

Title: Tuesday, April 10, 2007 PIPA Review Committee

Date: 07/04/10

Time: 6:25 p.m.

[Mr. VanderBurg in the chair]

The Deputy Chair: Well, good evening, everyone. I'm George VanderBurg. I am the vice-chair, and I'll be chairing the meeting tonight. Cindy Ady is not feeling well.

We'll go around the table and introduce ourselves, starting with Laurie since this is your constituency.

[The following committee members introduced themselves: Ms Blakeman, Mr. Ducharme, Mr. Graydon, Mr. MacDonald, Mr. McFarland, Mr. VanderBurg, and Mr. Webber]

[The following departmental support staff introduced themselves: Ms Kreutzer-Work, Ms Lynas, Ms Lynn-George, and Mr. Thackeray]

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Work: Frank Work, Information and Privacy Commissioner.

The Deputy Chair: Thank you.

We have the agenda in front of us. Does everybody have their paperwork handy, or do you need copies? Seeing none, I will ask for a motion to adopt the agenda as presented.

Mr. Ducharme: So moved.

The Deputy Chair: Denis Ducharme. Those in favour? It's carried. Thank you.

We have the minutes to go over from the December 12 meeting as well as the *Hansard* transcript from that meeting. They're under tab 3. Hugh, you were in attendance. Maybe I can get a motion from you to approve the minutes of the December 12 meeting.

Mr. MacDonald: You certainly may, Mr. Chairman. I move that we adopt the minutes as circulated.

The Deputy Chair: Any comments? All those in favour? Thank you. Carried.

Orientation for New Members. We have the committee mandate. There's a copy of Government Motion 22 in your binders. It provides an overview of the mandate and the authority of the committee. As you all know, the committee membership was revised by government motion. What date was that, Karen?

Mrs. Sawchuk: I apologize. I was supposed to be getting that revised date in there for you. I believe it was on the Thursday after session commenced.

The Deputy Chair: Okay. Thank you. So the mandate remains unchanged.

Karen Sawchuk is the committee clerk assigned to this committee, and she provides administrative research and general assistance as required. Other services provided through the Leg. Assembly Office include those of the Senior Parliamentary Counsel, the Clerk of Committees, and the communications branch. Alberta government services and the office of the Information and Privacy Commissioner provide the necessary technical expertise to the committee. Welcome, Frank.

Members also received in their binders a copy of the Personal Information Protection Act and a copy of the discussion guide issued

by the committee to assist them in their duties on this committee. The '07-08 approved committee budget estimates, a copy of the committee's approved operating budget, is included in the members' binders as well. Just for information purposes this budget covers the second half of the committee's mandate, which ends December of 2007. The 2006-07 budget covered the big-ticket items such as advertising. The 2007-08 budget estimates were approved by the Members' Services Committee at its December 2006 meeting, and these are provided for information purposes only.

If there are any questions, Karen, maybe you can help me.

Mr. MacDonald: Mr. Chairman, perhaps Karen can refresh my memory. Were we going to hold one of our meetings in Calgary?

Mrs. Sawchuk: I can speak to that, Mr. Chairman.

The Deputy Chair: Go ahead.

Mrs. Sawchuk: The committee had discussed moving to another location with maybe half of the oral presentations occurring here in Edmonton and the other half in Calgary, but a final decision was never made on that. After all the discussion was said and done, consensus was that if it appeared that the majority of presenters would be attending from southern Alberta, we would, you know, entertain meeting down there. But it was kind of left at that.

Mr. MacDonald: Okay. Thank you.

The Deputy Chair: The proposed revised timeline. I've asked the staff from government services to update the terms of reference and timelines, recognizing the changes in the tentative meeting schedule that was originally planned. Tom, can you or your staff update us on this, please?

Mr. Thackeray: Certainly, Mr. Chairman. The terms of reference, scope of the review, and proposed format haven't changed. The one thing that has changed is the proposed timelines for the review. Initially it was anticipated that there would be an interim report put out sometime in June, but because of the delays in being able to have a meeting of the committee, it's certainly our recommendation that we omit the interim report and continue with the deliberations of the committee from April through August of '07. In September the technical team would begin working on a draft final report. The report would be presented to the committee sometime in October, and in early November the final report would be ready to be tabled in the Legislative Assembly.

The Deputy Chair: Okay.

I'm going to ask at this time for a motion, then, to approve the revised terms of reference and timelines. Could I get a mover? Barry?

Mr. McFarland: Sure.

The Deputy Chair: Barry moved that the Select Special Personal Information Protection Act Review Committee approve the revised terms of reference and timelines as circulated.

Karen, is that fine?

Mrs. Sawchuk: Yes, that's fine, Mr. Chairman.

The Deputy Chair: All those in favour? Opposed? Carried.

Ms Blakeman: Could I get that noted, please?

The Deputy Chair: Sure.

Ms Blakeman: Thank you.

[For the motion: Mr. Ducharme, Mr. Graydon, Mr. MacDonald, Mr. McFarland, and Mr. Webber]

[Against the motion: Ms Blakeman]

The Deputy Chair: So we'll move to the overview of the review process to date. Just to bring members up to speed on what the committee has done to date, the orientation meeting was held in June of 2006. The discussion guide was issued in July of the same year, setting out key issues and questions to assist those wishing to make submissions. A province-wide campaign advising of the review and inviting submissions occurred in July as well. The committee approved the list of stakeholders to receive direct notice of the review and an invitation to make submissions.

Sixty-three submissions have been received. Submissions are reviewed and analyzed by technical support staff with a view to highlighting key issues raised. The committee started review of the responses received to question 1 in the discussion guide at its December 2006 meeting. The committee agreed at the December 2006 meeting to hear oral presentations and directed technical staff to compile a list of stakeholders which is representative of the various issues under consideration.

