendations — maybe I'm wrong — from the police complaint process.

R. Louis: If you do, it's by chance. I'm not aware of any.

K. Johnston: I just wanted to touch on it. In terms of volume of work in tracking through the commissioner's office, I would assume — and I don't have numbers either — that there would be thousands of FOI requests that would need to be assigned numbers. I also make the assumption, and could also be wrong, that most of those requests are resolved. I think we've had presentations today on both sides saying that sometimes it's not resolved, but in general, it appears that a lot of times those things are resolved. My question would be: wouldn't we bog down the system with thousands of assigned numbers, for example, in cases

where we didn't have to? The real work of the commissioner's office would probably suffer — the real work being the availability to appeal to that office and get some more action in terms of that office.

My concern would be that we'd have to expand that office to an unreasonable size to fix something that's not broken.

R. Louis: I guess I need to try to make absolutely clear that this — I apologize if I haven't done this — tracking process would be a latent process from the commissioner's perspective until the applicant appealed a refusal of the public body. Effectively, all we'd see happening is one three- or four-minute time imposition on the commissioner's office at the implementation of an FOI request. The commissioner's office would assign a uniform tracking number, and there would be no more involvement from the commissioner's office except to receive mail from the public body. That mail would be a tracking chart, a process chart. The commissioner's office would not be actively involved until there was an appeal, but they would receive copies of this process chart as it was regularly updated by the public body.

[1250]

Effectively, what we're saying the scenario would be is... Let's say Riverview Hospital receives an FOI request. They send a copy to the commissioner's office. A file is opened. The commissioner's office sends back a tracking number. At that point there would be no more duties of the commissioner's office, except to receive regular updates on an updated process-tracking chart, which they would just put in the file. This doesn't take a lot of work. You receive mail in the commissioner's office. I should say the clerk receives mail in the commissioner's office. She would just go to the file where this FOI request is and shove it in the file and close the drawer, which isn't a big time-loader.

The main purpose of the process-tracking chart, from our perspective, is to instil in a public body the consciousness that, well, if we're not following process here, it's going to be found out down the road if the applicant appeals it. We're having to now send a regular — every couple of weeks or every three weeks — update on this process by way of this process-tracking chart over at the commissioner's office. It would also instil more confidence in the FOI requester, because they would be receiving a regular update as to what the public body is doing, which they don't presently. The consequences of that are that many FOI requesters get frustrated. They feel like they're in a black hole with no support, and they feel like walls have gone up between them and the public body they're requesting documents from.

Does that answer your question? I'm sorry if I've rattled on too long.

K. Johnston: I appreciate the response. I just envision in my mind this massive bureaucracy — which we're all trying to get away from here, I think — in

terms of charts being filed. When I was referring to section 9 of the Police Act in terms of there not being as many complaints in British Columbia — not as many files opened, if you will.... I assume that under freedom of information it's probably — I said thousands — tens of thousands, hundreds of thousands of things initiated through a year at all the public bodies. To have that going into a file in the central office concerns me, and I was just trying to get your sense of that.

R. Louis: Right now we have about 500 hands. Each hand is a public body. Why not have those hands all know what the other hands are doing, rather than having 500 blind hands for everything?

K. Johnston: Okay. Thank you.

B. Lekstrom (Chair): Roderick, I see no further questions from members of our committee. Again, I want to thank you for taking time to come and present to us this afternoon. Thank you very much.

R. Louis: Thank you very much.

B. Lekstrom (Chair): We will move on to our next presenter this afternoon. I will call on Ms. Derksen.
Good afternoon and welcome.

Ms. Derksen: Good afternoon.

I have probably much different comments to make than some of the other people. This isn't something I normally do. I don't represent anyone. I'm not a lawyer — just kind of the average B.C. citizen, I guess. I may get a little upset, unfortunately, too, but I think I have a unique perspective that needs to be listened to. I was just a normal worker working, and unfortunately a co-worker had a mental illness. As a result of that mental illness, he has been stalking me for years.

This has repeatedly gone to court. It turns out he was here illegally from another country. He has a history of stalking women. He has a history of diagnosed illness, and he has been deported from Canada previous to him stalking me, so my understanding is that he was even working here illegally. It has been extremely difficult, and I realize it is because stalking is considered new, although it's not. I understand the laws came out in 1993, and I could carry on a lot of debates with a lot of legislative people about the stalking laws, including Canada, the U.S., England and everything. I'm very familiar with a lot of the complexities and the problems it has had.

The reality is that I have to live with this or die with this, and the responsibility has been placed on me. I understand I have to take a certain amount of responsibility for my safety at this point, but the system does not make it easy. That is, in part, because it is set up to protect criminals. I know that's kind of the hard edge to look at it, but when you've got someone who's actively trying to kill you, and he's gone to court and has been found guilty and he gets deported, and everyone says, "Don't worry; you are now safe," and he comes back,

but no one believes me.... I have to prove that I'm not nuts, and that's what I had to do.

[1255]

No one believed me, or they didn't want to believe me, because this is Canada. It is hard to get information to prove.... You know, like, how do you do that? Anyway, it ended up going to court again, and he has now been convicted of three counts of death threats. There are 12 convictions. This guy has gone to jail here for three years, and he gets deported again. Paperwork gets messed up, and he's missing.

I really am at a total loss. I can't get help from any government agency. I shouldn't say that, because that is an exaggeration. Some agencies have tried, and they all feel their hands are tied, and it's his right to privacy. I don't even get to know what's being done — you know, to try and find out what is wrong with him, why he did this to me. I did not date this man — ever. This is actually why he is doing this, I guess.

I understand from reading a lot of information you have on your site and submissions that there is this section 25. I think I've quoted that correctly. I'm probably not going to be putting it into my notes, because it's probably best I don't. I understand that he has the right to privacy, but at what point does his privacy continually get protected while my life is in danger? The rumour is that there has been a danger opinion done, and this guy is considered so dangerous that he's never legally allowed in Canada. I don't even get to know that. I found out by accident that there was a threat assessment done and that there is a very high probability that he's going to kill me. I put in a criminal injury compensation claim. I cannot get help from them, because they consider it a WCB issue. WCB says it's a CIC issue, so I'm getting no help from anyone.

I can't even fight it. I can't get information on him; it's hard to get information from the courts. I am constantly told not to go public with this. You have no idea how hard it was for me to decide to come here. I have been told to go underground. They looked at me going into the witness protection program. I was disqualified, because I don't qualify. I'm not a battered wife, I don't have a battering husband, and I'm not a criminal who turned in another criminal.

I'm now constantly trying to protect my privacy while still live and do everything legally. It is really hard to get a lot of the government companies to safeguard my privacy. It's more they say they're going to do it, but they don't. MSP, for example, has been very difficult. Their flat-out thing is: "Well, I'm sorry. We have to send your information that way, including putting your full name on an envelope, because our software doesn't cover anything else." I just don't find it acceptable. I don't know exactly how it's going to fit in with all this, but it all balances rights to privacy and rights for information.

I guess I'm looking for some sort of feedback. I've got 35 binders of information I could dump on someone. I don't think anyone wants to read it, but I'd really like to know.... I don't think the stalking is going to

stop. I think it's going to get worse. I think there's a lot more out there than what people realize. I think there are more people in my position than people realize. The reality is that this guy, when he finally gives up on me, is going to go after someone else. He may not come back. It may be someone else. I know he's not the first person that's even an American that's come up here.

I am really looking for some feedback on what sort of information I could give in explanation to try and make this legislation work. I don't think anyone has purposely done this to me. I don't think any system has purposely tried not to help me. I think a lot of the systems that I've dealt with have tried to find ways to help me, but they all feel their hands are tied. I've been flatly told stuff like: "When the guy breaks into your house and he's there to actually kill you, then give us a call, and we might be able to do something." I just think it's too unacceptable. There's got to be a way to help someone like me.

I don't know. I guess I'll just have to open it up to some questions or comments from anyone on the panel.

B. Lekstrom (Chair): Well, Ms. Derksen, I want to thank you for coming and sharing your story. Certainly, our thoughts are with you on that. It sounds like an incredible challenge you've faced — and still do.

I'm going to go to members of the committee.

J. Bray: I want to share the Chair's comments. This is the type of situation, as opposed to trying to get information about a government decision, that is really much more life and limb and much more urgent.

[1300]

I'm wondering.... I don't want to ask specifics. Is your greatest concern that you're unable to get basic information about this individual with respect to where they're incarcerated, whether they're incarcerated, whether they've been deported? Or is your greater concern your own protection, your ability to protect your privacy — you know, your name change or any of those? They're all concerns, but which today is the one that's causing you the greatest...?

Ms. Derksen: This may sound really stupid. This started when I was 28. At that time I'd planned to get married and have kids, have bought my house and the whole.... My career is gone. My ability to have kids is gone. What scares me the most is that I don't see anything happening. I have dealt with the Solicitor General, and I've written letters to the Attorney General and my MLA and other MLAs. I actually think there might be a couple of people in here whose offices I contacted, actually.

What scares me, I think, the most out of all of this is that I'm trying to work with people. It would be very easy for me to have been plastered all over television stations and stuff, but I just didn't think it was productive. I've tried to come up with something useful. I'll talk to people, and then I hear nothing back. I'll say:

"Well, can you tell me what's going on?" I get no response. I honestly don't see anything happening. I'll ask them: "Well, how do I find out what you're doing?"

What scares me is that I could end up dead, and then maybe someone might do something. They've already had people in Ontario die over the exact same situation. I don't want to have to reinvent the wheel. What scares me is: what does it take to learn this? I've got to the point where I've even told my family: "Look, if I'm dead, it's done." I would just really like it over.

I've tried moving on and just getting another job, and I can't safeguard my privacy. I've set up agreements with my employer, saying how hard it is to go into an interview — and my responsibility, as well, to safeguard their privacy. What is my responsibility? This guy is a potential danger. I didn't create it. I shouldn't be responsible for him, but even dealing with.... When you go in for an interview: "Is there anything else we should know about you?" "Well, yeah. Here's a picture of this guy who might show up and want to shoot everyone." It's 80 percent more likely that the people around me are going to end up dead. What are my responsibilities? No one can tell me.

I'll set it up with the employer. They understand. I don't think they really believe me. "Yeah, we understand. We get this." I'll tell them there's a court case pending. I've got to go to court. There's going to be a subpoena. "Yeah, yeah, yeah. No problem." As soon as I've got to go to court, there's a problem. Then they'll decide that I'm not really that serious or I'm exaggerating it. Then they put my name and picture on the Internet, and then the guy tracks me down.

I can't even just walk away and continue with my life, and I constantly get stuff from the government. I've got a situation set up with B.C. Hydro. "How can I safeguard my information so that you're careful about how you mail it? You realize that someone is actively trying to get information on me. This isn't just me being worried you might leak it out by accident, and it's going to go to the wrong government." I don't care who in the government has my information, to be honest. I just don't want this person to get it.

I was told it was all set up, don't worry, when it became B.C. Gas and B.C. Hydro. I phoned both of them saying: "Are you both still aware of these security concerns?" They go: "Yeah, yeah, yeah. No problem." One day I phoned up to double-check something, and it says: "Please punch in your telephone number." I type in my telephone number, and it comes back, "Oh, just to make sure we have the right account, we want to double-check," and it spits out my address. I'm trying to hide. They know my security concerns, and anyone who gets access to my phone number now has my address. These are people who know.

