

Title: Tuesday, May 1, 2007 PIPA Review Committee

Date: 07/05/01

Time: 6:55 p.m.

[Mr. Ducharme in the chair]

Mr. Ducharme: Welcome, everyone. Before we commence the meeting, I'd like to first address the issue of the acting chair for this meeting. The chairperson, Mrs. Ady, and Mr. VanderBurg, the vice-chair, send their regrets that they're unable to be present this evening, and in accordance with section 54(3) of the Standing Orders an acting chair must be designated. At this time I'd like to ask if there would be a member that would like to make the necessary motion in this respect. Mr. McFarland?

Mr. McFarland: Sure. I would like to move that the Select Special Personal Information Protection Act Review Committee elect Mr. Ducharme as acting chair for tonight, Tuesday, May 1, for a meeting in accordance with Standing Order 54(3). We've got it down to a science because time is of the essence.

Mr. Ducharme: All in favour? No objections? The motion is carried. Thank you very much for your confidence, panel members.

Before we commence into the presentations, if we may, could we introduce ourselves for the record, please. Laurie, if I could ask you to begin, please.

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

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

[The following departmental support staff introduced themselves: Ms Henty, Ms Lynas, Ms Kreutzer-Work, and Ms Swanek]

[The following staff of the office of the Information and Privacy Commissioner introduced themselves: Ms Denham and Ms Clayton]

Mr. Greenspan: Sheldon Greenspan, here on behalf of Hanaar Corp, serving as the government relations chair on behalf of NAID Canada.

Mr. Johnson: Bob Johnson, the executive director of NAID Canada.

The Acting Chair: Welcome, gentlemen.

You've all received your agenda for this evening's meeting, the oral presentations list, and copies of the submissions made by the groups that we'll be hearing from this evening. At this time if a member would like to move adoption of our agenda for this evening's meeting. Ty. In favour? Carried. Thank you. It was moved by Mr. Lund that

the agenda for the May 1, 2007, meeting of the Select Special Personal Information Protection Act Review Committee be adopted as circulated.

We'll now move on to the oral presentations. Our first presentation this evening will be coming forward from Mr. Sheldon Greenspan and Mr. Bob Johnson, from the National Association for Information Destruction.

Gentlemen, I would just like to set out the process for the record. You will have 10 minutes to highlight the key issues of your submission, and your presentation will be followed by questions from the committee. I will give you a one-minute warning so that you can finish up, and then I'll turn it over to the committee. The committee clerk will distribute the additional material. Thank you

very much for the long trip from Toronto to make it down to meet with us this evening, and welcome. The floor is yours.

Mr. Greenspan: It's our pleasure. Thank you. On behalf of the National Association for Information Destruction, NAID Canada, I would like to thank the chair and the committee for the opportunity to speak here today. NAID Canada is a nonprofit trade association for the secure information and document destruction industry. NAID Canada's members, like those of its sister organizations in the United States and Europe, provide commercial services ranging from the secure shredding of discarded paper records to the destruction of information contained on end-of-life electronics.

We take the invitation to address you here this evening as a sign of a growing understanding among policy-makers around the world that protecting personal information at the end of its life cycle is every bit as important as protecting it during its useful life. We will offer recommendations to reflect that in the legislation.

NAID Canada and its sister associations in other countries have earned a reputation as a vigilant consumer advocate and a trusted and credible resource for policy-makers. Our association has been asked to provide counsel in matters of proper information destruction to the Office of the Privacy Commissioner of Canada, the House of Commons Access to Information, Privacy and Ethics Committee, the Ontario Information and Privacy Commissioner, the Ontario minister of health, the U.S. Federal Trade Commission, the U.S. House of Representatives Financial Services Committee, and the British Standards Institute. On October 21 of last year NAID Canada had the honour of partnering with the Alberta ministry of government services to provide shredding services to individuals in eight communities across the province as part of Protect Your Personal Information Day. We look forward to working with the Alberta government on similar initiatives in the future.

With all that said, we did not travel here today simply to remind you that discarded personal information should be destroyed first. That is a basic and well-accepted principle of information protection. Indeed, it is one highlighted on the website of the Information and Privacy Commissioner of Alberta and enforced in investigation P2006-IR-003, which was the Monarch Beauty Supply case.

What we would like to share with you, however, is our observation that governments need to provide a high level of direction to ensure wider compliance with this principle and thereby real protection for their citizens. We maintain that you have that opportunity by amending PIPA.

Even with PIPA in Alberta or PIPEDA in most other provinces, personal information is routinely abandoned or discarded without benefit of proper destruction. Here are just a few examples. In Toronto in September 2005 a film company obtained several hundred boxes of office paper from a recycling centre to be used to replicate the scene of the 9/11 World Trade Center tragedy. As it turns out, the recycling company delivered medical records to fulfill this request. These most personal records were then summarily strewn about the windy streets of Toronto's business district.

In March of 2006 a B.C. government office sold magnetic tapes at public auction which contained 77,000 medical files, including those of patients with many sensitive diagnoses.

A month later in Winnipeg the dental records of hundreds of citizens were reportedly found in a dumpster.

Earlier this month, again in Toronto, cable giant Rogers suffered a breach when one of its suppliers left documents containing personal information, including social insurance numbers, intact in a parking lot.

Finally, as noted earlier, here in Alberta an informant provided the Edmonton Police Service with bundles of credit and debit card

receipts from Monarch Beauty Supply. The informant was said to be well placed within the criminal community. These documents are believed to have ended up in criminal hands as a result of binning, going through garbage bins looking for useful information to commit crimes.