Tom, you and your staff now maybe can add additional comments and respond to questions that came out of those steps, please.

Mr. Thackeray: Thank you, Mr. Chairman. It might be of interest to the committee to get a breakdown of the types of organizations and/or individuals that did make submissions. I'd ask Jann to do a brief summary of the 63 submissions that the committee received.

The Deputy Chair: Okay.

6:35

Ms Lynn-George: Of those 63 submissions, there was, of course, one from Alberta government services, as it then was – now it's Service Alberta – and one from the office of the Information and Privacy Commissioner. For comparison, the federal Privacy Commissioner received 61 submissions when she conducted a consultation process about the federal Personal Information Protection and Electronic Documents Act. That process was conducted around the same time. Also around the same time there was the legislative review of the Health Information Act, which received 72 responses, and the Conflicts of Interest Act a little earlier, which attracted just 20 responses.

Although the respondents were relatively few in number, they do represent a very significant number of individuals and organizations: 45,600 employers and 285,000 individuals in Alberta and Canada. They represent over 13,000 small businesses in Alberta.

A few facts about the respondents. Forty-five of the 61 respondents other than government and the Commissioner's office are based in Alberta, so 75 per cent. Twenty national organizations responded to the consultation paper and just five individuals. Thirteen professions were represented by the respondents. Nearly half of those were in the health professions.

The sectors with the highest representation among the responses were as follows: health, construction, insurance, financing, and education. Among churches one of the two Anglican dioceses and

the only Roman Catholic diocese in Alberta both responded, and they represent about 130 churches throughout Alberta.

Now, what did they say? Only 43 per cent of the respondents actually responded to all the questions in the questionnaire. A third of them answered just one to three questions, so they had very specific issues in many cases. The question with the highest response rate, at 61 per cent, was about exceptions to access. The question on the access process was close behind, as was the question concerning notification for a breach of privacy.

The questions on which the respondents were most divided were the questions about the access process and the commissioner's process. Respondents were divided down the middle on the act's appropriateness in these areas. The questions where respondents were most in agreement were the questions on forms of consent – people felt that they were appropriate – personal employee information, also appropriate, and notification of breach. There was a very broad consensus that there should be a notification requirement.

There was an open-ended question in the paper, and respondents raised a very broad range of issues. The top perhaps were the application of the act to health information, the effect of the act on loss prevention programs in the retail sector, requirements for document destruction, the application of the act to telephone soliciting, and finally, responsibility for contractors under the act. So they'll all be considered toward the end of the review of the consultation process.

Just to recap what's been said about how this information will be presented to you. For each question we've compiled a summary of all the comments, and we've organized them under a few different topics. Then we've given you the name of the respondent in a footnote so that you can locate the complete submission if you want to look at the actual language that's being used. Then we've provided a little bit of commentary on points raised by the respondents.

This is not just about interpreting the act. It's more to do with explaining something that may not be clear from the submission or something where there's a problem of understanding the act. So that's it in a nutshell.

Ms Blakeman: I note in reading the *Hansard* of one of the previous meetings that the rather obvious omission or lack of not-for-profits was identified. Has that been addressed in the intervening time since the December meeting? Can anyone answer that?

Mr. Thackeray: The way that we approached that issue was to ensure that in the list of presenters, which was requested by the committee and presented to the committee as part of the handout, that there were not-for-profit organizations represented and to give them the option if they wished to make a presentation to the committee.

Ms Blakeman: And, therefore, we can add who to the list? Which organizations were able to be added? If I have that information in my package, please tell me what tab.

The Deputy Chair: Under 5(a): would that be it?

Mr. Thackeray: Yes. It should be under 5(a).

Ms Blakeman: Okay.

The Deputy Chair: Any other questions?
Laurie, is that okay?

Ms Blakeman: I don't know. I can't read that fast. Keep going, and I'll come back to it.

The Deputy Chair: Tom and staff, you have a current overview of the act, including a PowerPoint presentation, that you want to do at this time?

Mr. Thackeray: Thank you very much, Mr. Chairman. The Personal Information Protection Act, or as we affectionately call it, PIPA, was brought into force two or three years ago. To begin our orientation of the Personal Information Protection Act, we're starting with a few stories from the files of the Information and Privacy Commissioner. A few of them may be familiar from news coverage, and the cases are typical. They cover a range of different organizations, and they involve different parts of the legislation.

This evening we'll be presenting a brief overview of the Personal Information Protection Act, including some background that explains why we have the act, the key principles of the act, and some real life examples of privacy legislation in action. We'll be explaining the way privacy principles are structured in the legislation, and we'll be demonstrating how general concepts such as reasonableness, consent, security, and the right of access can be applied to current and emerging privacy issues. To keep the overview as short as possible, we'll be concentrating on essentials. There will be an opportunity for detailed consideration of the act when we turn to the public submissions.

Concern about individual privacy has quite a long history. Concern about information privacy, however, is relatively new. It is a product of the digital age. Information privacy is about control of an individual's personal information. The question has become: who gets to decide how my personal information can be used?

When I deal with a business, I can decide whether I provide my name, phone number, and any other personal information. But once the business has collected the information, I don't know what they do with it. Do they create mailing lists and then sell them to charities for fundraising or to a data broker or to a business partner? Are their computer systems protected from hackers or even from curious employees? Are outdated documents shredded, or are they just thrown into the dumpster in the alley? I can't track how every business I deal with manages my personal information. Alberta's private-sector privacy legislation sets standards that businesses must follow so that their customers have some assurance that businesses are handling personal information responsibly.