I've got credit cards. I realize that's probably federal. I've been trying to cancel one for three years because they keep sending me information. Something always comes back to haunt me. ICBC is linked into a lot of private insurance companies. I'll set it up with a private insurance company that they're going to finally deal

with my address. They get it, and then — boom — ICBC comes around with renewal notices, and — wham — everything's thrown off because their computer's tied in, but the private insurance company can't interfere with ICBC's. I'm at a total loss about what to do.

Sorry, I probably was boring you a bit.

J. Bray: No, no. That's very helpful.

Ms. Derksen: This is a daily thing for me. You know — using a debit card. There's no way. Identity fraud. It would never even have occurred to me before this to put all my banking information on the Internet, but so many companies will do it for you, and then you get the notice two months later: "By the way, for your convenience we've now put all your information on the Internet, and you can now access it."

The reality is that there is identify theft. Maybe they're not stalkings, but should they be allowed to just go ahead and do that without your consent? They think they're doing something great for you. It's not for me; it's for them. We know things get hacked into. There are people-finders now.

[1305]

Security codes. Telus won't even use security codes, passwords, on your phone number anymore. They've told me flat out: "We know they don't work." Even Revenue Canada can't control it. I have been dealing with them for the last couple of weeks. I was supposed to have this special system set up. It's not set up. You know, people will change their software, or they change the company, or they get new advertising people, or they've got a new public relations firm, or they've got this new arm they created. What may be set up in one branch of that company never gets to the other, and then it gets separated further and further, and it may all be within the same company. Maybe you consented to that one individual person, and it just gets carried away.

B. Lekstrom (Chair): Gillian, do you have a question or not?

G. Trumper: No, I don't think I'll ask the question.

B. Lekstrom (Chair): Okay. Are there any further questions for Ms. Derksen? I'm not sure — I mean, listening to your story, it's incredible what you're facing and the challenge — what we can do as a committee. To be honest, I wouldn't want to mislead you. To know that....

Ms. Derksen: I don't expect you to fix the stalking. There is one thing I didn't even touch on. What this has all done, and I'll be quick on this.... I realize WCB is probably a huge thing, and I'm not going to go into all of that.

You know, this was a co-worker, and he was actually convicted of stalking me in the workplace, on workplace property, during work hours, which is why CIC is saying: "This is WCB." He was able to access

company records the day he was laid off, which is how he tracked me down in my home. Maybe this new private thing will cover that, hopefully. I don't know. Regardless, I still have to deal with WCB, and I would really appreciate it if someone would look at when you consent to an investigation of an incident or an accident, especially when.... I realize mine isn't a physical injury. It's post-traumatic stress, which is also new. I understand there is a new government document released, explaining that maybe we don't know as much about post-traumatic stress as our doctors should. I know about that too.

There are papers in WCB about when I lost my virginity. Is that really necessary? There's a guy who wants to kill me because he has a mental illness, and they are tearing apart my personal life and talking about the fact that my father was an alcoholic. This has nothing to do with it. They are putting me through hell.

I disagree with a lot of things they've done, and I'm not going to get into it. I don't know if that's something that can be looked at. I just do not see how anything in my past is at all related to this. I did not make a decision, for whatever reason, to get involved with this person. I was working in a very well-respected company. It's not like I made a bunch of bad choices and got myself in this position.

The one thing I hope that WCB at this point would know is that post-traumatic stress isn't a failing of you. There are such strict criteria for you to get that diagnosis. You have to have a life-threatening trauma to even get the criminal harassment conviction. It had to be proven in criminal court that this guy did something so life-threatening that I perceived it as a threat to my life, and he went to jail for it. But they are arguing about what is wrong with me that I would put in a claim. It's just ridiculous. Maybe, at the very least, that is something you could look at: where the duty to warn would fit in, in this sort of case.

B. Lekstrom (Chair): The one thing I do want to tell you, Ms. Derksen, is that your presentation here today has probably touched not just myself but each of the members. It gives us a considerable number of issues to put thought into in our ability to look at what we can do to try and help in a situation like yours. I'm sure it took a lot of courage to come here today, and I want to thank you very much.

Ms. Derksen: Thank you.

B. Lekstrom (Chair): With that, our next presenter is at 2 p.m. The committee will recess at this point until 2 p.m.

The committee recessed from 1:09 p.m. to 2:03 p.m.

[B. Lekstrom in the chair.]

B. Lekstrom (Chair): At this time I would like to reconvene the Special Committee to Review the Free-

dom of Information and Protection of Privacy Act. I would like to welcome everybody here this afternoon.

As I indicated in my opening remarks this morning, our job is an all-party committee of the Legislative Assembly. We have been commissioned to review the act, as is mandated by the legislation itself, every six years. Our job is to hold public hearings as well as to accept and review written submissions on how the act can be improved and any concerns related to the act. Following that review, it is our job to write and submit a report to the Legislative Assembly of British Columbia no later than May of this year.

Having said that, I will move right on. We do have a very tight agenda here this afternoon, with a number of presenters. Our first presenter this afternoon is Eleanor Hadley.

I'd like to welcome you here, Eleanor, and thank you for taking time to come out and address our committee.

E. Hadley: I am very pleased to be here. I only regret that I am not fully prepared. I've had so many problems, and there have been so many provincial and municipal meetings suddenly that I have been interested in for many years. I was at the first of the freedom-of-information and protection-of-privacy hearings in 1993. Unfortunately, in recent years I have had to deal with some of the issues related to freedom of information.

[1405]

This morning I jotted down some of my things in a hurry, unfortunately. There are so many errors that I don't know if I want to show them, but many of my concerns.... I will probably ask you questions about my rights as a citizen of the province and of Canada. It seems that there are so many different departments and people I have had to deal with for information like medical records and company records recently. I've had difficulty getting these records or even accessing them. Some of them refused, some of them complied, and some of them charged me for it. I have run into a lot of things that have confused me and my rights. Just what are my rights? Why was I insisting for records when I felt that it was my right to have these records?

I feel that perhaps the department of freedom of information — FOI, if I may say that — should clarify a lot of these regulations with the medical departments and small company departments. They are the ones that don't seem to know what a shareholder's right is and are making things very uncomfortable for me, for instance, when I feel that my rights are being withheld. That is what I am here for.

I noticed just this morning, as I was reading a newsletter here, that they referred to the B.C. Personal Information Protection Act, which will take effect January 1 — right now. Now, how is this B.C. Personal Information Protection Act different from freedom of information and protection of privacy — FOI? That's kind of a long....

B. Lekstrom (Chair): Oh, right.

E. Hadley: Can you answer some of these questions for me?

B. Lekstrom (Chair): We can definitely try. The PIPA, or Personal Information Protection Act, relates to the private sector. The Freedom of Information Act, which we are doing right now, relates to the public bodies, which is the government bodies — for instance, an application to a ministry or a municipality or a regional district or a school board. The difference is really the private sector legislation, which is the PIPA that you referred to, or FOI, as you referred to the other, which is what we are here to discuss today.

E. Hadley: Excuse me. What did you say? In the B.C. Personal.... Did you say that was PIPA?

B. Lekstrom (Chair): PIPA, I call it, yes — for the sake of shortening it, as you did earlier. Really, one is private entity versus public entity. Those are the two differences in the legislations.

E. Hadley: Yeah, so that goes into effect. Would that apply to small companies?

B. Lekstrom (Chair): Yes, I believe it would on personal information.

[1410]

E. Hadley: I am a shareholder of a condominium, and they refused to give me access to the company. It's small — 20 suites — and it's a company. They have refused to give me access to the files. I want them because it's necessary for me as a shareholder to know what is going on. The board is not advising the shareholders properly. I'm sure that is a concern with a lot of small companies, and this being a small condominium.... They should know. They're not unintelligent people or uneducated, so therefore it makes the problem that much worse. When you buy a condominium, for instance, you should have access to the board's minutes, documents and personal files, if they are keeping them. In this case, they are.

Dealing with small companies like mine, where would I...? What rights do I have? I understand I can have access to this information, even according to my agreement.

B. Lekstrom (Chair): Eleanor, what I could do is put you in touch, or we'll take your information following that. That really is out of the purview of this committee. You're dealing with the private sector legislation, where we're dealing here today with the Freedom of Information and Protection of Privacy Act, which applies to the public bodies.

E. Hadley: Well isn't privacy...? Isn't that the same?

B. Lekstrom (Chair): No, they're two different pieces of legislation — what you're referring to. I can

certainly put together a package or take some information from you and make sure the appropriate people contact you on that side of things.

E. Hadley: Yes. Well, that would be good. Anyway, how will you release all this information to small companies like self-owned condominiums?

B. Lekstrom (Chair): Again, you were referring back to the legislation from the private sector. That's what I will commit to.

E. Hadley: Oh, I'm sorry.

B. Lekstrom (Chair): Oh, that's fine. I mean, they're very good questions. It is new legislation that's come out, and your questions are relevant. Unfortunately, this committee has been asked by the Legislative Assembly to deal with this piece of legislation, which is the public sector side.

E. Hadley: You know, Mr. Chairman, that is part of my reason for being here. There are so many different departments that they may be overlapping, and as a result, those in charge and those not in charge don't know what their rights are. That is one of the things I wanted to bring up. Whether it's the health department, which you will be concerned with.... Some people understand what I want.

I must tell you. I'm 82. I'm going blind. I have a lot of problems that have come up, and therefore I am personally affected by a lot of these things — even with my eyes. In the last two years I've been going to a lot of specialists to try and save my eyes, and I can't even get a pair of glasses — these are my very old ones — so that I can see.

Despite the many specialists I've gone to and the many tests I've had, which is very trying on me, as a concerned taxpayer I feel that something should be done about these things so that all this stuff can be combined instead of going from one specialist to another. Fortunately, I insisted on getting reports from the specialists so that I can take them to the next specialist, but not all of them want to give them to me. There is a problem there that some will and some won't, and it makes it very hard for me. I have to spend a lot of my time going from one specialist to another, and the stress of losing one's eyesight is tremendous, so I'm coping with that also.

There seems to be very little consideration for the patient who is trying to get all this information to improve their health and their situation. That's a personal experience I'm going through, which something has to be done about.

[1415]

I don't know what you're going to do. I'm doing my best only because for the last 50 years I have been involved as a concerned citizen with many aspects of my city and community. I was just at one meeting last night at city hall fighting against casinos. I've been do-

ing that for the last 15 years. I just had to go last night and continue my protest against slot machines.

I think there is room, or consideration and concern, for this group to look at how they can make things simpler for the citizens, and perhaps the government departments and companies, to deal with all this information that is coming up. Going through it myself, I am very well aware of what is going on.

Aside from that, I'm wondering what is happening to freedom of speech. It seems that there is a law against racism. Is there?

B. Lekstrom (Chair): I believe, again, that's out of the purview of our committee, ma'am, although we could have that discussion, I'm sure, after the meetings. This doesn't deal with the issue of freedom of speech under this act at all.

E. Hadley: Well, I thought it did. I'll put it this way. Freedom of speech is so altered that a person cannot speak anymore without being accused of being a racist or being hateful. When is all this going to stop? Having been born in my country 82 years ago, I grew up with freedom of speech. I know what the words mean. You take the word "racist." That was developed in the First World War to refer to genocide in the First World War. Before then I'd never heard of the word "racist." I never grew up with "being a racist." It seems that in the last couple of years the meaning of words has so changed that I am afraid to speak up. Now that's freedom of speech. I no longer can speak freely because somebody else has put a different meaning on the word that I normally used all my years.