The truth is that these incidents are unique only in that they made the headlines. On any given day it would not take long to find personal information being discarded intact and accessible to the public. Careless disposal in dumpsters or garbage bins is the obvious example. Keep in mind as well, however, that recycling alone is not safe information destruction. Documents may still remain intact, vulnerable to a privacy breach, for an extended period of time before being recycled.

Our message is clear. Privacy protection is no longer simply a human rights issue. Violating the rights of others by casually discarding their personal information provides much of the feedstock for what has become a global epidemic of identity fraud. According to a study conducted in the United States, the vast majority of identity theft results from low-tech access to personal information, such as dumpster diving or binning.

Indeed, law enforcement officials in the U.S. recently exposed elaborate rings of organized criminals capitalizing on this ready source of personal information. These rings were found to have divisions of labour where lower ranks started by harvesting the information from dumpsters, which is then handed over to others of higher rank who have been trained to best exploit it.

Only in the United States has a new generation of legislation begun to appear, exemplified by FACTA and a host of state laws, which is designed not only to protect privacy rights but also to stem the tide of identity fraud. As a result, there is a marked difference in the regulatory language regarding information disposal.

Where in the past regulatory reference to information disposal would require limiting unauthorized access, improved regulations now require that steps be taken to destroy personal information prior to its disposal. Further to the point, the newer generation of legislation requires that such security measures be documented in the organization's policies. We are here to respectfully urge this committee to enhance the effectiveness of PIPA in protecting the citizens of Alberta by adopting a similar approach. Information destruction requirements must be clearly spelled out in legislation. That is the only way to put an end to these unnecessary breaches.

7:05

There are a number of specific recommendations that must be noted to ensure that such protections are effective. These are also outlined in our written submission. First, to maximize the impact of a requirement to destroy discarded personal information, NAID Canada recommends that information destruction be clearly defined as "the physical obliteration of records in order to render them useless or ineffective and to ensure reconstruction of the information (or parts thereof) is not practical." Enshrining such a definition is critical. It cannot be left to interpretation, as it currently is. We propose that PIPA be amended to include a new section 35 that would specifically outline an organization's responsibility to destroy personal information using the definition just provided. We've included the wording for such a section in our written brief.

Second, we recommend that any organization that collects or stores personal information must have an information and document destruction policy. That forces organizations to think about this issue and implement a policy that fits the definition just provided. That should be included in a new section 36.

Third, we also support stronger contracting requirements between information custodians and third parties to whom destruction is

outsourced. For example, NAID Canada is a professional association. Our members must abide by certain standards. We also have a rigorous certification program for members who want to be recognized as the top of the class in the information destruction industry. When such professional standards exist, we believe they should be recognized by policy-makers, if not in legislation and regulation then certainly by enforcement bodies like the Information and Privacy Commissioner.

Finally, we also recommend requiring information custodians to provide notification to individuals put at risk by breaches of security, which has been a hot topic lately. We commend the Information and Privacy Commissioner of Alberta for requiring notification in the Monarch Beauty Supply case. Historically such notification has been reserved for incidents involving sensational electronic data breaches. It is important to note, however, that a breach resulting from casual disposal of paper records can be just as damaging for consumers. Therefore, it is our recommendation that PIPA not only be amended to include a notification requirement for electronic data put at risk but also casual disposal of paper records.

In closing, everything we have recommended today is already included in current information protection regulations elsewhere in the world. Some is even loosely implied in PIPA. However, given the number of breaches still occurring, we believe greater specificity is needed in the legislation to ensure that organizations understand exactly what they must do to protect privacy and information security. Identity theft is growing epidemically with no borders. When governments strengthen information protection in one jurisdiction, the criminals have proven to move to where the laws are weaker or less well-defined. Also, please keep in mind that as processors of personal information ourselves we fully understand that we will be subject to the same regulations and consequences of violation.

Finally, I will leave you with a story that best demonstrates the value of increased government direction in the area of disposal. In May of 2002 the state of Georgia passed the first serious shredding law in the United States. Two weeks afterwards our executive director, Bob, received a call from the VP of operations of a very large insurance company, well known to everyone in this room. The gentleman asked if NAID could send them a list of their members in Georgia so that their many claims offices could comply with the new law. Of course, we were more than happy to accommodate the caller, but our director added that he could also send a list of members across the country for their other offices. Without a second thought he said: "No, thanks. The other states don't have shredding laws."

I wish I could tell you that your good counsel and prodding would be enough to prevent the casual disposal of personal information, but history has proven that more deliberate direction is required. Most importantly, the legislation must define information destruction.

Thank you for the opportunity to appear before you today. We firmly believe that if Alberta acts on our recommendations, this province will have some of the highest information protection standards in North America. We remain at your service at any time to provide further input or support for this committee's efforts to better protect the privacy of Albertans.

Thank you.

The Acting Chair: Thank you.

Mr. Martin: I'm just wondering. I expect that part of the problem when you're dealing with information is people trying to determine when that information is no longer relevant. I'm thinking specifically of the legal profession. They used to have 10 years that they

had to keep the files. I think that now in Alberta it's down to five. Is that a part of the problem? In other words, how do you determine when you should do the shredding? I expect that that may be some of the hang-up.

Mr. Johnson: That's a very good question. We do regularly get calls from businesses across Canada or North America looking for direction on how long they need to retain records. Keep in mind, however, that for our members who provide commercial shredding services, really about 80 per cent of what they destroy and about 80 per cent of the waste paper from just business communications paper never goes in a box to be stored. It's the outflow of memos and notes and errors and misprints and extraneous copies of forms and kind of the daily product of a business with real-time information on it that makes up most of the paper that a business produces. About 22 per cent actually goes in a box and goes on a shelf. They have retention schedules.