6:45

Canadians are becoming increasingly concerned about privacy. In a 2006 Ekos survey 71 per cent of Canadians polled felt that they had less protection of their personal information in their daily lives than they did 10 years ago, 66 per cent believed that protecting the personal privacy of Canadians will be one of the most important issues facing the country over the next 10 years, and 77 per cent felt that it was important to have strong laws to protect Canadians' personal information.

Ms Lynas: Now, as Tom has suggested, technology has played a large role in creating a demand for privacy protection. Before the digital age, information about us was stored in paper files. It costs a lot of money to manage and collect information, so when businesses were done with information, they destroyed it or else sent it in for storage. If someone wanted to create a dossier about you, they would have to go and look through volumes of paper records, retrieve boxes, and probably go to more than one location.

But things have changed now. Within companies they use

customer relationship management programs, which can profile individuals, and of course we all know about Google as a way to collect information out of the public domain. Really, there is so much ease now in collecting and amassing data in electronic form that it creates greater threats on privacy. Last year an editorial in the *Ottawa Citizen* put it this way:

Privacy invasion in the 21st century does not come as a single, massive assault. It comes in pinpricks . . . Requests for personal information are commonplace these days, so it's easy to forget that answering them is voluntary. Personal information has value to marketers, but it doesn't belong to them. It belongs to us.

You may remember hearing this story about the cellphone records of Jennifer Stoddart, the federal Privacy Commissioner. The lesson here is that nobody is immune to threats to privacy, not even the federal Privacy Commissioner. Her personal phone records were bought on the Internet from a U.S. data broker for about \$200. In 2006 there were nearly 8,000 reported Canadian cases of identity theft. These involved losses that were estimated to exceed \$16 million. About 612 of these cases were from Albertans.

Looking at a bit of the history of the legislation, in the early '70s computers were starting to play an important role in governments and large businesses such as banks and credit reporting agencies. This was part of the driver for developing laws to protect personal information. The result was a set of guidelines which are known as fair information principles. These were developed by the OECD and became the foundation for the first generation of privacy laws, which were generally laws governing the public sector.

In 1995 the European Union passed tough data protection legislation for the private sector. It prohibited member countries from transferring data to other jurisdictions that didn't have adequate data protection legislation. For example, it could prevent companies from sending personal data to Visa in the U.S. for processing. The EU's actions had significant impacts to continue to participate in the global economy and to be able to exchange data back and forth with European counterparts. Canadian businesses needed to be able to offer a comparable standard of privacy protection. Quebec was the first jurisdiction to bring in private-sector privacy legislation in Canada.

At the national level the Canadian Standards Association set up a committee to develop some standards. This led to the CSA model code, which embodies the OECD's fair information principles. This became the foundation for the federal Personal Information Protection and Electronic Documents Act, which we refer to as PIPEDA.

PIPEDA was implemented in stages. It began in 2001 with federally regulated businesses. By 2004 the act was fully in effect. It now applies to personal information collected, used, and disclosed in the course of a commercial activity by all private sectors in the provinces. Now, the exceptions are Alberta, B.C., and Quebec because these provinces have their own legislation that applies within the provinces. PIPEDA applies to all personal information transferred by private-sector organizations across provincial borders. This would include the personal information that an Alberta business transfers across the border for a commercial purpose.

There is a review of PIPEDA by a House of Commons standing committee. It began in November last year, and a report is expected this spring. B.C. also is looking at reviewing their private-sector privacy legislation this year.

Mr. Thackeray: If Alberta did not enact its own legislation, the federal legislation, PIPEDA, would apply to Alberta businesses. A consultation with Alberta businesses and individuals in 2002 indicated strong support for made-in-Alberta legislation. There were some inherent problems identified with PIPEDA. Most notably, it's

a very difficult piece of legislation to read and understand because the CSA code was not drafted in the form of legislation, and it is attached to the act as an appendix. In the code “shall” is a requirement and “should” is a recommendation.

The other issue that we heard when we consulted with Alberta businesses and individuals was that PIPEDA was designed for big businesses. It wasn’t designed for the small- or medium-sized businesses that are the backbone of Alberta’s economy. It was designed for organizations like banks, telecommunications companies, and transportation companies.

British Columbia and Alberta were drafting their own versions of PIPA at the same time, so it was decided that it made sense to harmonize the two pieces of legislation as much as possible. We worked together with British Columbia in developing the legislation. Coincidentally, they’re both called Personal Information Protection Act. We did that to ensure that the acts would be harmonized as much as possible between the two most western provinces.

PIPA governs how private-sector organizations may collect, use, and disclose personal information about their customers, clients, and employees. The act does this by balancing an individual’s right to have his or her personal information protected with the need of organizations to collect, use, and disclose personal information for reasonable business purposes. The act also allows an individual to ask an organization what personal information it has about that individual. It allows me, Tom Thackeray, to go to a business and say: what information do you have about Tom Thackeray? I can’t go and say: what information do you have about Hilary Lynas, or what information do you have about Frank Work? But I can ask what information they have about me. The act does not allow an individual to request information about someone else or to request the organization’s business information.

Ms Kreutzer-Work: The act applies to all organizations in Alberta that are not federally regulated, from large companies to an individual who’s operating a home-based business. There are certain types of personal information and certain entities to which the act does not apply. It doesn’t apply to a person who’s acting in a domestic capacity such as compiling a party invitation list or researching the family tree. It doesn’t apply to a newspaper that’s collecting personal information for journalistic purposes. The act does not apply to public bodies that are subject to the FOIP Act, such as government departments, public schools, municipalities. Even if a public body contracts with a private-sector organization to provide a service, the personal information relating to the service continues to be the responsibility of the public body. For example, the FOIP Act continues to apply when a municipality uses a private-sector company to produce paycheques.

6:55

PIPA does not apply to health information covered by the Health Information Act. The act does not apply to the personal information that a registered constituency association or political party handles or when personal information is collected for an election campaign.