They threaten you with court action. This has to be cleaned up, this freedom-of-speech business. You just can't say that anybody can sue you if they think you're a racist. To give you an example, I complained at....

Is my time up?

B. Lekstrom (Chair): A couple of minutes, ma'am, and then.... All right.

E. Hadley: To give you an example to clear up this racist business, I went to a meeting and complained about the panhandlers and drug addicts in my area, which is inundated with these people. They have no concern for my rights on the corner of Cardero and Davie streets. They sit there, and it's filthy. I complained about the filth and the fear of being assaulted. In fact, I was assaulted. So I complained about that at a public meeting, and I was called a racist. Well, am I not allowed to speak anymore? What's happened to my freedom of speech? I have a right to complain about what's happening in my community. I have a right to demand that I have police protection, that these people not be allowed to intimidate me. But I was called a racist.

[1420]

I think the words have to be cleared up. You can't use these words loosely because they have now be-

come a charge of a kind — to be called a racist. And hate. Well, I never used the word "hate" — never in my life. I think it's a terrible, powerful word, and I don't like the feeling of even thinking of the word "hate." It's a terrible feeling, so I don't use it. Yet people can sue you for hate.

I think these things have to be clearly defined. They are affecting my freedom of speech to be able to use the words as I was brought up to use them or not to use them. There are a lot of other four-letter words that are used frequently — every day, every minute. I hear it all the time. Why isn't it a crime to use their words? As a matter of fact, those four-letter words — seven of them.... I have not heard what those seven words are, but I've heard them mentioned.

B. Lekstrom (Chair): Ma'am, I don't want to be too rude. Our time is wrapping up. All right.

E. Hadley: I'll finish with that. They are used. They are disgusting, foul words, and they are now legalized. I think that when you make your laws, you should be aware of how things can be abused — not only the English language but all these rights to be able to see one's records.

Thank you very much. I'm sorry I'm so ill-prepared.

B. Lekstrom (Chair): Eleanor, I want to thank you for coming. You weren't ill-prepared at all. It's our job, and it's a pleasure to hear from British Columbians on their views, so I thank you. I think we all strive for a society that's respectful, and that's what we all hope for. We'll manage to be able to maintain that quality of life, hopefully, with everybody's involvement.

E. Hadley: Well, these are personal experiences, so I don't think I should have to go through those things at my age. I need the protection of the law, it seems, in order to be able to speak freely and ask for my rights. Thank you very much.

B. Lekstrom (Chair): All right. You take care.

For our next presenter this afternoon, I will call on Gloria Hansen, if Gloria is with us. Good afternoon, Gloria. Welcome.

G. Hansen: Hi. I want to mention two experiences regarding freedom of information, access to information and the Privacy Act — one federal that I've just been going through and one that I can't get to go through in B.C.

I had the unusual experience of having an access to the RCMP regarding some files. I'm a person that's never had any dealings with the RCMP. I've never been caught for drunk driving; I've had one speeding ticket in my life. Whatever. As retribution, I guess, for putting a complaint in against an officer for giving my name to a man that defrauded me of my business, a bunch of officers got together and collected another woman's police incident records — she had the same

first and last name as I do; she's from another city, works in another city — and included them in mine.

The officers even asked for her records: "Don't return. Please shred at your point." One of them is a criminal record, at least. She's had three incidents in one year with the police. I am afraid to cross the border into the States because they share the files with the FBI or something, and I don't know what this woman has done. I might end up in Guam or something. I don't know.

[1425]

I compared the B.C. act to the federal act, and I think the B.C. act has a little bit more leeway in letting officers pretty well do what they want. I would never have known I have a criminal record, if I do. I don't know. I'm not supposed to have seen this. It's access-restricted to the internal affairs bureau. I know where the woman lives. I know her address, her phone number, and I know some of the things she's been involved in, but they look like traffic accidents or things that happened in traffic. I think that's bad. I could go through life not knowing I may have a criminal record. I've never been fingerprinted, so how would I know? I couldn't even ask to get it reversed, because I didn't know I had one, and I still don't know if I have a criminal record. It's very bad for police to do that.

I'm also concerned about the ombudsman's office, small as it has become. I had an issue with them when Dulcie McCallum was running it. Unfortunately, the man I was after was a friend of the senior investigator. He happened to let it slip when I visited. I had a very good case. It looks like he falsified documents, because I have original documents and notarized them. Anyway, I phoned him, and he said: "Your file is just at the bottom of my pile." This is an ex-RCMP officer. Then one day he phoned me, and he said: "I'm closing your file now." I couldn't believe it. I hadn't even heard yet that they'd done a thing.

Anyway, I kept on phoning and kept my phone records of all the calls I made to them. I tried to open it up several years ago, but they said: "No, we don't have to." They lied in the letter. They said I wanted to close it. I have all the phone calls — 35 of them, or something. I taped the senior investigator with a hidden tape recorder sewn into my pocket. Unfortunately, I couldn't turn it around and do the full time, because it was sewn into my pocket. He didn't deny anything. I went over it.

The ombudsman's office. You go to them; you believe in them. Maybe it's a friend of theirs. The guy didn't like me on the phone, but when I arrived in the office in Victoria, we got along great. I'm not a vicious person, but I'm very persistent, and people don't like that. I don't even have to try; it's just inbred in me for some reason. I'm really concerned that anyone going to the ombudsman's office is not allowed to find out anything. I spent months. I typed out letters that would take me half a day. I phoned. I've kept the phone records. I taped the secretary. Basically, I was told just to go to hell. Why should they be exempt? If a person

goes to all that trouble.... If the ombudsman's office is not allowed.... If they can just lie and say: "You closed this...." It's obvious from everything I have that I never closed it, and they know it. It isn't.

I would like to get in there, but I'm not going to go through what I went through with them. They would never even tell me on paper that they closed it. I had to go to an MLA meeting, hang around because nobody would talk to me, and corner the NDP MLA in my area at the time. That's the only time I could get the ombudsman herself involved. I think people are powerless against a bureaucrat that thinks you may have done something wrong to a fellow bureaucrat in another department that he works with, which was the case with the ombudsman's office. In the case of the RCMP, because I complained about an officer giving out my phone number to a man that stole my business.... The guys went to work, and this is headquarters and records in Pickering. That's really bad.

There's nowhere to go. You just go on and on and on. I've been dealing with this case since 1997 or '98. I have done three access requests federally. They say the third one is coming sometime, but that's against the law: "Oh, it will come sometime."

[1430]

Only with the second one did I ever find out that some informant or somebody they asked a question of gave them a whole bunch of nonsense information, and they kept that covered. They covered him. I didn't know what was lacking in something. Nobody would tell me what was said or who even said something. I found out years later — I don't know who said it — that I have proof to the opposite. Someone has misled them. This person has been protected, and I've wasted years and years trying to deal with the bureaucrats.

Anyway, I looked at the B.C. act: "Disclosure Harmful to Law Enforcement. The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm a law enforcement matter." I had a similar thing going in Ottawa. The harmful thing was they were going to get found out that they took another woman's records with the same name as mine from another city and put them into mine. Whatever she's done, I guess they've attributed to me also, and I really don't like that.

I don't think the police should be given as much freedom. I hope they are not given as much freedom as they are federally. But the Forest Practices Board *Complaint Investigation Manual* has extremely good suggestions. Analysts discuss initial findings with participants, primarily to verify facts. Nobody wants to talk to you. They don't want to deal with you. At the end of this process the analyst prepares an analyst's review to be sent out to those participants who may be significantly and adversely affected by it. The analyst remains accessible so that the complainant and subject can remain informed about the process.

I've just been through the RCMP complaints commission. They will never tell me a word. They have never asked me a question and won't tell me who even

looked after my file. It sat there for more than two years — I think two and a half years. Then they come out with wrong information that's right in front of their face. I'm very good at writing websites, and they're going to be on it pretty soon, I'll tell you, with what I went through with them.

B. Lekstrom (Chair): Gloria, could I ask: have you dealt with the B.C. act at all through applications under the freedom of information and....?

G. Hansen: I tried to, but.... The federal thing — it's the RCMP, and I believe they're covered federally. But with the ombudsman, yes, I.... Well, I haven't submitted a form, because I phoned and asked them. I said: "I want to apply for this." This was several years ago. They said: "You can't. Ha ha ha." I wrote a letter and got a reply from Lanny Hubbard, I think his name was, saying: "You can't. We're immune from it. Besides, you were the one that closed your file." But I have the proof I wasn't. I have it on tape, and I have it in letters. They have gotten away with being untruthful and unfair to someone who was victimized to the point that I was ill for years.

B. Lekstrom (Chair): Gloria, I'm going to look to members of our committee to see if they have any questions about what you've said to the committee this afternoon.

J. Bray: I'm just looking at the provincial Freedom of Information and Protection of Privacy Act, and they actually list all the public bodies which they've defined as.... The office of the ombudsman is in fact an office that's covered by the Freedom of Information and Protection of Privacy Act.

G. Hansen: When did this happen?

J. Bray: I don't know. I'm looking at the act right now. With respect to....

G. Hansen: I read the whole act. I didn't see that, but I have a letter saying I'm not allowed to find out anything from them. "But you closed your file anyway" — which I didn't. I've got a tape of the senior.... I taped him, to have it on tape.

J. Bray: Well, I would certainly....

G. Hansen: You tell me what it is, because they let....

B. Lekstrom (Chair): Just in order to bring this back, I think if you have some questions, Gloria, we can certainly put you in contact with somebody that could put you in the direction as far as....

G. Hansen: Well, it might help if it comes from you, because it certainly doesn't help if you come from....

B. Lekstrom (Chair): I don't want to get into the specific requests you've asked or which organization. It sounds like you've had some challenges with the ombudsman's office, which is covered by the act we're reviewing or have been asked to review here as a legislative committee.

G. Hansen: Is it covered? You mean I am allowed to see things?

B. Lekstrom (Chair): Through an FOI application. I'm not sure if you've actually formally done that or been involved through that. Our job as a legislative committee is to look at the act, which is the Freedom of Information and Protection of Privacy Act.

G. Hansen: I have it in a letter that they weren't covered and that I couldn't get any information.

B. Lekstrom (Chair): Okay. We'll take some information from you. We will have somebody be in contact with you or give you the information to contact someone.

[1435]

G. Hansen: There are serious things. I did manage to get some copies from Dulcie McCallum that were extremely important, but I couldn't do anything about it because the guy said: "Even though you talked to her, we had closed it. And it's still closed. Even though you tried, we still kept it closed on you."

It's the funniest thing. It's the same with the RCMP. Because of my persistence in letters and phone calls — and I take sometimes two or three hours to write a good letter — they think they've got the bitch from hell at the other end and: "Oh my God. Unlucky me." Then I meet them, and we get along fine, which was the case with Scott Gardner. We got along fine when I met him.

I am so specific that I really want information, and I take a long time. But they don't want that; they want me to go away. You should see the police report: "She will not go away."

B. Lekstrom (Chair): Well, what we will do and the commitment I will make as committee Chair, on behalf of the committee, is that we will take the information from you and have someone get in touch with you to see if there's anything that can be done.

G. Hansen: Well, I wanted to show you something, and my son said: "You're going to sound like a lunatic if you get on that subject."