We, just because it varies so widely from province to province and jurisdiction to jurisdiction, don't weigh in on advising anyone on how long they have to keep stuff. To the degree that that could be cleared up by any governmental body from an advice standpoint, that would be good for them, but it's really not our purview. So when they decide they have to get rid of it, then that's when they decide how they have to get rid of it. Our standard answer is: seek legal counsel for that answer to the retention issue.

Mr. Martin: Thank you.

The Acting Chair: Are there other questions?

Mr. Graydon: I'm new to the committee, so this might be in the bill or even in some background. In both your new sections you refer to an organization. Is there a definition of "organization" anywhere around? Like, you say, "when an organization determines personal information is no longer needed" or "an organization must develop an information destruction policy."

Mr. Johnson: Well, for our purposes we leave that vague in using the word "organization" because it does encompass any governmental body, and I understand PIPA is for private sector only. But it would be public, private, whether it's a nonprofit, whether it's for-profit, anything from a library to whatever, so we're trying to leave that as open as possible. It's really anybody that's a custodian of anyone else's personal information. If you took a direction from FACTA, the FACTA law in the U.S. goes right down to the individual. Any individual possessing any personal information about anyone related to their credit reports is required to destroy that information upon discarding it.

The Acting Chair: Hilary, would you like to possibly add to that?

Ms Lynas: I can just say that there is a definition of "organization" in the act, and it includes a corporation, an unincorporated association, a trade union, a partnership, and an individual who's carrying out a business.

Mr. Johnson: We love that definition.

The Acting Chair: Any other questions?

Well, gentlemen, first of all, on behalf of the committee I'd like to thank you very much for your long travel here. I must say that your presentation was very clear and succinct, and I thank you for that. For your information the *Hansard* transcript is being recorded

this evening, and if you'd like to check back as to what the presentation was like, by Friday you can view it on the Legislative Assembly of Alberta website, which is www.assembly.ab.ca. So, once again, thank you very much for taking the time. We appreciate the information you shared with us, and safe trip back home.

Mr. Greenspan: Thank you very much.

7:15

The Acting Chair: Welcome, Ms Landry. Before you start, I'd like to remind the committee that Ms Landry sent in her submission a few weeks ago and that Mr. MacDonald and Ms Blakeman suggested that the committee hear from Ms Landry in part to balance out the perspective of the presentations being made primarily by organizations. There was general agreement by the committee at our April 20 meeting, so Ms Landry was invited to attend this evening.

I'd just like to set out the process for the record, if I may, Ms Landry. You have 10 minutes to highlight the key issues from your submission, and your presentation will be followed by questions from the committee. I'll give you a one-minute warning so you can finish up, and then I'll turn it over to the committee. If you have any additional materials for the committee today, you can pass them on to the committee clerk.

Thank you.

Ms Landry: Thank you, Mr. Chair and hon. members of the PIPA Review Committee. I greatly appreciate the opportunity to present before you today. I'm here to address the issues before the PIPA Review Committee. I present as an individual Albertan with over three years' experience using the privacy act processes in Alberta as per my letter of April 18, 2007, that I understand all of you have a copy of. I'm presenting today as a past employee, as an investor, as a former investment adviser registered to sell mutual funds through the Alberta Securities Commission and under Mutual Fund Dealers Association rules, as a former salesperson, and as an insured person able to obtain insurance from my insurance provider, as per the roles that I held at my former employer, ATB Investor Services and ATB Financial.

My experience concerns my request under the Personal Information Protection Act that I have made of ATB Investor Services and ATB Financial and also related and relevant requests that I have made under the Freedom of Information and Protection of Privacy Act involving the Alberta Securities Commission. My request to ATB for access to my personal information under PIPA regarding my performance and termination was dated December 18, 2003, more than three years ago, and as such predated the launch of PIPA on January 1, 2004. As number P0008 my request appears to be the eighth request ever made under PIPA.

I am here today to tell you that the current privacy act processes in Alberta do not protect the privacy rights of individual Albertans under the Personal Information Protection Act. The solution does not concern the particular wording of any one clause of PIPA although improvements can be made. Instead, I see one main fundamental problem that needs to be addressed under the current review of PIPA. The apparent rampant lack of accountability of those enforcing PIPA results in a privacy act process that erodes the privacy rights of individual Albertans in favour of organizations and, in so doing, ignores objective evidence and existing privacy act precedent.

As a result of the absence of privacy rights for individuals in Alberta, Albertans can be fired for requesting the completeness and accuracy of their performance. As well, the RSP investment documents of Albertans can be withheld indefinitely despite the

urgency of investment decisions. Furthermore, much time and taxpayers' money is wasted pondering self-evident questions concerning discretionary definitions of work product that individuals do not have access to, including questions such as: do salespeople have the right of access to the sales reports by which they are compensated, managed, and even, perhaps, terminated?

In relation to the lack of accountability of those enforcing PIPA, the most obvious forms of this erosion of the privacy rights of individual Albertans are the submissions to this PIPA Review Committee of Frank J. Work, Alberta Privacy Commissioner, submission 33, and of the Ministry of Alberta Government Services, submission 63. Overall, these recommendations strip hard-working Albertans of their privacy rights at a time that I find individual Albertans are not really aware of the Personal Information Protection Act and what their privacy rights are in Alberta. Individuals usually only discover their privacy rights in times of distress, dispute, and urgent need; for example, when an individual who has been abruptly and wrongfully terminated by an employer uses PIPA to obtain his or her personal employment information in order to establish the truth of his or her performance so as to be able to quickly obtain gainful re-employment.

Another example of the violation of Albertans' privacy rights is the recent Order P2006-001, dated April 4, 2007, by the Alberta Privacy Commissioner and involving the Alberta Association of Registered Occupational Therapists. This order allows anything about an employee to be said about the employee, whether it is right or wrong, whether it is supported by objective evidence or not, and the employee has no right to know who said it and no right to get a copy of what was said as per PIPA. In this case the employee lost a job opportunity.