The act applies only to personal information, whether it is recorded or unrecorded. The information does not have to be written down. For instance, the act applies when information is collected over the telephone.

Personal information is information that identifies an individual, such as a name, an address, a telephone number, an e-mail with a user name, a unique identifying number such as an account number, an employee number, or your social insurance number. It could be a photograph. It could be biometrics: fingerprints, voice prints. Personal information is also information about you; for example,

birthdate, gender, race, religion, education, financial history, employment history, medical history.

You may have noticed a privacy statement printed in your daily newspaper. You may have received an insert with a utility bill or from a bank, or you may have seen a link to a privacy policy on a website. The act requires organizations to have a privacy policy of some kind. The privacy policy must be made available to the public upon request. An organization must also make someone responsible within the organization for its compliance with the act and, of course, with its own privacy policy.

The act requires organizations to act in a reasonable manner. The act defines reasonable as “what a reasonable person would consider appropriate in the circumstances.” For example, it would be reasonable for a video rental store to ask a customer for a name and a telephone number or an address, but a reasonable person would not consider it appropriate in the circumstances for the store to ask the customer for his or her social insurance number. The reasonable person test is an objective test and is one that has existed in law for many, many years.

Ms Lynas: One of the key principles underlining PIPA is that an organization must obtain consent before collecting, using, or disclosing personal information unless the act permits otherwise. The form of consent that’s used in any circumstance will depend on the type of information involved and the purpose for the collection, use, or disclosure.

An organization can collect personal information only for reasonable purposes, and it can collect only information it reasonably needs to fulfill those purposes. For example, one of the cases that we put up earlier is illustrated. Kim has put it up. In this one a store collected and recorded an individual’s driver’s licence number when a customer was trying to return some goods. The commissioner determined that collection of the driver’s licence number was not reasonable. The store’s purpose, which was to verify the customer’s identity so as to deter fraud, could be fulfilled by just viewing the individual’s driver’s licence or other identification. There wasn’t a need to record it or make a copy of the driver’s licence.

Normally the personal information is collected directly from the individual, and before the information is collected, the organization must tell the individual what the purpose is for collecting the information. Similar rules apply to use and disclosure of personal information. It does require consent unless otherwise permitted by the act.

There are some exceptions to when consent is needed from an individual. Another case involved an individual where a landlord had called 911 when a tenant’s alarm had gone off. The landlord, knowing some information about the tenant’s medical condition, was concerned that there might be some kind of medical emergency. The commissioner found that the landlord did not need the tenant’s consent to disclose the medical condition to the emergency personnel who showed up because the disclosure was clearly in the interests of the tenant, and he would not be reasonably expected to withhold consent. So that’s one of the provisions in the act that allows disclosure without consent. It was also permitted because it was necessary to respond to an emergency that threatened the health of an individual.

There are other key exceptions to consent, such as when a federal or Alberta statute or regulation authorizes collection, use, or disclosure, when the personal information is being disclosed to a law enforcement agency, or if it’s for the purpose of an investigation or a legal proceeding. Another example is when a public body under the FOIP Act is authorized to collect the information from an organization or to disclose information to it.

PIPA does take into account the special nature of the employment relationship. There are some instances where an employer couldn't meet their legal obligations if an employee refused to consent to a disclosure of information. For example, employers have to release certain income information to the Canada Revenue Agency. There's really no point in asking an employee to provide consent because the employer is obligated to disclose the information.

PIPA contains provisions to specifically address the collection, use, and disclosure of personal information of employees and job candidates by an employer. The personal information of employees can be collected, used, and disclosed without consent subject to certain conditions. These conditions are that the personal information must be reasonably required for the employment relationship; that is, related to hiring, managing, and terminating employment decisions. Also, the employer must explain to current employees why information is being collected and how it will be used or disclosed. That notice must be given in advance.

Ms Kreutzer-Work: PIPA has special provisions to allow a prospective purchaser to undertake due diligence in the purchase of a business. In Alberta and B.C. the acts permit collection and disclosure of personal information provided certain controls are in place. For example, the purchaser can collect only the information needed to decide whether to proceed with the transaction.

An individual can make a request to the organization for access to his or her own personal information that is in the custody or under the control of the organization. The request can be only for recorded information. An individual can also ask how the information has been used and who it has been disclosed to. As with the FOIP Act, there is a duty to assist the applicant and a time limit for responding. The organization is permitted to charge the individual a reasonable fee, but no fee can be charged when the request is for personal employee information.

There are limited circumstances in which the organization may or must refuse access. For example, an organization has the discretion to refuse access if the information is subject to legal privilege or was collected as part of an investigation. This was the case where the former employee requested access to documents relating to the employer's investigation into a complaint about the employee. The commissioner found that the employer properly exercised its discretion to refuse access to the records because some records were subject to solicitor/client privilege and other records contained personal information that had been collected during the investigation. An organization must refuse access if a disclosure of the information would reveal the personal information of another individual.

An individual can also request that an organization correct his or her personal information. The right to request correction of inaccurate or incomplete personal information is important because it allows some measure of control of personal information held by an organization. This right has the practical value of preventing decisions based on wrong information. An organization must reasonably ensure that the personal information is accurate for the purpose for which it is being collected, used, or disclosed.

7:05

The information can be kept only for as long as it is reasonably required for legal or business purposes. Personal information that has been retained by an organization must be protected. An organization must establish reasonable safeguards, such as locking offices and filing cabinets and protecting computer systems using passwords or encryption.