The federal thing is an ongoing thing, continuously, but I sort of keep letting the ombuds thing ride. It should be looked into.

B. Lekstrom (Chair): All right. We will take the information from you, Gloria. I will have somebody see if we can be of any assistance on that.

G. Hansen: Okay. Thank you very much.

B. Lekstrom (Chair): Thank you.

G. Hansen: It was good to get this out.

B. Lekstrom (Chair): You take care and have a good afternoon.

We'll move on to our next presenter this afternoon. I will call on Stanley Tromp.

Good afternoon.

S. Tromp: Good day. My name is Stanley Tromp. For five years I've been the research director for FIPA, B.C. Freedom of Information and Privacy Association, and newsletter editor for that group and a freelance news reporter for about ten years — a graduate, UBC political science.

For your interest, I have prepared a five-page executive summary about a report I've been preparing on FOI statistics and usage over the past two years, which I e-mailed to everyone yesterday as an attachment. I don't know if you received it or not or have had a chance to go through it.

Interjection.

S. Tromp: You have? Oh, very good. Excellent. I don't know if the e-mail system is working very well.

My purpose is to supplement some of FIPA's points, who'll be doing a separate submission. I'm writing my report as a separate submission from FIPA and just to supplement some of FIPA's points, because we have so many points to make and never enough time or space, it seems, to make them all. I don't know how long your attention span is for all these many, many points we have to make. I was at your committee meeting on Monday with Darrell, and I found it most interesting.

If we start with a statistical study, a review, for the past five years to compare the record before and after the election of May 2001 — this was very kindly supplied by the Ministry of Management Services — of various kinds of applicant types, delays, fees, records from various ministries.... We'll perhaps be putting that on our webpage along with our reports. As well, we have much information on our webpage that you may find interesting — www.fipa.bc.ca.

We noticed some trends in freedom-of-information and privacy practices. The number of requests has been rising modestly from 1998 to 2002. We are pleased to note that access requests denied in full, so-called, have fallen by nearly half — from 325 in 1998 down to 170 in 2002. This government has cited a trend towards routine release of information, and the figures seem to support that claim, partly. From 54 requests marked routine releasable in 2002, it's nearly tripled to 181 in 2001 and further rose to 258 in 2002.

[1440]

We were also pleased to discover — we give credit wherever it's due, although we're critics — that the FOI request response time has shortened over the past six

years. In 1998 about 28 percent of the total requests were closed in 30 days or less, as the law says they should be. This more than doubled to 62 percent of the total in 2002 and rose to 73 percent during the first half of 2003. Even better, requests in the most regrettable category — that is, closed in 60 days or over — plummeted from 55 percent of the total in 1998 down to 11 percent in 2002 and then down to 4.2 percent in the next half year. So there are good and bad points to be made.

We recall that newly elected Premier Campbell, in his victory night speech of 2001, said: "We will bring you the most open and accountable government in Canada. I know some people say we'll soon forget about that, but I promise you that we won't." However, we only wish the practices would live up to the rhetoric. As Darrell would write in his report, if we were grading a report card, we would give the Liberals a bare P, or pass, on privacy protection and F, fail, on freedom of information. We would note that they are not performing up to their abilities and are just not trying.

FOI compliance problems occur not so often with ministries as with some other entities that jealously guard their quasi-autonomy from senior governments — certain municipalities, colleges, universities, Crown corporations, professional regulatory bodies and police forces.

FIPA made several submissions on improvements to the act in the six years of review, and FIPA's proposals were largely ignored in the two sets of amendments, along with most of the recommendations produced by the all-party committee which reviewed the act and reported its findings to the Legislature in 1999, as you may recall. We hope this won't happen again and that there will be political will to implement this committee's recommendations. If not, your labours may be perceived by some to have been in vain.

There are a few amendments. I don't quite have all my ducks in a row here, but it'll be forthcoming in this report, which I expect to be done and polished up in a week or two and released. In the amended FOIPPA Act, section 21(1)(a)(ii) is amended by replacing "of a third party" with "of or about a third party," not as it once stood, only "supplied by a third party." For us, this is too broad in this new era of private-public partnerships. This could potentially shield from the public view records about a company's environmental violations, health inspections, improper business practices and so forth, all with the claimed purpose of preventing so-called competitive harm to the company. We believe the concept of the Legislature being required to consult with the information and privacy commissioner on proposed bills to seek his opinion on the privacy impacts of these should be extended to taking in his views on the FOI and accountability impacts of proposed bills.

We believe the applicant should be allowed to appeal to the commissioner within six months. Actually, this is my personal view, speaking as myself; FIPA

may say differently. These are separate submissions, although we agree on almost every other point. The applicant should be allowed to appeal to the commissioner within six months or at the very least three months of an FOIPPA refusal — not the one-month deadline that now exists, especially when you recall that the federal act allows for one year to appeal. Some people making Privacy Act requests to government perhaps had conflict with the police or mental health institutions and may be confused, distraught and not understand their rights or the process very well, so the 30-day deadline is often missed. We know that the commissioner has the discretion to overlook a missed deadline, but this could be enshrined in law.

If you were asking how to do routine release, which is a valuable goal, I have a solution that's cheap, easy and simple. It could be proscribed, and the law could be amended that records cited in the B.C. FOI Act, section 13(2), must be posted on the public body's Internet page within a month of their creation and must be routinely released to applicants with no need to file an FOI request.

[1445]

Such records are — as Michael Doherty said in his submission — any factual material, public opinion poll, appraisal, economic forecast, environmental impact statements and so forth. These are the types of records that would not be withheld or severed under any other section, because they are so clearly in the public interest. These are exactly the sorts of things that could be released. The OICs are put on the government's Internet page within a week; the *Hansard*, the next day. It's not difficult. It takes just a few keystrokes to put them up. For the ministries, I believe they can put up the full record on the Internet page. For other public bodies this may be a little more onerous. At the very least they could put up lists of such records within a month of their completion.

We urge the B.C. government to at least pass a whistle-blower protection section in the FOI Act such as the Alberta FOI act has in section 77(1). In fact, the 1999 FOI review committee advised the prospect of a more general whistle-blower protection act be considered, and we prefer this broader option.

FOI directors can be put under immense political strain. The FOI directors of Toronto and Langley have been fired due to their diligent seeking of governmental records, just doing their job. The federal information commissioner John Reid said his staff who were seeking the Prime Minister's briefing books in response to an applicant had their careers threatened by the Prime Minister's Office. It is that sort of thing that should be averted.

We regret that one Liberal government plan would very much disturb open-government advocates. In October 2002 there was a move to amend the FOI Act to mandate that if any government caucus committees or any other committee had a single cabinet minister sitting on it, that committee could now be accorded the same FOI protection of section 12, cabinet confidences.

You're put in the dark. This problem was partially reversed under protest.

The information commissioner, of course, has.... In a letter to FIPA during the 2001 election campaign, Mr. Campbell stated he was committed to providing a stable funding base for the information and privacy commission's office to ensure that it has resources to discharge its statutory mandate, yet after the election they slashed the commission's budget by 35 percent over three years. Recently he's been granted some more funding, but that new money is just enough to cover his duties under the new PIPA, the privacy act, not the current FOI tasks.

Another serious matter is the matter of record retention and archiving. Civil servants avoid writing things down now because they fear they'll become subject of an FOI request. Ken Dobell, deputy minister to Premier Campbell and head of the B.C. public service, spoke to a panel discussion on it in the fall. Mr. Dobell confirmed that he runs the government via informal meetings through telephone conversations, seldom keeping working notes of either. He does make thorough use of e-mails, but: "I delete those all the time, as fast as I can." We are profoundly troubled by this news, and we urge that the laws be amended to avert this practice.

You could pass an information management act, which prescribes all record creation, storage and retention of government information, rather than a rather outdated patchwork of record retention laws we have now, such as the Document Disposal Act, ORCs and ARCs, GMOPs and so forth.

You could pass a section containing strict penalties for the improper record destruction or alteration of government records such as the federal government and Alberta have. Another very serious issue is the shrinking coverage, the privatization partnerships. When is a public entity not a public entity? Unfortunately, the FOI coverage list of bodies not included has the newly privatized B.C. Ferries corporation, including — inexcusably — its safety audits; the Vancouver 2010 Bid Corporation or any future organizing committee for the Olympic Games that would stage the event; B.C. Hydro's Accenture branch. We've heard the B.C. government may be planning to sell the B.C. Buildings Corporation to the private sector. If so, that would likely be exempt from FOI coverage.

These are public buildings held in the public trust, and we surely have a right to know what's happening there. With the Olympics in particular, the cost to the public could be staggering. Historically, it's been so in other cities. We surely have a need to know everything about the process. There is a growing population of private contractors. Some are assuming responsibility for the operation of essential infrastructure while others play a critical role in developing policy advice for government, and their records would be exempt from FOI laws.

We believe public bodies should be added automatically to the FOI schedules when they're created,

and not added slowly by ministerial choice one by one at the minister's leisure. I stress that we are not objecting to privatization per se; it's just the loss of accountability that can come with it.

The B.C. legislative review of the act, in its 1999 report, advised that new public bodies be brought under the act's coverage as they are established. Mr. Campbell has promised in writing to FIPA that he will implement this report's recommendations, but this has not been done. The committee did not endorse FIPA's recommendations to amend the act to clearly extend it to government services that are contracted out and to personal information that is given to non-governmental organizations.

[1450]

Great Britain passed an FOI act in 2000 which is far more advanced in its coverage of this. It has a model solution to the problem. We find it highly ironic that Britain was the mother of parliamentary secrecy in this country and is far advanced to British Columbia.

The matter of FOI funding and fiscal value of the FOI, cost versus benefits. Public concern is very evident among the 136 written submissions and 116 oral submissions to the 1998 legislative review committee on this subject. There were more comments on fees than on any other issue. Governments often complain without justifications of the high cost for FOI management. Critics reply that if the government really wanted to save money on the FOI mechanism, it would release far more information routinely, as far as I've suggested with the section 13 records, index records more precisely, and cut back on its public relations branch. The FOI Act was meant as a means of last resort.

In a 1998 memo the head of the Treasury Board at that time, Ms. MacPhail, now my MLA, raised useful ideas for reducing the cost of the FOI process, writing: "Your ministry should consider the following measures: create a file for releasable information which can be released outside of FOI; reduce the number of unnecessary records held in off-site storage; and a number of management layers required to approve FOI releases should be reviewed and, where possible, reduced."

The auditor general's official added that FOI processing costs are so high because government databases are extremely poorly managed. Some are antiquated, and none were designed to retrieve records for FOI requests. The act was passed in 1993, and of the systems that support it, some were pre-Internet and some were even pre-Windows, if you can imagine.

B. Lekstrom (Chair): Stan, a couple of minutes.

S. Tromp: Okay. I'll wrap up. Many note that the FOI process often receives funds because government outrage over wasted money uncovered by FOI requests induced government to cut the waste. Sometimes officials have been shamed into actually paying back funds they had grossly overcharged to the public treasury after exposure. It also compels stricter controls on

things like megaproject overruns. From such examples we can wonder: can we afford to have FOI? The question should be rather: can we afford not to have it?

We hope Mr. Campbell will live up to his pledge to have the most open and accountable government in Canada. We have a reputation to uphold, because B.C.'s act was described at that time as the best in Canada. Let us not fall behind Britain on the privatization issue or Alberta on the whistle-blower protection issue, for example. That's all I have time for.