This is an outrageous violation of the privacy rights of individual Albertans in favour of the rights of organizations. If similar privacy decisions were made that so negatively impacted the income-earning ability of organizations, there would be an immediate outcry by organizations in Alberta, and the decision would be repealed as being unfair.

Consequently, the solution is not just to make changes to the wording of PIPA in order to improve PIPA for individuals as well as organizations but to also radically overhaul the ministry of Alberta government services and the office of the Information and Privacy Commissioner to ensure that PIPA is enforced objectively under the law and not in a manner that covertly and not-so-covertly inappropriately favours organizations over hard-working Albertans who are employed by customers of and investors in these organizations.

Simply put, Mr. Chair and hon. PIPA Review Committee members, the submissions by the Alberta Privacy Commissioner and by the ministry of Alberta government services unjustly and unfairly strip individuals of their privacy rights in Alberta and are such a violation of the rights of hard-working Albertans that they should not be tolerated. Overall, these recommendations will result in harm to individual Albertans.

To better ensure the privacy rights of Albertans, I make the following recommendations. In the 10 minutes allotted I will not have enough time to address all the issues of importance, so I request the opportunity to provide a written submission to the PIPA Review Committee. Also, I encourage the hon. members to ask questions of me during the 15 minutes allotted today for questions.

Recommendation 1. Clearly define what success looks like. I propose that success be defined to exist when an individual requests his or her personal information and personal employee information from an organization, receives it in a timely manner without recourse to the office of the Information and Privacy Commissioner and without recourse to legal action in the courts. Thus changes to PIPA

should encourage direct compliance with PIPA by organizations and individuals and discourage delays by the organization to provide to the individual that which is rightfully his or hers at the outset to receive.

Recommendation 2. Clearly define and acknowledge the key challenges to obtaining this success. I see four main challenges. The first challenge is to recognize the ownership rights of the individual to his or her personal information and personal employee information. In essence, recognize that the individual owns title to his or her information, not the organization. Consequently, similar to a person who deposits \$1,000 into a bank account owns that money and is able to take it out in part or in full at any time, so does an individual own title to personal information and personal employee information. As such, the individual should not have to prove ownership when requesting access to it from an organization and should not have to experience delays in obtaining that information.

The second challenge to obtaining this success is recognizing and enforcing the time value of information. In many cases individuals require immediate access to and completeness in accuracy of their personal information in order to obtain employment, receive benefits when sick and unable to work, take advantage of market fluctuations with investments, and other similar situations of immediate and urgent need.

The third challenge to obtaining this success is to recognize the power disadvantage of individuals versus organizations. Currently organizations can unilaterally deny individuals their rights under privacy legislation in Alberta and then delay indefinitely in order to starve the individual into giving up his or her request given the far greater resources of the organization. Also, organizations can use the withholding of appropriate responses under PIPA as a bargaining tool to settle an outstanding dispute, something that is not condoned and, in fact, looked harshly upon by privacy act precedent by the Privacy Commissioner of British Columbia.

The fourth challenge to obtaining this success is the lack of objectivity and lack of accountability of current privacy act processes in Alberta to ensure the rights of individuals. As I have already referred to, ensure that decisions by the Alberta office of the Information and Privacy Commissioner are objectively rendered on the basis of evidence, privacy act precedent, case law, and other authorities. Also, ensure that written, complete reports are provided to the individuals and organizations as well as placed on the www.oipc.ab.ca website. Only once a clear picture of success and of the existing challenges is determined can effective recommendations be made to improve PIPA.

Thus my third recommendation is to minimize the discretion of the office of the Information and Privacy Commissioner in regard to PIPA. In practice discretion means lack of accountability of the office of the Information and Privacy Commissioner to objectively enforce PIPA and typically results in the denial of privacy rights of individual Albertans, to the harm of the individuals.

Consequently, under no circumstances allow the Privacy Commissioner the discretion whether or not to issue an order, as per recommendation 19 of the ministry of government services submission 63. To do so would be to increase the lack of accountability of the office of the Information and Privacy Commissioner by allowing the OIPC to abandon a case without resolving the issues and with no recourse for individuals to request judicial review as currently provided for in section 54(3).

Also, under no circumstances allow the Alberta Privacy Commissioner to have discretion to decide which security breaches are important enough to report to the individual, as per the submission of the Alberta Privacy Commissioner. The organization should be

required to report any breach of security immediately to the individual as well as to work with the OIPC to resolve breaches of security in order to quickly minimize the impact on the individual and prevent them from reoccurring.

7:25

Recommendation 4. Provide a deterrence to organizations that refuse to comply with the direct private requests of individuals under PIPA. Under no circumstances set a time limit for an offence under section 59 of PIPA, Offences and Penalties, as is recommended by the Alberta Privacy Commissioner in his submission 33. To set the two-year time limit recommended is to encourage organizations to delay complying for two years to individual Albertans' valid requests under PIPA so as to avoid accountability under PIPA and, in doing so, create much harm to the individual. Also, the two-year time limit should be avoided because the OIPC process can take a long time, in my case more than three years without any decision yet rendered under inquiry.

Under section 58, Protection of Employee, provide for severe penalties and fines to organizations that are payable to the individuals affected in situations in which organizations take adverse action against employees for their valid direct requests under PIPA.