Two of our scenarios illustrate this requirement. As you'll

remember, in the case of the store that sold a returned computer that still contained the personal information of the previous customer, the commissioner's office found that PIPA's security provision was contravened when the store failed to wipe and restore the computer's hard drive before reselling it. The organization's failure to do this resulted in an unauthorized disclosure of the previous customer's personal information. In the dumpster case some 5,000 credit card and debit card slips were tossed by a business in the garbage bin behind the premises. Other financial records of the businesses were discarded in the same way. The information was eventually found by the Edmonton Police Service in the hands of identity thieves. The commissioner's office found that the business failed to comply with the security requirements of PIPA.

Ms Lynas: The Information and Privacy Commissioner has oversight of PIPA as well as the Freedom of Information and Protection of Privacy Act and the Health Information Act. His powers to conduct inquiries and issue orders are similar to those under the FOIP Act.

Now, anyone can complain to the commissioner about the personal information practices of an organization. The individual's own personal information does not have to be involved. Before investigating a complaint, the commissioner can refer an individual to some other alternative complaint process that may exist. The commissioner can require the complainant to try and resolve the complaint within the organization first or to use an industry-operated complaint resolution system; for example, something within the insurance industry or offered by a professional regulatory organization.

Since January 2004 the commissioner's office has received 670 complaints and requests for review. The top five sectors for complaints are retail; real estate and rental leasing; professional and technical organizations, including law offices, accountants, engineers, IT companies; health care; and oil and gas.

It is an offence to intentionally breach the act. There are fines of up to \$10,000 for an individual and \$100,000 for organizations. A person whose privacy has been breached can go to court to recover damages. So far we haven't had any instances of damages awarded to date.

PIPA contains some special provisions for self-governing professional bodies, or professionally regulated organizations, as they're called under the act. These provisions were intended to address the concerns of these organizations about the appropriate balance between privacy protection and the protection of the public through the regulation of their members.

PIPA also contains special provisions for some nonprofit organizations as they are defined in the act. These nonprofit organizations must comply with the act only when they're collecting, using, and disclosing personal information in connection with a commercial activity. If they were excluded from PIPA completely, then they would be subject to PIPEDA. Nonprofit organizations that don't meet the definition in the act must comply with the act whether or not they carry on a commercial activity. In B.C. all nonprofit organizations are fully covered by their act.

Now, a commercial activity is defined under the act. It specifically includes a circumstance where an organization might be selling, bartering, or trading donor or membership lists and also the operation of a private school, private college, or early childhood services program. The personal information of employees of nonprofit organizations is not protected by the act unless somehow it's become involved as part of a commercial activity.

That concludes our high-level overview of the act.

The Deputy Chair: Very well done.

Any comments or questions?

Mr. McFarland: I have one. Could you give me an example of a nonprofit organization? You indicated part 9 of the Companies Act. Can you give me an example of the type of business that might cover?

Ms Blakeman: It's just the way you're incorporating it, and the structure of your board of directors is slightly different. So you can have a theatre company that's incorporated under part 9 or under the Societies Act, either one. It just makes a slight difference in the way the organization is set up and what its bylaws look like.

Mr. McFarland: And they have to have – what? – five principles or objectives in order to qualify for that incorporation: promotion of science, religion. What are the others? It's been a long time.

Ms Blakeman: Or a charitable endeavour, and under the charitable endeavour they capture things like arts and youth recreation and assistance to the vulnerable and seniors. Yeah.

Mr. McFarland: So PIPA applies to those or doesn't apply to those?

Ms Lynas: It applies to them only when they're carrying out a commercial activity. So one of the examples we give is that if you're a community league and you're running a hockey school, it's a membership fee, and it's probably not going to be covered. Did I get that right, Jann?

Ms Lynn-George: Yes.

Ms Lynas: Yeah. That's right. Something like the YMCA, where they're running a health club – their fees are pretty much the same as a commercial club that's running as a business – that's considered a commercial activity, whereas something that's really running on break-even basis, even if there's a fee charged, is not regarded to be a commercial activity.

The Deputy Chair: Thank you. And thank you again for that presentation.

We're going to move on to item 5: Business Arising from the Minutes of the Last Meeting. First is a proposed list of presenters. The committee had quite an involved discussion on this item at its December meeting, and Tom Thackeray and his staff were asked to compile a list of presenters encompassing those stakeholders or individuals who asked to appear before the committee as well as any other parties that would be representative of issues under the review. As you know, we have scheduled a meeting for Friday, April 20, for the committee to hear these presentations. The deputy chair, the chair, and I discussed the time commitment required to hear from 10 to 15 stakeholders and agreed that scheduling a full day of presentations would be more workable than 4 or 5 or 6 meetings in the morning or in the evening.

Tom and staff, maybe you can explain the list that we have before us, please.

Mr. Thackeray: Thank you, Mr. Chairman. After the meeting of December 12 we went back and reviewed the 63 submissions that had been received by the committee in response to the discussion guide. There were six organizations and/or individuals that specifically requested the opportunity to make a presentation to the

committee. So in the document under tab 5A you will see those at the top of the list. The office of the Information and Privacy Commissioner; the National Association for Information Destruction; an individual by the name of Mr. Buteau; the Canadian Bar Association, Alberta branch; the Personal Information Protection Act Advisory Committee; and Service Alberta.

We then went through the list to try to identify organizations that could bring a fairly balanced view. So we were looking at the religious sector, which is the Anglican diocese of Edmonton. We looked at Alberta Blue Cross because they're involved in the health side. We looked at the Consumers' Association of Canada, the Alberta branch, as representative of the consumer within the province. Then we added the Alberta Federation of Labour from a union perspective, but the Alberta Federation of Labour did not put in an initial submission in response to the discussion guide. So we came up with the list of 10. We have probably four or five more that we could add to the list if it's the view of the committee that we're missing a specific sector.