B. Lekstrom (Chair): I know it's very difficult, Stanley, in 15 minutes, although we've exceeded that. It's a difficult time for him to get it all in.

I'm going to look to members of the committee if they have any questions regarding this.

K. Johnston: You went through some statistics quite early in your presentation. There was one I hope that I got right when I scrawled it down here. You talked about freedom-of-information requests that were responded to on time, in a 30-day window. I think you said in 1998 there was a 38 percent compliance, in 2002 a 62 percent and in 2003 a 73 percent. To me that would seem to be going in the right direction in terms of compliance. I was wondering if you had any sense of what has happened to make those numbers appear to be improving.

S. Tromp: Well, I think there's more experience from the FOI offices in response to that and also many more rulings from the commissioner which give more guidance on how to respond. Perhaps the nature of the requests is changing. We noticed a great change in far fewer FOI requests over the last five years, but the number of personal privacy act requests has been rising greatly. The balance is shifting completely, and I don't know exactly why that is. We will give all the statistics to you very shortly in detail.

That's the only explanation I have for that. Perhaps Management Services would be able to answer.

K. Johnston: Yeah, just from a simplistic point of view, it looks to be getting better — I guess, would be the terminology I would use. I was just trying to get a sense of what is making that happen. Obviously, you pointed out some things that you feel need to be improved, but somebody seems to be complying on a better basis than they did a few years ago.

S. Tromp: Oh, for sure, and the nature of the requests has certainly changed as well. There seem to be many factors in there. Probably Management Services would know much more.

[1455]

B. Lekstrom (Chair): Stanley, I want to thank you for coming out and presenting to our committee. As you had indicated, you are planning on putting a written submission in as well, and I can assure you that our

committee will give due consideration to that as well. Thank you for taking the time.

S. Tromp: You're welcome. Thank you.

B. Lekstrom (Chair): Our next presentation this afternoon comes to us from the Injured Workers of British Columbia, Mr. Darwin Sorenson.

Good afternoon and welcome, Darwin.

D. Sorenson: Mr. Chairman, Deputy Chairman, committee members, Clerks, the public gathered here today — especially Joy MacPhail. We know the maximum workload that you have in the House, and I just want to acknowledge you for the work that you're doing in there. You know, it only takes four Liberals to hold down the two of you. I'm just wondering what these guys do most of the time. Are they all out golfing, Joy?

B. Lekstrom (Chair): It takes many more than that to hold Joy....

D. Sorenson: Anyway, I feel very strongly about having no opposition, especially in government, and I feel strongly about having no opposition to this Freedom of Information Act. I guess the best I could hope for is that ten MLAs will cross the floor and form an opposition with whichever party.

The suppression of information will not become socially acceptable. Talking about freedom of the information actually might lead to freedom of information. Why is it that every conversation I have with somebody about freedom of information starts out like this — "I believe in freedom of information" — and ends up like this — "but there are some things people just shouldn't be informed about"? Now, sentence 1 and sentence 2 should by all laws of physics create a fluttering, devouring void into which everything is sucked when they are combined into sentence 3: "I believe in freedom of information, but there are some things people just shouldn't be informed about." Bang.

It's a syntactical impossibility, a semantic impossibility. It's also completely indefensible. Time and again, people revolve around those two magical sentences, pretending to be liberal and open-minded, but they're secretly advocating thought control and are hiding an agenda that is in fact the opposite of what they espouse. No, you don't believe in the freedom of the information if you say that. You can't say you do and then espouse opinions contrary to that. No walking around proud about your ethical and moral fibre. I can't make this more clear. You don't believe in freedom of information. Say it with me: "I don't believe in freedom of information." Say it with the capitals on: "Freedom of Information — I Don't Believe In It."

I want to make one point very clear here. This is the difference between freedom and slavery. Freedom is where everyone has the option to be informed. With all due respect, my request to you as the committee members today is this. If you do not believe in freedom of

information and the strengthening of that ideal, then please leave the room. As a stakeholder in the province under the Freedom of Information and Protection of Privacy Act, I hereby formally request the names of all government officials that this committee reports to, and the names of the people who will make any changes to this act based on any documented information not submitted to the FOI Act forums, and also decisions resolving from those presentations and documents submitted to the FOIA forums. I request all transmission documents, slips, notes, written opinions, executive files, control records, system file movements, instructions, documents, reminder actions, notes, e-mails, raw data, rough drafts, secondary-level information, memos, dictations, any data held apart from the main forum submissions, MLA input, documentation, deputy minister and minister responsible for the FOI Act. Disclosure of information should include a cover sheet providing a record identifying all information disclosed as well as all information withheld.

[1500]

One of the biggest problems that we have is to find out: how many documents is the government withholding, how many documents is the public body withholding or severing — or severed input, drafts, committee submissions to senior officials, press releases, FOIA commission drafts?

It is the commission's responsibility to ensure that the information is gathered and maintained in compliance with the Freedom of Information and Protection of Privacy Act. I'm sure you are aware that the committee has no authority to arbitrarily exclude all or any part of the records from the Freedom of Information and Protection of Privacy Act. You are reminded that compliance with the Freedom of Information and Protection of Privacy Act provides that you provide disclosure within 30 days of receipt of this notice of request. Thank you.

Now, what I've done is essentially made a formal freedom-of-information request, and I expect this committee to honour it. One of the problems we had with the core review is that we waited for a year. We were constantly told that the Minister of Labour was going to come back with committee reports. We sat there and waited, and we phoned, and we contacted them. They almost treated us like we were harassing them because we wanted to find out the information.

I'm really, really worried about the accountability. I hope this just isn't a smokescreen here, that it isn't just a hidden agenda, that somewhere behind this gathering here and the gatherings that were supposed to be in Kelowna, that were supposed to be in Prince George.... I question that. There's something wrong there when you can't get this advertised sufficiently that you're going to attract the people that are going to make a contribution to this committee. You've left out all those people in Prince George. I think I'm the only person that's here from the Okanagan, and that's thanks to this committee's financing my trip to come down here.

I'm worried about the suppression of information. I listened to that girl talking about the RCMP. They constantly suppress information. It's common knowledge. The Crown constantly suppresses information. Our own legal system is a joke.

I made a personal request under the freedom of information to the Workers Compensation Board. I lost my right eye in 1959. I wanted to find out information from the Workers Compensation Board. Do you know what they sent me? A bill for over \$10,000. That's right — a bill for over \$10,000. If you don't have a lot of money sometimes, you're in a very tough situation under the Freedom of Information Act. They're going to work for three hours for you, and they can't get much done. So they come back, and they send you a big bill. That's the way they get rid of you. I hope that as a committee you're going to be able to address some of these issues.

Graham Bruce's office is a perfect example of withholding documents. I made a request to his office, and I got about one-tenth of the documents that I had submitted over the years. I made a specific request. We can't get information out of this supposedly open-door government.

There are things I'm curious about with this government. I'm curious about Basi. I'm curious about the leader of the Marijuana Party. I can't understand why he went over to the NDP and not to the Liberals.

Anyway, I think one of the things that happens is that the public relations departments of too many organizations — the RCMP, the Vancouver police — put a spin on things, and you don't always get the truth. That's why it's so important that we are able to utilize a freedom-of-information act. Now, when you read this act.... Sometimes I say this is the "suppression of information act" because there are so many doors that are closed to people, which they can't get into to find the information.

[1505]

What I'm asking you to do is to open the doors. Those people who contravene this act.... I've never heard of anybody being charged under this act, who ever paid \$5,000 or \$1,000 for not fulfilling their obligations under the act. Perhaps somebody could advise me here if that has ever been done. Has anybody ever paid a fine for not producing the information?

B. Lekstrom (Chair): Darwin, I don't have the answer to that.

D. Sorenson: Well, I think that's an answer that.... Certainly, if you don't have that here today, maybe it would be useful for the committee to conduct an inquiry into whether, in fact, anybody has ever been charged and whether anybody has ever been convicted. If they haven't, then again, this is just a joke. There are no teeth in this act if you can't enforce it, and I think what you have to do is put teeth into things in order to enforce them.

This business of three hours spent locating and retrieving a record is a joke. My request to you is that

you expand that period of time, because a lot of times institutions or bodies.... The one I get to work with the most, of course, is the WCB, and they are constantly withholding documents. If you want to find slips or transmission documents or anything between a doctor and the WCB, you can't get it, and it's there. We know, because we've gone and got it after it's been withheld.

I can tell you that over 50 percent of the work in your constituency offices is done with WCB problems, and it's a big pain in the butt for MLAs. It's about time that we did something about it. I think a forensic audit would be useful, but you can't get into the WCB and find out the information. You can't find out where or how.... They were losing over a million dollars a day last year. The WCB lost over a million dollars a day of my pension money. That's how I look at it, personally.

Then they put a cap on it. No, your government — the Liberal government — put a cap of 4 percent on my pension. When the inflation runs at 18 percent, I'm losing 14 percent for every dollar that's put into my pension. And you don't think we're upset about that? We can't get the information, so what I'm asking and requesting you to do is put some teeth into this act so that we can get the information.

B. Lekstrom (Chair): Thank you, Darwin. I'm going to look to members of the committee to see if they have any questions regarding what you've presented here today.

J. MacPhail: Thank you, Mr. Sorenson. Thank you for coming down from the Okanagan.

I just want to make sure we understand your submission so that you don't leave here disappointed. Are you suggesting on page 2 of your submission, then, that you're making a formal FOI request?

D. Sorenson: That's correct.

J. MacPhail: Okay. I'm not sure that we have a right to take it in that fashion, but perhaps we can assist later, Mr. Sorenson, in converting this into an FOI request. As I interpret it, you're asking for an FOI request on anything that might lead to a change in the legislation that doesn't appear in the report of the committee.

D. Sorenson: No, this FOI request is just as it's outlined in this document — just here. I want the transmission documents. I want the drafts. I want all that information.

J. MacPhail: No, no. I understand that, Mr. Sorenson. Just who are you making the request to?

D. Sorenson: I'm making it to the committee.

B. Lekstrom (Chair): We can check on that. Certainly, you're catching me off guard as Chair. It's kind of untraditional. I can give you a couple of....

D. Sorenson: This is a body that's....

B. Lekstrom (Chair): Oh, very much.

J. MacPhail: Maybe we can help him get it to the right place.

B. Lekstrom (Chair): You asked a question as to whom we formally report. I can make that very clear. We are an all-party committee of the Legislative Assembly, and the people we report back to, the Legislative Assembly — each and every elected member.... That's where the report goes. Let us do some work on this, Darwin, and we will do what we can.

[1510]

D. Sorenson: I will leave a signed copy here at the back desk before I leave, so that you have an official request signed by me, and then we'll see how that develops. We'll see if, in fact, this Freedom of Information Act really works.

B. Lekstrom (Chair): I'm sure we will comply per the act. That I can assure you.

D. Sorenson: Are there are other questions?

B. Lekstrom (Chair): I see no further questions, Darwin. I, too, want to thank you for taking the time to come down.

Our next presentation this afternoon comes to us from the B.C. Association of Municipal Chiefs of Police. With us is Volker Helmuth. Good afternoon and welcome.

V. Helmuth: Good afternoon, Chair, members.

B. Lekstrom (Chair): Possibly, if I could just clarify. The 15-minute time frame has been extended in this case, as you're representing a number of interests — for clarification for the people watching.