There are many other issues that I could speak about, but we're running out of time. So I would just conclude by saying this. Much harm to me has resulted due to the failures of the Alberta privacy act process to protect my privacy rights in Alberta. My career, my finances, my health, and my personal life have all been severely negatively affected. Several times I have been on the brink of bankruptcy and am now over \$100,000 in debt. I was unemployed for most of two years and have now also apparently lost my new-found career in the financial investment services industry. But for the grace of God and my family and those who came to my aid, I would now be on the streets.

I still do not have access to nor the completeness and accuracy of my personal information, including my performance information as well as my personal investment information regarding my RSP mutual fund investments through ATB Investor Services. As well, there has been no decision rendered by the Alberta Privacy Commissioner regarding my three inquiries, and it is now more than three and a half years since my original request for access to and completeness and accuracy of my personal information prior to . . .

The Acting Chair: One-minute warning.

Ms Landry: . . . ATB's abrupt termination of me effective September 12, 2003.

Thank you.

The Acting Chair: Thank you.

I'd now like to pass it over to the committee, if they should have any questions to ask of Ms Landry. I'd just like to remind the committee that basically we're looking in terms of change in legislation, not going into the personal matter of Ms Landry. She has presented us with four different recommendations, so if we can keep our questions to that issue.

Ms Blakeman: I think I'm within your limits.

I'm wondering if you are aware of others. I understand your personal experience is part of this, but you often spoke as though you were speaking in the collective sense. Are you aware of other people's stories? Don't tell them to me. Just tell me if there are more people.

Ms Landry: Okay. I would love to hear from other Albertans

regarding their situations. I am appalled at the lack of coverage in the oipc.ab.ca website of cases that cover penalties awarded to organizations.

Ms Blakeman: Sorry. My question was: are you aware of any others?

Ms Landry: Of individual ones? No.

Ms Blakeman: Were you speaking of them in a collective sense when you made your presentation or, really, your own?

Ms Landry: I was speaking for myself as an Albertan. Yes.

Ms Blakeman: Okay. Thanks for the clarification.

Ms Landry: Okay. Thank you.

The Acting Chair: Mr. MacDonald.

Mr. MacDonald: Yes. Thank you, Mr. Chair. I have a number of questions. The first one would be a follow-up to what we encountered at our last meeting, and that was the general public's knowledge of this legislation. How did you become aware of this legislation? Are we doing a good enough job of selling this legislation to the public, or are they completely oblivious to its existence, as are their employers?

Ms Landry: Okay. If I understand your question correctly: in my experience do I understand if other people are aware of PIPA? Is that right?

Mr. MacDonald: Yes. And employers.

Ms Landry: Okay. In my experience no one is aware of PIPA or their privacy rights. When I tell them about my experience in terms of my difficulties in getting access to information, they're not aware of what their rights are in terms of privacy rights. They're not aware of what exactly PIPA does or is. Okay?

I learned of this PIPA Review Committee presentation just accidentally. I got a flyer in the mail, You and Your Neighbourhood, and the little piece in it said: this is the MLA elected for your region. I thought: well, who is my MLA? I went to the Legislative Assembly website, and here right on the front page is PIPA Review Committee. I'm just wondering why I never got a notice mailed to me directly saying: you as a member who has been using PIPA for three years, why don't you present a submission? Certainly, I've made several complaints. Ty Lund has received so many letters from me asking for a public review of my case because of all the issues involved in it, and I've never had that.

The Acting Chair: Any others? Go ahead, Mr. MacDonald.

Mr. MacDonald: Yeah. Now, I think you had four recommendations how we could improve this. Could you summarize briefly the top three problems that you as an individual are having with PIPA?

Ms Landry: Yes. I would say that the first, second, and third problems are all related and the same. It is simply the rampant lack of accountability of those enforcing PIPA to objectively enforce it by using objective evidence and resorting to privacy act precedent. My case was a very simple one. It could have been decided in one week. It has taken three and a half years of public funds to fund this

organization and yet no decision reached. It is my opinion that if they had wanted to reach a decision, it would have been reached a long time ago.

The Acting Chair: Ms Landry, if I may. I know that you've got your issue. In fairness to the committee we weren't the ones that sat. So if you could just keep it in terms of recommendations as to how we can improve the legislation and not refer back to your situation, it would be greatly appreciated.

Ms Landry: Yes. Thank you. I think that if there is to be a change, it has to be a change of the heart of the people enforcing PIPA. I look at the Privacy Commissioner's recommendations in submission 33. On page 2 in the paragraph that starts, "In the almost three years of overseeing compliance with PIPA," he lists all the things he's accomplished, and in not one has he involved the public. He hasn't consulted with the public, the people, the people in your constituencies, in terms of: is this working for you, and what do you need? Okay? I do not see any reference to consulting the public. Maybe I missed the advertising campaign involved with this PIPA review process, but I didn't see anything in terms of, you know, enlightening the public regarding what PIPA is and what cases it can be used for, what employee information is, what the issues are and how it impacts them in their everyday life in terms of employee situations, investment situations, access to information when they need it for benefits, all those types of situations that can have an extreme impact on their lives.

Mr. MacDonald: I have one more question that's related to work product information. We had a brief discussion on it here the second-last meeting we had. Now, you're a salesperson, right?

Ms Landry: Yes, I was.

Mr. MacDonald: How could we better define work product information? Like, what part of your job – or was it all of your job description? – is included in work product information as you know it?

Ms Landry: That's an excellent question. In preparing for this meeting, I did a bit of research in terms of just finding out about the ministry of government services, et cetera, and I think one really easy way to start with defining work product is to start first with defining what personal employee information is. Of course, every person's job is different. You can't nail it down in definite terms, but you can, for example, say that at minimum it includes the performance description, the letter of hire, the letter of acceptance, the letter of termination, performance targets, performance reviews.