I know that one of the deliberations that we had when we were putting together the list is trying to identify a not-for-profit organization. The one that came to mind right away was the United Way. The United Way from Calgary participated in a conference in Calgary last fall, and they certainly did an excellent presentation to the people that were in that session. They, again, did not make a submission to the committee, but if the committee is looking at the not-for-profit sector, it's certainly one that could be considered.

7:15

Ms Blakeman: I would agree. The United Way would be great. The other one that's local would be the Edmonton Chamber of Voluntary Organizations. The United Way is clearly fundraising. That's their focus. But the Chamber of Voluntary Organizations is covering a pretty wide spectrum of those in the voluntary/charitable/NGO sector. So you start to get more into that vague area that we were wondering about before: you're not for profit, but is your activity considered commercial or not? I think that group is starting to find its feet and might be very useful to us.

The Deputy Chair: Any comments?

Mr. Webber: Tom, who is this Robert Buteau? He's an individual at submission 47. You did take a look at his submission, I'm sure. Do you think that what was in that submission is relevant to have him come and present to us?

Mr. Thackeray: Mr. Buteau has had the experience of going through the process. He did have a file with the office of the Information and Privacy Commissioner. He's the only individual that requested the opportunity to speak to the committee, so that's why he's on the list.

Mr. Webber: Okay. Thank you.

The Deputy Chair: I suggested that we start with the tougher ones earlier in the day so that as the day progresses, we'd only have the easier ones.

Mr. MacDonald: You said, Mr. Thackeray, that four or five more proposed presenters could be added. Is that information available to the general public so that if they wish, they can come forward and make an oral submission? Is that on our website?

The Deputy Chair: Well, I guess the idea is that if we're missing,

you know, specific groups – I think Laurie made a good suggestion on a group. Is there a specific group that you feel is missing on the list that you'd like to add?

Mr. MacDonald: Well, Mr. Chairman, when this committee was first struck, the time frame was quite short. I had proposed a motion that we extend the time for submissions into the fall because last summer everyone was quite busy. Sure enough, we had a meeting electronically, if I can say that, and after we initially defeated my motion to have the time frame extended, it was decided that perhaps that was best. So we did extend the time frame. There was some general confusion about that. I'm wondering at this time if we shouldn't just send out a second and last call to any individuals or organizations or businesses again to see if there is any interest in presenting to the committee.

The Deputy Chair: Well, I guess, it's your opinion. I mean, we had a pretty wide and expensive advertising process. It's taken quite a bit to get here. You know, other members can talk about it, but I would be opposed to extending the time.

Mr. MacDonald: I'm not asking for an extension of the time, but perhaps we should put one last effort into seeing if there are other individuals or other organizations that want to make a presentation to this committee. If we're going to open it up for one, perhaps we should. It's only fair.

The Deputy Chair: Is there a specific group that you're thinking we're missing? You know, we're trying to encompass a broad range of organizations throughout the province. Are your comments driven by something, that you feel we're missing something here?

Mr. MacDonald: At this time, no. I've sent some letters out individually to respective groups, and I haven't heard back from them. I sent those letters out, I think, before Christmas because I had some questions specific to the nature of their business from the submissions.

The Deputy Chair: You don't think that if they had a real interest, they would have responded by now?

Mr. MacDonald: Well, they may have responded directly to the committee, and I would be unaware of that.

The Deputy Chair: Oh. Okay. We have the full binder with the 65. Are they in there?

Mr. MacDonald: Yes. They are.

The Deputy Chair: Well, you're covered then.

Mr. MacDonald: But there were issues related to the submissions that were of interest to them.

The Deputy Chair: Oh. Okay.

Tom, do you have anything to add? A member asked if there were others that you had on your waiting list.

Mr. Thackeray: I guess a couple of comments, Mr. Chairman. One is that the initial discussion guide was sent out to in excess of 350 organizations and/or individuals across the province. The second point is the PIPA Advisory Committee. Maybe I could just explain what the PIPA Advisory Committee is and who they represent.

Members of the committee include the Canadian Federation of Independent Business, the Independent Insurance Brokers Association of Alberta, the Law Society of Alberta, the Association of Fundraising Professionals – I'm struggling here – the Canadian Association of Petroleum Producers. So it's a cross-section of private sector organizations that are impacted by the legislation, and their presentation would be on behalf of all of the members of the advisory committee, which covers a fair number of organizations that are subject to this legislation in our province.

Ms Blakeman: One other suggestion for you on the NGO sector – and they have staff, which is a problem for a lot of the other NGOs as they are just so hollowed out right now that they can't accommodate a request from us. But the Edmonton Federation of Community Leagues does have staff. I know that those community leagues don't exist in other centres, but in Edmonton it's representing several hundred community leagues, and they have paid staff that might be able to prepare a submission.

Mr. McFarland: I have a dumb question. I'm reluctant because I gather that this is all recorded. I don't understand the difference between PIPA and FOIP in a health care setting. I will try to ask it in this way because I don't want to be wrong, and I don't want to get anyone in trouble. If a health care provider was aware that a patient had an illegal substance in the building, and that health care provider has been told that they cannot report that because it contravenes that individual's rights, is that right, or is that wrong if that person, in fact, has an illegal substance in their possession in a public building?

7:25

The Deputy Chair: Maybe off topic but, Frank, go ahead.

Mr. McFarland: No. The reason I'm asking is that maybe we've got a whole lot of people here that have all the administrative expertise, but you've never heard from anyone that has to deal with it on a day-to-day basis.

Mr. Work: Mr. McFarland, you just asked the million dollar question. It's actually a very pointed question: where is the saw-off between the Health Information Act, which covers health care paid service providers, and PIPA, which covers, like, your chiropractor if you go there on your own hook? So the question you asked is a tortuous one. It's a very, very good question.