M. Hunter (Deputy Chair): If I may, sir, I have to get an airplane at 4 o'clock, so if I leave in the middle of your presentation, I don't want you to think I'm rude — okay?

V. Helmuth: I appreciate it.

M. Hunter (Deputy Chair): I will read what you submit.

V. Helmuth: I'm the information and privacy coordinator for the Vancouver police department, but I'm appearing today on behalf of and as representative of the British Columbia Association of Municipal Chiefs of Police. This association does not include RCMP detachments. There is another association that includes RCMP. This is only on behalf of the British Columbia Association of Municipal Chiefs of Police, as only they are subject to the Freedom of Information and Protection of Privacy Act. The RCMP, of course, have their

own federal legislation. I'll refer to our act as the FOIPPA, just to keep it short.

To begin, the fundamental principles of the FOIPPA are recognized and are given full support and deemed highly commendable by the association. I myself have again and again observed the satisfaction that people gain from being able to review what information a police department has about them or to allow them to discover that a police department may not have any information about them, which also gives people satisfaction. Alternatively, many people have expressed their gratitude when information that they do not want disclosed to third parties or to the media is withheld by a police department, at their request, in accordance with the legislation.

That said, municipal police agencies do encounter significant difficulties as a result of the FOIPPA, and there are three main ones I would like to canvass this afternoon and go over in detail.

The first is that the FOIPPA has resulted in a necessary redirection of resources from the primary policing function of protecting the public through suppression and prevention of crime. The Vancouver police department last year processed close to 2,200 requests for access to records. This requires a staff of four, including one police constable for that policing expertise with regard to the records. Of course, this constable could otherwise be out patrolling on the street.

Smaller police departments are no less occupied with responding to requests. The Saanich police department last year, I was informed, received 1,593 requests for records. Most police departments are required to assign either one police constable in a full-time capacity or, at a minimum, in a part-time capacity to manage and process FOIPPA requests for records. Again, those are police members who would otherwise be out patrolling.

A secondary impact that causes police departments concern is that investigators are presented with roadblocks in their attempts to obtain information that's germane to the execution of their duties. The FOIPPA has necessitated negotiating complex information-sharing agreements to regulate the release of information when requests are received from police investigators. For example, hospitals and schools, because of legislation, are not able to readily cooperate in investigations and simply hand over records. There are protocols now, and often those are very difficult to follow. In urgent situations often the resultant sort of expert in the agency maybe isn't available, and investigations of criminal offences are delayed as a result. Those are the administrative matters that police departments work around as best as possible.

[1515]

I come now to the third issue, which I'm going to spend most of my time on. This is the issue that the B.C. Association of Chiefs of Police have identified as the primary matter that they would like to see some action on.

The issue is this. The impact of the FOIPPA is that information that could lead to significant harm to

members of the public or to police officers is put at risk of disclosure because there aren't proper protections in the legislation to exempt or otherwise protect sensitive information, or ultimately, the information and privacy commissioner of British Columbia has the discretionary decision-making without necessarily specialized policing knowledge to order that such records be released.

I'll give you an example. In the case of the Robert Pickton investigation — which I assume everyone is familiar with — regarding the disappearance of women from the downtown east side, this matter broke in the media before the criminal charges were laid. Now, while the investigation was in full swing, the media requested access to the investigation records. Family members could have made the same request — or interested members of the public, possible neighbours and so on. Anyone can make a request for those investigation records.

The result of such a request is this. In the middle of the investigation, the records have to be identified, they have to be copied, and they have to be analyzed line by line to determine what information in those records could be released without causing any harm to the law enforcement investigation and which parts of those records maybe could be released. Anything that does not fit within a clear exception under the act potentially would have to be released.

If the applicant was dissatisfied with the records that they received, they could ask the information and privacy commissioner's office for a review. The records would then have to be copied, shared with the information and privacy commissioner's office, reviewed with them, and the police department would have to go to great lengths to attempt to justify why those records were being withheld in the middle of this investigation.

Ultimately, if the requester can't be satisfied by the commissioner's office in the course of trying to mediate a resolution to the matter, then the matter goes to a formal inquiry, and the information and privacy commissioner decides what records of that investigation are of a sensitive or not-sensitive nature and what can be released.

In the case of the Pickton investigation, the RCMP was the lead agency on that, and the records were in their custody. Therefore, it didn't fall to the Vancouver police department under the provincial legislation. I'm not sure how the RCMP handled the request. It wasn't necessary to do so under the FOIPPA.

That raises the issue that it is imperative for police agencies to be able to protect information related to active investigations and, as well, certain operational sensitive records. The FOIPPA doesn't ensure that kind of protection in the current form. All it has in section 15 are various exemptions that one can apply. Basically, one has to hope that one can make a case that the records, if they were released, will cause harm to a law enforcement matter and that the commissioner's office accepts that.

I'm going to suggest three alternatives to protect police records. The first is that the FOIPPA be amended

to exempt agencies that are subject to the Police Act, with the result that those kinds of agencies are regulated exclusively in accordance with the provisions of the Police Act. The Police Act has various regulations attached to it, one of which is the code of professional conduct regulation, and it currently has a section, section 8, entitled "improper disclosure of information." The section makes improper disclosure of information a disciplinary default. Oversight of that section is taken care of through the office of the police complaint commissioner. In effect, already now the police complaint commissioner regulates the disclosure of information by a police agency and the office of the information and privacy commissioner as well.

[1520]

Section 8 in the Police Act regulation is somewhat limited at the current time. It could be expanded, as may be considered appropriate, and the police complaint commissioner, with specific expertise in relation to policing, would be able to provide the requisite oversight.

Now, a second option to ensure the protection of police information is that — and this is, in a sense, if we are going to look at them in tiers — if removing police completely from the FOIPPA is the most extreme, then the next would be simply to amend the Police Act to ameliorate the negative impacts of the FOIPPA. Amend the Police Act to allow categorical refusal to disclose specifically designated categories of information — in particular, information related to ongoing investigations.

Other acts already have exactly this kind of section. I'll refer you to section 50 of the Coroners Act, which reads: "Despite the Freedom of Information and Protection of Privacy Act, before an inquiry or inquest is completed the coroner may refuse to disclose any information collected in the course of fulfilling the coroner's duties with respect to the inquiry or inquest." So the coroner has that power. While the coroner is conducting their inquest and it's ongoing, not yet completed, records related to that inquiry are exempt. Later on they then become subject to the act again.

A similar provision needs to be added to the Police Act that would permit the categorical refusal to disclose ongoing investigation files of police departments or other categories of particularly sensitive information. I'm thinking of criminal intelligence information, possibly investigative procedures — that kind of thing. These categories could be set by regulation to the Police Act.

The third option to protect police information is simply to amend the FOIPPA. There the FOIPPA can be amended to exempt absolutely specific categories of police records, including again — first and foremost, I would suggest — records relating to ongoing investigations. The FOIPPA currently already exempts numerous categories of records. They're all listed in section 3(1). The clearest parallel would be that records relating to a prosecution are exempt. They're exempt if all proceedings in relation to the prosecution have not been completed.

No such exemption exists for police records, and it produces a bit of a strange result. While the investigation is ongoing, the FOIPPA applies to the records. They have to be produced, reviewed — all that — with the commissioner's office. Once a charge is approved by Crown counsel, suddenly those very same records are exempt, and then following the prosecution, the records become subject to the FOIPPA again.

I'm suggesting today that an amendment be made to section 3(1) to exempt active investigation records in the same manner as prosecution records. This would not prevent access. It would merely postpone it until the investigation is completed or, if prosecution results, until the prosecution is completed. It's just that it has the potential to be incredibly harmful to have records released during the investigative phase before Crown counsel has a chance to apply their protection to those very same records.

As stated at the outset, the fundamental principles of the FOIPPA are given full support. The value of ensuring access to certain information while also protecting other information — in particular, information about individuals who don't want their information disclosed to third parties — is not in dispute. What is required, however, is either oversight of the disclosure of police records by an authority with specialized expertise in policing — and here I would suggest the office of the police complaint commissioner — or what is required is a mechanism to protect certain police information from the risk of inappropriate disclosure, and there I've provided those three options.

[1525]

The least disruptive to the current legislative framework would be to exempt categories of records by reference in the Police Act or to exempt records by adding police investigative records to section 3(1) of the FOIPPA. Again, the records of primary concern are ongoing investigative records or, in addition, operational records to do with police procedures or tactics.

If I may just ask, how am I doing for time?

B. Lekstrom (Chair): You're fine so far.

J. MacPhail: I have a few questions, just so you know.

B. Lekstrom (Chair): Okay.

V. Helmuth: I've provided in my written submissions a section-by-section review of the FOIPPA. I'll quickly canvass a couple of the ones I'd like to draw attention to just for the record.

Sections 5 and 9 of the FOIPPA allow an applicant to demand to see original records. This creates problems in a police setting, because often the original records are police evidence. They're seized materials, or they're materials that were gathered where continuity of evidence is required, and it becomes very problematic if a person wants to come in, see those records and

has the potential ability to damage them — that kind of thing.

Section 11 of the FOIPPA is another one of concern. It allows a public body to transfer records within 20 days of receiving a request if it's determined that another public body is the more appropriate one to deal with the records. While that 20-day period has already been extended from an earlier ten-day transfer time period, I would like to ask consideration be given to extending that to the full time period. Quite often, if records aren't located until, let's say, the 20-day period, because one needs to canvass a large organization, the records are located and identified a few days after that they contain records that clearly come from another public body, and suddenly that other public body no longer has the opportunity to deal with the records. The secondary party is answerable for them, and that's not a desirable result in many cases, because the originating body is the one that has the expertise to deal with whether or not they should be released.

Section 15 is the primary section used by police agencies to withhold sensitive operational records as well as records related to active investigations. As submitted, the primary position is that operational police records or investigative records should be exempt from the act or, in the alternative, that the act should not apply to active investigations and that they be carved out. If neither of these amendments is acceptable, then section 15, at a minimum, must be strengthened. It's currently discretionary, and it's suggested that it needs to be made a mandatory exemption. This would then force applicants to bear the burden of convincing the information privacy commissioner why they should be released.

Section 15(1)(a) deals with.... That's the exception that's most commonly applied to active ongoing investigations. However, it allows the commissioner's office the unfettered authority to review the police agency's assessment and make his own determination of whether or not the release of these records would harm a law enforcement matter. I would suggest that section 15(1)(a) should be amended to include as a separate exception that records may be withheld that would reveal a record related to an ongoing investigation.

Section 15(4). I draw attention to that next. Section 15(4) requires an amendment to clarify what obligations in the section apply to Crown counsel charge approval. That process is Crown's responsibility. The Crown approves the laying of a charge, and it may be inappropriate for a police agency to disclose information third-hand to victims, detailing why charges were not approved in a particular matter. Crown are the ones who do or don't approve the charge. It shouldn't be the police department that explains to the parties involved why a charge wasn't approved. It's third-hand information by the time it comes back to the police.

[1530]

Also, clarification is needed on how to balance the obvious conflict between the discretion under 15(1)(g),

which is to refuse to disclose information relating to the use of prosecutorial discretion and the requirement under section 15(4) that victims and so on be advised why a charge wasn't laid. Those two sections are in direct conflict.

Finally, my last submission centres around section 25 and section 33. These are the public notification or public warning sections. Basically, these sections allow an agency or public body to make public disclosures of third parties' personal information if there's a risk of significant harm to the public as a result of the information. Section 33(p) allows somewhat the same process when a public body determines that there are compelling circumstances that need to be addressed.