7:35

I'm just looking at the letter from the office of the Premier to the Hon. Lloyd Snelgrove, who I understand is the Minister of Service Alberta. Here it is, his letter of hire, basically, and it has all his duties that he is to accomplish, including "govern with integrity and transparency," "manage growth pressures," and "improve Albertans' quality of life." Then at the bottom, which is interesting, it has a PS. "Please note: on February 9 . . . Honourable Lloyd Snelgrove's mandate letter was amended." The responsibility of a particular issue was removed. So you want to get that ongoing, whatever else is relevant to that person's job description.

You want to first establish very clearly what personal employee information is and then by default work product is not, whatever is not. You would save monstrous amounts of time, months and

months and months of the taxpayers' time, by simply starting with a performance description because every salesperson in their letter of hire will have the terms of their hire in regard to the sales performance of themselves as well as their sales team, commissions, variable pay, et cetera. It's clearly stated. It leaves no mystery.

The Acting Chair: Any further questions?

Seeing none, I just want to thank you, Ms Landry, for your travelling down from Calgary and thank you very much for your responses back to the questions that were asked by the committee members. As I indicated earlier, the *Hansard* will be available by Friday at www.assembly.ab.ca. Thank you very much for taking the time once again.

Ms Landry: Thank you very much. Maybe one question to the committee. I just learned of the committee recently. Is it possible to issue a submission? Can I submit a submission to the committee?

The Acting Chair: We've received the submission that you had forwarded.

Ms Landry: That was more a letter of request.

The Acting Chair: Okay. By all means, please. Go ahead. Thank you. Have a safe trip back.

Ms Landry: Thank you so much.

The Acting Chair: If I may at this time, I'd like to welcome Ms Armstrong on behalf of the Consumers' Association of Canada, the Alberta chapter. Welcome.

Ms Armstrong: Thank you very much. I'd like to also include our president, Mr. Larry Phillips, who's able to join us here tonight.

The Acting Chair: Welcome, Mr. Phillips.

I'd just like to set the process for the record if I may. You'll have 10 minutes to highlight the key issues from your submission to the committee, and your presentation will then be followed by questions from the committee. I'll give you a one-minute warning so that you can finish up, and then I'll turn it over to the committee.

I understand that you have a short video clip that you'll be presenting first, before you do your submission.

Ms Armstrong: Yes, a little new multimedia.

The Acting Chair: Okay. So we'll start by viewing that and then we'll go on.

Ms Armstrong: We just need one moment. I actually think I have a page of notes before we go into the video clips.

Well, thank you very much, Mr. Chairman and committee members. We'd like to thank you for our invitation to present to the committee. The Consumers' Association of Canada has actually been monitoring the loss of privacy of personal and health information in the marketplace and, I'd like to also suggest, its bite since the 1970s. In our presentation tonight we hope to reflect some of the experiences and feelings of Canadian consumers and also shine some light on the changing information practices in our society that appear to be eroding the trust and goodwill of individuals in their dealings with business, health providers, and government.

Our perspective tonight is based on calls and letters from the public, ongoing monitoring and investigation of marketplace

practices, in particular redress and remedies for harm done, and participation and consultations dealing with specific industries, including the clinical drug trial industry, health care, and insurance industries. The increased collection and sharing of personal health information that has accompanied rapid computerization has caught most citizens, patients, and consumers off guard and ill prepared to protect their interests, from our perspective. The loss of strong consumer rights, public interest, and civil liberties organizations and voices over the past decade has actually compounded this problem, from our perspective.

The landscape in which these practices are occurring has also changed, and I think this is very important, and you probably recognize this very much as MLAs. For example, during the 1990s we witnessed increased reliance on fewer and larger sellers of goods and services. We saw the emergence of large global companies with multiple lines of pillar, of business. We found a whole collapsing of the various financial pillars. We saw the growth of virtual money, a shift to delegated professional and industry regulatory bodies to make decisions, and increasing use of private security and investigative bodies. Nowadays, businesses choose their customers, and governments scrutinize their citizens. It used to be the other way around.

Decisions which can profoundly affect our lives are now made by strangers in faraway places on surreptitiously collected information in databases that may not be accurate, relevant, or complete. Inaccuracies, innuendo, erroneous assumptions, and hidden prejudices increasingly influence our relationships with insurers, bankers, credit granters, educational institutions, landlords, health providers, retailers, employers, and the police, delegated authorities, the courts, and our neighbours.

Our lack of knowledge about the existence or extent of such information and its uses are forced compliance to provide information in order to obtain benefits, and our limited ability to readily validate its accuracy or defend our own interests has left many Canadians feeling powerless and betrayed, with very little control in their lives. In fact, I'm sure every one of us around the table has felt like that in some instances.

Few Canadians now read insurance contracts, consent forms in health care settings, or privacy policies on the Internet before signing or clicking; nor are they really expected to. A recent survey by the Canadian centre for Internet privacy and public policy found that even university-educated people couldn't decipher the privacy policies of many retailers or even obtain some of those policies. Instead of being deliberate, informed choosers, we have often become pickers of the path of least resistance in our increasingly busy and complex lives. Few consumers also take the time to complain. What's the use? If you refuse to provide information, you lose the service, or it's treated as suspicious, as if you have something to hide. Others explode inappropriately in anger.

The problem that we all face in society, though, is that when citizens, workers, patients, consumers, and complainants feel that they have not been dealt with in good faith – and I think we've actually just heard an example of that – there is often little incentive for them, in turn, to deal in good faith. There is also a tendency to disengage. From our perspective, this might be considered the ultimate lose-lose scenario for all of us.

Our earlier submission identified the lack of expert agreement of the rules governing health information, some of the commercial interests that trade in personal health information, and the dangers of blurring the boundaries between health promotion and marketing and public- and private-sector interests.