On the specific issue of reporting possible criminal activity, reporting fraud, and so on, as the Chairman said, it may be a little off topic, but I think it's important to tell you that the Health Information Act was amended last year to allow health care providers to report any activity which could indicate criminal activity or could indicate a threat to another person or could indicate fraud against the system. So there's certainly the ability to report where the situations that you described exist, and now my office and Health and Wellness are working with the health care providers to try to develop some sort of examples that they can use for guidance on those things.

Mr. McFarland: I apologize for my ignorance as a new member.

The Deputy Chair: No. I think it's a good question. There are a few members that had some copies of this Alberta privacy legislation and the scope of the legislation. Karen will make sure to get copies to everybody.

Dave.

Mr. Coutts: Thank you, Mr. Chairman. Tom, if you could just

refresh my memory for me. When it came to health information, originally it was excluded from the act. I can't remember. Did British Columbia have any of their health information included? As you'll remember, we were trying to make the acts substantially similar to one another, and I just can't remember whether or not British Columbia has health information in their act or not.

Mr. Thackeray: Mr. Chairman, British Columbia doesn't have a health information act. That's the difference.

Mr. Coutts: Thank you.

The Deputy Chair: So if we're satisfied with the list, we need to draft a motion. Laurie, you'd like to add on the Edmonton Federation of Community Leagues.

Ms Blakeman: And the other one, the Edmonton Chamber of Voluntary Organizations.

The Deputy Chair: Right.

Ms Lynn-George: I'm just wondering. Would either of those organizations have any experience with PIPA? It sounds to me as though the act doesn't currently apply to them.

Ms Blakeman: Well, it depends on what the community leagues are doing. That was one of the examples that you've already used. So in some cases they would. Again, I think a quick phone call to their staff would answer that question for you. I'm pretty sure that the Edmonton Chamber of Voluntary Organizations would have experience with it because they have a fairly large member base, so they may well be representing anywhere from dozens to several hundred voluntary-sector organizations.

Mr. Ducharme: I had mentioned earlier, I guess not on the record, to Mr. Thackeray that he may also want to be in contact with Punch Jackson in the ministry of municipal affairs. He's the one that would be in charge of the voluntary sector, and he would probably have some good recommendations as to, you know, who is abiding by it and then could possibly participate.

The Deputy Chair: So I wonder: if we draft a motion with the list provided, plus we ask staff to contact those additional three organizations to see, can we physically do that in the day? Are we okay, Karen?

Mrs. Sawchuk: Mr. Chairman, I stand to be corrected by Tom Thackeray, but I would think that Friday, April 20, is really only long enough to accommodate 10. I think we might even be pushing it a bit with 10. But there's no reason why we couldn't add an extra half-day or day depending on how many additional groups you get.

Mr. Thackeray: As I recall the discussion back in December, the proposal was for a 10-minute presentation by the individual and/or organization, 15 minutes for questions/discussion, and then five minutes to bring in the next organization. Part of the issue is that the four or five or six that did not indicate their interest in making a presentation have not been contacted.

The Deputy Chair: Right.

Mr. Thackeray: They may not want to make a presentation. Today is the 10th of April; the 20th is 10 days from now.

The Deputy Chair: Well, why don't we add those three to your list of calls, and we'll make the schedule work for the day. Is there anybody opposed to that?

Ms Blakeman: Well, not opposed to it, but I was going to suggest adding to it and setting aside a possible evening as well. We're now supposed to be holding these committee meetings on Tuesday or Wednesday nights, but they will start to book up once those policy fields come into play. So if we were today able to say that we'll set aside this evening as well, if we need to lapse over into that time, we would have set it aside, and if we don't need to lapse over, great, we all get the night off. But let's book the time now.

The Deputy Chair: Okay. I think that would be a reasonable suggestion. It may be that by the time we contact these organizations, they're not interested in appearing, and then we won't need the evening. But if we do, we will. Would anybody be opposed to that?

Mr. MacDonald: I have, before I decide, a couple of questions here. The four that are at the bottom of the list here, starting with the Anglican Diocese of Edmonton – it would be the end of the week by the time we would have official notification to them, and if they are to make a presentation on the 20th of April, do you think that's time enough for them to prepare?

The Deputy Chair: I guess we would ask them and find out. Otherwise, we'd take Laurie's suggestion and maybe go an evening.

Mr. MacDonald: Okay. My next question is . . .

The Deputy Chair: I stand to be corrected if there's someone opposed to that.
Go ahead.

Mr. MacDonald: Are we cutting off permanently the ability of anyone else other than these 10 and the remaining 53 on the list of appearing and making an oral presentation to us?

The Deputy Chair: Again, I would think so because at some time you have to cut off the process in order to get a completion date at the end of the year.

Mrs. Sawchuk: Mr. Chairman, the committee agreed to the process, and they agreed to the timelines, which were then, you know, revised. There was a telephone kind of vote. It was advertised. Direct notice was sent out, like Tom mentioned, to between 315 and 400 groups because, actually, we did add a few to the list that was initially brought before the committee. As the clerk if I were to be the one asked to go that step further, who would we be notifying? What would we be doing?

Mr. MacDonald: We'd just be issuing a last call for submissions.

Mrs. Sawchuk: But to whom? That's what I'm asking.

Mr. MacDonald: To the general public.

Mrs. Sawchuk: Another advertisement? But the committee adopted the communications plan. The budget was based on that. We're kind of now going back and starting a new process, and I'm not sure on what basis we'd be doing that.

The Deputy Chair: I don't think you're going to get any movement on that, Hugh.

7:35

Mr. MacDonald: Okay.

The Deputy Chair: So I'd ask for a motion, then, that we move on to approve the list of presenters with the addition of Laurie's two groups and Denis's group and that we would allow staff to make those calls to see if those folks are interested in presenting, try to accommodate that under the schedule for Friday the 20th. If it's not possible to schedule all of them, we would sit one additional evening.