There was a court decision in 1996, *Clubb v. Saanich*, which imposed a notice and waiting period to allow the suspect whose information was about to be disclosed to appeal the police's intended decision to release the information. This notification and appeal requirement prohibits police agencies from making section 25 public warning disclosures in a timely fashion.

Typically, once a decision is made to undertake a public disclosure, there's real urgency around the release. From the police perspective, it's unreasonable and a threat to public safety to give a suspect a significant appeal period once the police agency has made a reasoned assessment that the suspect poses a risk of significant harm to the health or safety of the public or a group of people.

Public disclosure decisions are taken very seriously by police agencies, and consideration should be given to amending section 25 in order that police agencies do not have to wait for that appeal period.

Section 25(1)(a) allows the public disclosure for safety reasons only to the public or a group of people, not to an individual at risk, and this needs to be addressed. It's a flaw, I would suggest, in the legislation that could be remedied very simply by adding that a public disclosure may be made to the public, a group of people or an individual or an applicant. This would allow police agencies to release information to, for example, a single victim of a crime where the suspect has clearly indicated that they intend to harm that victim again.

My written submissions contain a further review of additional sections, and I ask the committee to please consider those.

In closing, I would then just return to my main theme, which was that on behalf of the B.C. Association of Municipal Chiefs of Police, I'd like to ask the committee to consider amendments to protect records relating to active investigations and, beyond that, additional sensitive information which would include, possibly, procedures and that kind of thing where you're dealing with how the police conduct investigations, let's say, or in riot situation techniques used for public order — that kind of thing. These are the kind of procedures that, if released into the public, would cause quite serious public safety concerns. Again, active in-

vestigation files — those are what we really do need to see protected.

B. Lekstrom (Chair): Thank you very much, Volker. I'm going to look to members of the committee to see if they have questions regarding your presentation.

J. MacPhail: I will start by saying I'm taken aback completely by your presentation. First of all, could you tell me why this letterhead is of Jamie Graham, the chief constable? Is he the head of the association or something? I'm sorry, I don't....

V. Helmuth: No, he's not. The head of the association is Chief Ian Mackenzie of Abbotsford.

[1535]

J. MacPhail: Well, Mr. Helmuth, I think it's an unusual time for police to come forward and say they want greater privacy. I didn't hear anything in your presentation that talked about real-life examples. You talked about the Pickton example but then reported that wasn't within your jurisdiction anyway. Then you talk about potential examples of abuse without providing any specific information about real abuse. It does seem to me highly unusual that the police would come forward now and say: "We want to give less information to the public than we already do." In our society one of the greatest underpinnings of our justice system is "innocent until proven guilty." It seems to me that the only way any of us who are ordinary citizens have to presume innocence is to have access to all the information that may be directed against us in a charge or under an investigation.

I totally understand the sensitivity around requests for information that would harm the outcome of an investigation, but you've presented no evidence to us that any harm has occurred with FOIPP. You have suggested that the redirection of resources toward fulfilling information requests away from beat policing or investigations is harmful, but that's a budget issue. That's not an improper use of an act issue.

It also seems to me that right now the public is more concerned about the lack of information they can receive from police. The police have the ability to obtain search warrants and have those search warrants withheld from public purview. I know that my colleagues sitting here have expressed concerns about that right now.

I just wonder: when was this brief prepared, and how much was it discussed by the police chiefs? What urgency does it have?

V. Helmuth: The act functions fairly well. It's been applied now for the last ten years, and this is basically the final, remaining large issue that we would like to see addressed at this point, because it can create huge problems.

J. MacPhail: It does or it can?

V. Helmuth: It does.

J. MacPhail: Will I read your brief and find out the examples of where it has actually created problems?

V. Helmuth: In every case where a request for information is received while an investigation is ongoing, the process that I described of having to respond to the request, retrieve the records, analyze them and then release what is and what isn't releasable — make that analysis, release what's releasable — and then go before the information and privacy commissioner.... If the person appeals what they didn't get, then we have to wait and see what the information and privacy commissioner says about whether or not they agree that the information can be withheld.

Of course, that has the potential to prejudice the prosecution, if you look at it from the point of view of the innocent suspect. If at that point....

J. MacPhail: Sir, you've just said "potential" again. Mr. Chair, I understand I'm not here to cross-examine the witness. You've always said potential. That's why I'm asking you. It doesn't seem to me — because I've flipped through your brief and looked for real examples, and it's a quick read, but I couldn't find any — that what you have described is the rigours of applying freedom-of-information legislation. There's no question about that. I assume that the police chiefs aren't attacking the underlying the premises of freedom of information...

V. Helmuth: No.

J. MacPhail: ...and therefore I would suggest that your complaints are about having legitimate points about the rigours of enforcing legitimate legislation. So be it. You're not unique in that area. Your organization is not unique, and I assume that you're not coming forward to challenge the whole premise underlying freedom-of-information legislation — at least I hope not. I find the requests.... I'm taken aback by them. I find them unusual.

My last question, Mr. Chair, is: when was the last time the organization for whom you're speaking discussed this matter and turned their minds to making such requests? Is this fresh?

[1540]

V. Helmuth: Yes, this is. Various members of the association reviewed it as recently as last week.

If I may just reiterate, the protection is already there at the prosecution stage. Why would it not be extended to the investigation stage? At that point the person is just a suspect. If one was to be a suspect of an investigation before one even had a chance to have the matter brought to court, why should anyone run the risk of having information, which could compromise their case in court later on, revealed during the investigation stage?

J. MacPhail: There are protections in the legislation against that, sir — third-party protection, absolutely.

B. Lekstrom (Chair): To bring it somewhat to order, rather than debate the issue — and I think the discussion is valuable — we are going to move on to further questions at this point.

K. Johnston: I have to say I do understand the sensitivity of police investigations in regard to freedom of information. However, I personally had an experience of sitting on the committee that reviewed the office of the police complaint commissioner. Right away, when you come and ask, or at least make these recommendations, I get a little freaked, frankly — considering what we went through on that.

Considering the concern of certainly the people of Vancouver with regard to — how do I put it? — the kind of view they had of that office and the kind of the things that went on and the lack of access they had to that office as well.... I hear you when you said you had one constable and four people working on 2,200 files last year. I guess my first question to you would be: what would be the alternative? You have to have some sort of access to information and somebody fulfilling the requests, if you will. I can't remember how big the force is — 500, 600. Am I way off?

V. Helmuth: In Vancouver, close to 1,000.

K. Johnston: A thousand, okay. I am way off. One person out of 1,000 doing this does not seem to me to be an unrealistic amount. Is that what you said? You said one person was a drain on the force?

V. Helmuth: No, I didn't say it was a drain on the force. I was commenting on the overall impact.

K. Johnston: I just want to put in context. I don't think that 1,000 people and one constable working on that is something you probably could avoid. What would your alternative suggestion be on that? Someone is going to have to.... I'll get to this in a minute. Even if it was under the office of the police complaint commissioner, someone is going to have to deal with these requests — right?

V. Helmuth: Yes. If there was potentially more protection for investigative records, then a police constable may not be required to analyze those records. It could be done by a civilian, for example.

K. Johnston: Right. I understand what you're talking about with ongoing investigations. Again, part of my limited knowledge is with regard to the last committee I was on. One of the concerns was that these investigations tend to go on forever; there's no conclusion. I know you talked about prosecution, which is a pretty obvious conclusion — right? So many files in the Vancouver police department — the Hyatt, whatever

— seem to have gone on forever. Part of the concern of the public would be that there will never be any access to them. Do you know what I mean? This has been the experience. How would you address the concern that there is no definitive end to the investigation — in a lot of cases, not every case?

V. Helmuth: All investigations do conclude. I don't have absolute expertise in this area, but it's my understanding that the only investigations that don't conclude are missing persons investigations, if the person isn't located. Those stay open. The department would still have the discretion to release information in those situations.

K. Johnston: You're right. They all conclude at some point, but some go on at length — maybe a really long time. It's hard for the public to get a grasp of getting information, if that's an exclusion. That's a concern I have and wanted to throw at you.

You talked about the police complaint process as well. Information-sharing in terms of FOI was never even discussed at that level, under section 9 of the Police Act — right? — and you're suggesting that FOI should be shifted to the police complaint commission area.

V. Helmuth: That's one of the options.

K. Johnston: I wanted to be clear that that was never, ever discussed, so none of the public would ever be aware of that at this point. That would be a concern of mine as well.

Lastly, you talk about the information being given to individuals that are maybe at risk, or something. What is the police department doing about that? Are you just not giving out the relevant information at this point under section 25?

[1545]

V. Helmuth: No. We work around it as best we can. I can't think of a specific case, but one could consider, for example, the whole family to be a group of people — that kind of thing. Or one could apply the section 33 exception to release information, but section 25 is the big one for public notification on that.

K. Johnston: It's really important you brought that up, because I think the public need to know is way more important, in a lot of cases, than the FOI. I think that's something the committee will certainly look at. Thank you very much.

B. Lekstrom (Chair): Volker, I see no further questions from members of the committee. I want to thank you, as the Chair of the committee, for taking time to come and make your presentation. As with all presentations, either written or verbal, they will be given due consideration in the development of our report, so I thank you for taking the time.

Our next presenter is not here at the moment. We will at this point take a five-minute recess and reconvene in five minutes.

The committee recessed from 3:46 p.m. to 3:58 p.m.

[B. Lekstrom in the chair.]

B. Lekstrom (Chair): At this time I will reconvene the Special Committee to Review the Freedom of Information and Protection of Privacy Act in British Columbia.

Our next presenter has joined us, and I would like to call Mr. Maurizio Grande, who is representing the Cambie Boulevard Heritage Society. Good afternoon and welcome.

M. Grande: Good afternoon, ladies and gentlemen. My name is Maurizio Grande, president of the Cambie Boulevard Heritage Society. I'm here today to share with you, the public, how the process to obtain the truth under the Freedom of Information Act failed us.

Our society made a request on May 10, 2003, to the office of the Premier of British Columbia for the disclosure of records, reports and correspondences relating to the RAV project from January '98 to the present. Let me describe briefly....

Sorry, if I can interrupt for a second. I ended up that one more naturally with the Freedom of Information Act, the three pages you see there. I'm just adding a brief comment.

[1600]

Let me describe briefly the result. We have 211 pages, of which eight are largely gutted, primarily under section 16. A further 58 pages are completely blanked out. I'm giving you these details to demonstrate the inappropriate, if not illegal, omission of information contained in these pages. Evidently the materials excised were determined relevant to our request on their merits but conveniently cut out or denied to us on various rationales — none of which withstand scrutiny. Furthermore, we then found that on 14 separate occasions the freedom-of-information results described the material cited in the request response process but excised it before release.

Again, we see that the response process, however imperfect in this politically neutral stage, identified 370 pages of materials that our freedom-of-information request should have flushed out. Yet this material was suppressed for reasons that would not stand scrutiny. We ended up with about 150 pages, while losing about 430 identified sheets in the political gears. We assume that Mr. Dobell and others in the Premier's office chose to deny the public's right to know about even the most fundamental of issues — facts, measurements, assumptions and rationales for a gigantic project with profound effects on the financial and social future of British Columbia, the biggest single project in the history of British Columbia.