This evening we have chosen to provide you with a few examples of how the changing landscape related to the use of personal health

information is influencing the choices we all have. We'll be then pleased to answer any questions or even respond to the questions in your guide.

Now, what I'd like to show you is a short video clip put together by the American Civil Liberties Union about the increased blending of commercial, government, and health information.

[A video was shown from 7:44 p.m. to 7:46 p.m.]

Ms Armstrong: Thank you. That was definitely some food for thought, I think you'd agree.

Now, this video deals with assumptions and the blurring of public and private information that can influence your choice in the marketplace for a pizza, for the type of pizza. However, such assumptions and information sharing, which already goes on, also can and do on a daily basis have a profound effect on many people's access to employment, insurance, credit, schooling, child custody, and medical care.

Our second example that we'd like to provide this evening, not on video, unfortunately, is about a 43-year-old professional administrator in Edmonton, Ann, who was contacted by a large North American investment firm she used to work for and encouraged to apply for a new job opening as a senior administrator. She applied and was hired. However, once hired, she was asked to sign a form authorizing a U.S. based company called Verifications Inc. and all their agents to perform an employment screening check on her. This would include the company searching out all the details of her life and retaining this information with no time frame. It included but was not limited to her educational records, court records, insurance records, driver's licence, credit card use, banking records, fingerprints, government agencies, and employers.

Uncomfortable with being asked to sign this document, she contacted the head office of the company she had been hired by as well as the head office of Verifications Inc. for more details. She also did a Google search on the company. She wanted to know just who these agents were that would be used for this purpose. Was there a time frame for the destruction of the record? What did the phrase "not limited to" really mean, particularly with regard to medical records, although she suffers no medical condition at the present time?

To her amazement she was advised that an example of their agents would be the RCMP, and yes, there was no specified time frame. Furthermore, the company also offered tenant screening, drug testing, occupational medical screening, and assessment testing. While she could request a summary of the nature and substance of the information collected, there would be no guarantee of full disclosure. Ultimately, despite the urging of her new boss to sign – "After all, there's so much information flowing out there already, and you can't do anything. Why not sign it?" – she refused and was summarily dismissed.

While concerned about the nuisance factor and potential identity theft with so much information in the hands of one company, particularly with its authorization for transfer of this information across international borders – the example given to her was India – her greater concern was for young people being asked to sign these forms with their very first job, often in less than five minutes, including forms such as the one you have in your package, that we provided with our submission from RBC medical insurance. Yes, that is the same RBC financial group that provides mutual funds, that provides banking services and many other different types of services. Or perhaps the forms that you may have signed for Blue Cross or Great-West Life when you became MLAs. I'm curious how many of you may have read the contents of those forms.

Companies such as Verifications Inc. and ChoicePoint also sell information to public authorities, the police, public employees, and nonprofits. I'm running out of time, so I won't get into our example, but given the rhetoric around public health care in this country, you may not be aware that Canadians already rely more on private health insurance to pay the bills than do citizens in most other OECD countries, and this is growing. You may also not be aware that outside employer-sponsored benefit plans, which only about 50 per cent of workers in this country enjoy, insurers are not obligated to provide health insurance for those who are considered too great a risk of making a claim. A history of breast cancer, back pain, depression, or diabetes will often leave Canadians without insurance.

The Acting Chair: One minute.

Ms Armstrong: Furthermore, I'm not sure if all of you are aware, but the information on these applications and through your claims is collected and shared in the industry-run North American database called the Medical Insurance Bureau.

Two other points that we think are relevant, quite briefly. First is the issue of bias in diagnosis and the accuracy of diagnostic information in medical charts. Bias in diagnosis, particularly psychiatric diagnosis, and false assumptions about the accuracy of predictive screening tests create significant risk for consumers when this information is spread around indiscriminately. Many tests, including genetic tests, can now reveal the likelihood of someone getting a disease without providing either certainty that he or she will get the disease or offering an effective treatment. It can raise anxiety for years over something that may never happen and also have a negative effect on their relationships, employment, credit, and insurability.

The second one: a 1999 survey by the Canadian Medical Association found that 3 out of 4 Canadians believe that information they provide to their physicians is confidential. However, 11 per cent held back information from health care providers because they were concerned about who it would be shared with or to what purposes. In addition, 77 per cent of Canadians either strongly or somewhat agreed that they would allow their personal health information to be released to governments and researchers but only if their consent had been obtained, and I can assure you that they were not thinking of deemed consent at that time.

In summary, I would like to say that when it comes to the collection, use, and disclosure of personal and health information, it is not the balance of information that matters but the balance of power required to protect the rights and opportunities of individuals versus the rights of organizations to fair decision-making. The questions, therefore, and the challenge that your committee faces are: does PIPA create a level playing field and ensure justice for citizens as consumers, workers, and members of society in their relationships with companies, organizations, and governments? Who decides based on what information, and can legislation alone accomplish this objective? In our view legislation alone cannot accomplish this goal.

In fact, I'd like to say that we think the greatest accomplishment of PIPA to date has been the awareness that it has created in the small-business community about the hidden dangers of seemingly innocuous information-sharing practices. Therefore, our recommendation to you today is to throw open the windows and shine some sunlight on current practices related to the collection, use, and disclosure of information in private and public sectors to enable MLAs in subsequent years to be able to truly assess the effectiveness of legislation. In order to do this, we would like to respectfully request that your committee consider recommending that tax funds

be designated for yearly surveys about the level of knowledge of citizens related to current practices in the marketplace and a comparison of citizen beliefs versus actual practices.

In addition, we would like to recommend the creation of a fund similar to that created by the federal Privacy Commissioner to fund research and surveys by consumer rights, human rights, and civil liberties groups into compliance of the industry with voluntary or legislative rules and the experience of consumers. Making such information public, we believe, would do much to reduce the cost of meaningful enforcement of legislation and public policy objectives.