Ms Blakeman: Our next possible opportunities, then, would be Tuesday, the 1st of May, or Wednesday, the 2nd of May, because you've got that constituency week in there. I think that by the time we come back, those are the dates that you're at. Or if anybody else is faster with their PDA, let me know.

The Deputy Chair: Okay.
Tom, are you back then?

Mr. Thackeray: I'm back, but I'm gone again.

The Deputy Chair: We don't want to make you feel left out, Tom.
So you're suggesting, Laurie, the 1st or the 2nd of May. It's a Tuesday or a Wednesday.

Ms Blakeman: Yeah. Friday, the 20th, is the end of our last House week. The following week is a constituency-based week, which we were exhorted not to hold committee meetings in. The next time we're back, then, is Monday, the 30th of April. Well, we're not meeting on Monday nights, so the Tuesday is the 1st of May.

The Deputy Chair: Yeah. Or the Wednesday.

Ms Blakeman: Or the Wednesday.

The Deputy Chair: Yeah. The Wednesday works for me. We need the chair or the vice-chair, and at least I can say that I can make it. I don't want to make a commitment for the chairman, but May 2 if needed, right? We're going to do everything we can to make it work for Friday though.

So I'll ask someone to move a motion that
the Select Special Personal Information Protection Act Review
Committee approve the list of presenters as revised.
Is that going to be good enough, Karen?

Mrs. Sawchuk: The discussion is on the record, Mr. Chair, with the names of the groups, so it should be satisfactory.

The Deputy Chair: Gord Graydon. All those in favour? All those opposed? Carried.

Mr. MacDonald: Can I have that noted too, please?

[For the motion: Ms Blakeman, Mr. Coutts, Mr. Ducharme, Mr. Graydon, and Mr. McFarland]

[Against the motion: Mr. MacDonald]

The Deputy Chair: It's noted.
Okay. Item 5(b), Request for Documents Issued by the Federal Privacy Commissioner. During our discussions related to question 1 in the guide, a request was made for documents referred to as

issued by the federal Privacy Commissioner relating in part to the issue of work product information. These documents are included in your meeting binders under tab 5B. There are three documents separated by blue sheets of paper.

Ms Lynas: This information was requested by Mr. Johnston. The first document was prepared by the office of the Privacy Commissioner of Canada. The commissioner ran her own review of and sought public input on PIPEDA before the start of the review by the parliamentary committee. This document outlines the context of PIPEDA as it relates to work product on page 10 and talks about PIPEDA versus B.C.'s act and Quebec legislation.

Then the next document was the commissioner's submission that she presented to the Standing Committee on Access to Information, Privacy and Ethics, and it discusses work product on page 6. In that she refers to an appendix, which she says includes extensive reasons for the importance of continuing to include work product as personal information in PIPEDA. So the third document is the appendix outlining their analysis of the work product context.

The Deputy Chair: It's just an information item and a little harder to go through because I know you probably have page numbers on your documents, but we don't, or I don't anyways.

So we'll go to 5(c), Draft Motion: Work Product Information.

Ms Kreutzer-Work: As was previously mentioned at the December 12 meeting, the committee began its review of the public responses to question 1 of the discussion paper, and that question was: "Is the process for providing access to records containing an individual's own personal information appropriate?"

Two respondents recommended that a definition of work product information be established in the act and that this category of information be then clearly excluded from the definition of personal information. A briefing was prepared on the issue of work product information, in which it was explained that under PIPA information is looked at in its context in order to determine whether the information is about a business matter or is information about the individual who prepared the memo or the report. The chair suggested a motion that the act not be amended to exclude work product information from the definition of personal information. Some members thought that the recommendation should be phrased in positive rather than negative language, and it was agreed that the technical support staff would work on the wording and bring a draft to this meeting.

So the reworded draft motion is the one that you have before you this evening, and I'll just briefly read it.

That the definition of "personal information" remain unchanged, with no reference to "work product information," so as to continue to allow an organization to consider the context when deciding whether information in a record created as part of an individual's employment responsibilities is "personal information."

In essence this is a recommendation for the status quo. A definition of work product information would not be added to the act, and there would be no express exclusion of work product information from the definition of personal information. Organizations would continue to take into account the context of the information in order to determine whether it is personal information and, therefore, subject to the act or business information and outside the act.

The Deputy Chair: Thanks, Kim.

So if we're satisfied with that wording – and thank you for that – I'd ask for a mover. How about a shaker? Denis. All those in favour? Opposed? Carried. Thank you.

We'll move on to item 6, Other Business. Is there anything arising from the meeting that members would like to raise at this time?

Mr. Thackeray: Mr. Chairman, just a point of clarification. Is it the committee's wish that the support team contact these individuals to set up the presentations on the 20th?

The Deputy Chair: Yes.

Mr. Thackeray: Okay. Thank you.

The Deputy Chair: You knew the answer before you asked the question, didn't you?

Mr. Thackeray: I just wanted to confirm, sir.

The Deputy Chair: Okay.

We'll go on to item 7. As discussed earlier, we'll hear those oral presentations Friday, April 20, starting at 9. Karen will let you know if we need to start at 8:30. If it's a matter of starting half an hour early or two hours early, I mean, we can get this done in one. We're here on the 19th anyways, aren't we? There we go. So it's just a matter of staying overnight and trying to beat Ivan Strang to work.

Ask for adjournment? Laurie? Or do you want to stay?

Ms Blakeman: Oh, I'm just dying to stay.

The Deputy Chair: Moved by Laurie to adjourn. All those in favour? Thank you. Carried unanimously.

[The committee adjourned at 7:45 p.m.]