The most commonly cited rationale falls under section 16: "...harmful to government relations or negotiations." Use of this provision in this broad way in effect asserts that freedom-of-information requests cannot ask governments how they deal with each other; yet governments act on behalf of the public, who finance them. Surely it makes no sense to deny the beneficiary of such discussions access to the background and reasoning behind these decisions. The only excuse for secrecy is to avoid either embarrassment or scandal.

All the above shows what will become of any attempt to tell the truth when the information hits the highly politicized upper reaches of our bureaucracies. The lower-level bureaucrats find the information. It is sent upstairs for review, and it is largely butchered by unaccountable, partisan flakes. This suggests that as long as the public service is controlled at the top by polls with no regard for public service or good, the freedom-of-information requests will be truncated by partisan political spin. Ultimately, this has the potential to undermine the effectiveness and morale of everyone in the public service.

Ironically, at a recent meeting with the Minister of Finance we expressed our frustration at all the blank pages we received, at which point Mr. Collins laughed and told us: "That's exactly what I felt when I was in your position and received blank freedom-of-information requests back." Isn't it about time we take away at least some of the frustration and improve this process to cut down on the blank pages and then the ironic laughter?

I have a copy for each one, if you want to address it. My English probably wasn't very good.

B. Lekstrom (Chair): It was very good.

M. Grande: I do it from the heart.

B. Lekstrom (Chair): All right. I appreciate you coming and presenting to our committee this afternoon. I am going to look to members of our committee if they have any questions regarding what you have put forward this afternoon.

M. Grande: I can add one other thing. We also asked TransLink the same. It took about six months to basically get these blank pages back. Of course, timing under the Freedom of Information Act is very important, because due to the process, there are lots of meetings, lots of dates. GVRD has to make some decisions yet, and of course we can't substantiate anything. We don't see any transparency. We tried every single avenue. We tried to talk with politicians, newspapers, directly to the TransLink people, to the government, MLAs.

[1605]

Like I said, it's the single biggest project in the history of British Columbia, and the GVRD will also suffer lots of consequences because of the big impact financially. We attended all the meetings that were in De-

ember, to have input. They were mostly negative. All of a sudden we heard from TransLink. It's that poll. They were saying that 70 to 80 percent of the population is very happy and in favour of this. Again, we're trying desperately. I thought, really, it was a great tool to try to get to the bottom. On the other hand, politicians very often decide not to do their due diligence, so someone has to do it. My daughters have to pay for the next 20 or 30 years.

Sorry about that.

B. Lekstrom (Chair): That's fine. Again, I will look to members of the committee to see if they have any questions.

B. Belsey: Thank you very much for your presentation. In the information you've got, granted these numbers are very difficult to deal with for your people, I'm sure.... From what you did get, has there been any value in that?

M. Grande: Here and there we actually found quite a few interesting points. But again, they're kind of truncated, meaning there are some papers that are very promising and then the next page is white — blank or "best regards." What was before that one, I think, would be very interesting to know.

I'm a businessman. I do bidding every day. I'm in a business where I do quotes and I do bidding — internationally too. We all play on the same level. We've got all of this specification, and we need to bid. So I don't think there is anything really secret if we choose to.... I had lots of situations.... It has to be something else. Unfortunately, I cannot prove it yet because I don't have that information, but certainly there were lots of lies that we could definitely disclose. We are working on that one through a few newspapers who choose to listen to us. The correlation between the Olympics and the RAV project. We're saying that left and right, there was no correlation. We have a letter by Jack Poole and TransLink. We have a correlation with another situation that unfortunately, like I said, is very difficult unless we have a big number of pages so that we can look at it. It's quite hard and frustrating because you can see something in your head.

There were lots of lies like, for example, there are processes where this line is supposed to start and finish with no other lines possibly connecting. I don't know. I think 99 percent of the population doesn't know about that, so we're going to spend lots of money to have one single piece of SkyTrain, RAV train or whatever it will be — hopefully, never, but you never know.

B. Lekstrom (Chair): We have one other question. I will go to Gillian.

G. Trumper: I just noticed on this letter down here with all this stuff....

M. Grande: That went direct to the....

G. Trumper: There actually isn't a date that I can find, so I'm curious as to when you started all of this.

M. Grande: January 8.

G. Trumper: This month?

M. Grande: Yeah, because we had 30 days to have the review in and hopefully more. I received it personally after 200 calls — I'm not exaggerating — almost every day from the poor girl there in Victoria. We received it on December 18 from May. Basically, the whole political spectrum went on — all the dates, all the meetings, all the votes. We couldn't do anything.

G. Trumper: Could I just go back to the start? When you were dealing with this.... I know about the project also, and I know Cambie. That's my geography of Vancouver. I go from A to B, and I don't digress. I get lost.

When you started all this, you went to the Premier's office for the information?

M. Grande: We tried the Premier's office. We were sent through the channels to the Freedom of Information Act. The same day we sent it to TransLink.

G. Trumper: That's what I wanted to know.

[1610]

M. Grande: Here's another one for TransLink. This is the recent thing we received. If you want, I can copy it.

G. Trumper: No. That's fine. I just wanted to know whether you'd done that step. Thanks very much.

B. Lekstrom (Chair): I will go to Joy now.

J. MacPhail: Thank you, Mr. Grande. Have you had any hope held out from any of these organizations that once the bidding process is concluded, which I've been told is any day now, they will provide you with the information?

M. Grande: That is another story. I asked repeatedly to Pat Jacobsen and to Jane Bird but it's the usual secret, you know. They don't disclose anything unless they decide to do it. Very important in this situation is the ridership. I have pages, actually, on TransLink — not on this one — where there were very important numbers, and they're all blank. They decided to say no, because it could jeopardize the bidding process. It's quite odd because, for example, they say there has been no technology chosen yet.

I don't know. Two and two is four.

J. MacPhail: Have the organizations distinguished in a timeframe of pre-bid and post-bid in terms of providing you with information?

M. Grande: Yes, but up to now we didn't receive anything substantial or of any real importance or relevance to really.... What it was to me was a pitch to sell the SkyTrain. That's my personal opinion. I tried desperately to understand how they can arrive at spending \$2 billion on something that will never work.

The latest example is the Millennium Line. I discussed it even with Doug McCallum of TransLink — the one issue. I had a big perplexity with this one. It would never work because of ridership. We are not in New York; we are not in Paris; we are not in London. We don't have the population for this. They say they're going to have 100,000 people a day. Are they going to put all the people in Richmond and Vancouver on the SkyTrain?

Only if you start from some simple assumption.... It will never work. The problem is that we can never do too much. They got lots of money to do their pitch, to do their sell. There is very, very little input. They say there was lots of public input. They had, if I recall, exactly three meetings of about two and a half hours each at which we were allowed to speak for five minutes — not even like we're doing right now. You are asking questions and we respond.

We are going to spend lots of money. Plus the fact that they jumped priority. It was priority No. 4, went to priority No.1. Actually, in view of the labour, that's one thing that we discovered too — the jumping of priority. It's very tough to work.

B. Lekstrom (Chair): I see no further questions from members of our committee.

Mr. Grande, I want to thank you again for taking the time out of your busy schedule to come and present to our committee this afternoon.

M. Grande: It's been a pleasure. Anytime. Do you want a copy of the speech?

B. Lekstrom (Chair): Please. That would be much appreciated.

That concludes our presenters this afternoon at the public hearing.

A Voice: I have tried to get on to the speakers list, but unfortunately they said it was full. Yet there's been a cancellation. I'm wondering if you could spare a minute of your time.

B. Lekstrom (Chair): I think we could certainly entertain that, definitely. If we could get your name for the record, ma'am.

L. Fralin: My name is Lorraine Fralin. I really will only take a minute of your time.

B. Lekstrom (Chair): Welcome. Thank you for coming.

L. Fralin: Thank you for allowing me a minute.

I also wrote for freedom of information, and out of the 66 pages that I received, 44 were blank. There were some e-mails from general public individuals. They were not from provincial people or anybody that was a designate employee of the provincial government. I found it to be really questionable that I would receive somebody's personal e-mail with a personal name on it.

[1615]

The information that I was seeking was also in relationship to the RAV line, and there was nothing. There was just nothing at all.

I guess my question is to you, because you're the professionals. You're the ones who are in the provincial government. What is the purpose of the Freedom of Information Act?

B. Lekstrom (Chair): I guess I can answer that. I mean, it's to allow the ability to access information from a public body, of which I believe there are 22 covered. There are exemption clauses within that act. Not knowing the specifics of your individual case, the blanked-out pages, I'm sure, were applied under an exemption that probably would have been relayed back to you.

Our job as a committee is to come and listen to British Columbians, their experiences, as you're relating to us — ideas on what has worked, what hasn't worked. After listening to British Columbians and reading the information through written submissions, it's our job to put a report together and report back to the Legislative Assembly no later than May and include recommendations, if this committee so wishes, on how to improve the piece of legislation we now operate under in British Columbia.

L. Fralin: Those recommendations — are they subject to be turned into law, to actually revamp the act?

B. Lekstrom (Chair): Yes. The way it will work is that this committee, which is an all-party committee of the Legislative Assembly, puts forward a report, as I indicated, no later than May. It is then up to the entire Legislative Assembly to either adopt that report, accept it or not accept it along with recommendations, if there are any within this report.

L. Fralin: Well, I hope — and I'm sure, because you all look incredibly attentive — that many people aside from myself and Maurizio Grande have spoken to you with very similar kinds of reports and circumstances, that they will listen to what you have to say, that you will put forward to the government that these pages are unacceptable to come blank, that they're unacceptable to have individual e-mail names on them — things that are just not appropriate. I really hope they'll take your advice and listen to you.

B. Lekstrom (Chair): All right. Thank you.

J. MacPhail: Just a very brief question for you. What organization are we talking about here, which sent you blank paper?

L. Fralin: The letterhead.... I don't have it with me, but I'd be happy to send you a copy. It just says the freedom of information.

J. MacPhail: But were you requesting it from TransLink or the provincial government?

L. Fralin: The provincial government.

G. Trumper: I just want to clarify. What did you say about the e-mail address? I'm sorry. I missed that while I was writing something.

L. Fralin: Well, you know when you send an e-mail to somebody, your name is in the "to" or in the "from". It's in one of those slots, depending on whether you're receiving or sending. People's names were there. It would take me forever, probably, to try to hunt them down, to find them....

G. Trumper: So was the e-mail to you?

L. Fralin: No.

G. Trumper: Oh. The e-mail was to a whole lot of other people. Interesting.

L. Fralin: I would feel a little odd having my name in there. I mean, it would be easy to hunt me down; I'm

the only Fralin in the whole of B.C. But if it's a Smith, it could be a little tough.

G. Trumper: Your name was on it.

L. Fralin: No.

G. Trumper: It wasn't on it.

B. Lekstrom (Chair): Somebody else's. Yeah.

G. Trumper: Interesting. Well, yeah. It's an issue.

B. Lekstrom (Chair): Well, Lorraine, I want to thank you for taking the time to come and address our committee today. Definitely, we try and accommodate however many we can, and I appreciate you taking the time.

L. Fralin: I appreciate you doing that.

B. Lekstrom (Chair): Well, thank you, and take care.

L. Fralin: I wish you luck.

B. Lekstrom (Chair): All right. With that and no further presenters before the committee this afternoon, I will now call the committee adjourned.

The committee adjourned at 4:19 p.m.