In closing, we believe that fair and honest dealing, education, and a little sunshine can do a lot to restore trust in business, governments, and each other. Thank you for your time and attention.

The Acting Chair: Ms Armstrong, the chair was very lenient, and you will be ordering the pizza, not I.

Ms Armstrong: Yes. I apologize. Okay. Will that be double meat or sprouts?

The Acting Chair: I would now like to open it up to the committee members. Mr. Lund.

Mr. Lund: Thank you very much, and thank you, Wendy, for that presentation. As usual, you covered a broad range of issues and topics. I don't have a specific question, but what I would appreciate would be if you would write some recommendations to us on areas that you think we could improve. You covered a bunch of them broadly, but I would like to see some more specific things that would help. In this short period of time we don't have time to get into them, so if you could put it in writing, I'd really appreciate that.

7:55

Ms Armstrong: Well, we might be willing to do this, certainly consider that. If you think back to our first submission, one of the great challenges that we had was great difficulty determining in the areas that we were concerned about and had investigated whether or not PIPA applied and, in fact, what legislation applies to health information in what circumstances. We contacted the Privacy Commissioner's office. We contacted Mr. Thackeray at government services. We have contacted many people, certainly. So it is difficult to know. I mean, I appreciate your request for those kinds of recommendations, but if we really don't know the circumstances in which this legislation applies, it's difficult to make recommendations about what to do.

In our original submission, I might just add – everybody tends to think of health information, and they think of health providers, and they think of public hospitals, and they think of doctors, and they might think of physiotherapists. But probably the biggest collectors and users of health information are actually health and disability insurers, drug companies, who are very interested in recruiting patients for clinical drug trials. You've got new health care broker referral and case management companies such as Best Doctors and Medcan, independent surgical companies that are marketing CT scans. You have the retail drug stores, consulting companies, and a proliferating number of information management and market research companies. So these are people that really want the details of your life and all kinds of information.

And if I might say from our perspective, one of the dilemmas we've heard or seen raised in some of the submissions is that perhaps the answer is to pull all health information into the HIA, which we would have concerns about because the HIA is really about generous sharing of information with a whole number of

people for a proliferating number of purposes. However, the real dilemma: are we going to be pulling Great-West Life into the HIA? You know, one of the dilemmas is: who in the private sector has, uses, and wants more health information?

The Acting Chair: Okay. On this point, Mr. Lund.

Mr. Lund: Well, thank you, Mr. Chairman. I believe that in PIPA it certainly was the intent, even if we did not accomplish it, that in fact there would be a purpose for collecting that information, and it could only be used for that purpose. When you're speaking of health information and you're talking about life insurance companies and those types of people, yeah, they need that information for a purpose: to set the risk of you as an individual. So in that field I think that if we haven't done it strongly enough, then we need to tighten it up. But you touched a whole group of other areas.

Ms Armstrong: I guess one of the questions, then, that I would ask in terms of the original drafting of the legislation that might be helpful for us is: was the intent to allow the use of this information for marketing purposes?

Mr. Lund: No. So if we didn't hit that, we didn't meet that goal, then. But when you say marketing, you're talking about the ability for a drug company to get some information so they could market a drug to you. Is that what you're referring to?

Ms Armstrong: Well, it could be that. It's actually a lot more sophisticated than that, but, yes, it could be.

Mr. Lund: Well, the purpose for collecting the information in the first place would not be for marketing.

Ms Armstrong: But they can acquire that kind of information. Again, I would urge you to look at the enclosure from the RBC medical authorization form. I think where people are extremely uncomfortable is, I guess, what you would call the information leakage and exactly what they mean by determining your eligibility for payment or determining for claims. So, for example, in the back here it reads:

I/We authorize any health care professional, as well as any health or social service establishment, any insurance company, the Medical Information Bureau, financial institution, personal information agents or security agencies, my/our employer or any former employer and any public body holding personal information concerning me/us, particularly medical information, to supply this information to RBC Life Insurance Company and its reinsurers for the risk assessment or the investigation necessary for the study of any claim.

I guess the question is: do you, do we, or do the people signing the form actually believe that that kind of contact or that kind of intrusion into their lives with all those individuals is justified or necessary for either establishing eligibility for an application or for payment of claim?

The Acting Chair: If I may, I think the point has been made. I have three others on the list, and we're starting to exceed the time.

Ms Blakeman: Could you give me an estimate of what you believe is the approximate percentage of information that is held that is inaccurate?

Ms Armstrong: Of health information or of all information?

Ms Blakeman: I'll take anything you've got, any category you want to give me.

Ms Armstrong: Well, certainly studies that have been done in the past – again, one of the reasons that I can't tell you about the accuracy of this information is that much of the inaccurate information is commercially confidential. It's very difficult for . . .

Ms Blakeman: Work with me on this one.

Ms Armstrong: Okay. I will. A study a number of years ago found a 40 per cent error rate in credit reporting agencies. It's very interesting because I just attended the prairie summit health information conference in Saskatchewan, and I asked that question of someone on one of the panels: as we move to electronic records, what are they finding in terms of the incongruities or the misinformation of electronic records? A representative of the College of Physicians and Surgeons here pointed out that it was very interesting because there were significant discrepancies, certainly, in the records that they were trying to reconcile.

Again, you know, it could be a small error, or it could be a large error. My friend's son is going in for surgery next week, and she was telling me that the hospital records and certainly the physician records showed that he had had surgery two years earlier than he had surgery. There can be minor discrepancies, or there can be major discrepancies.

Ms Blakeman: Okay.

My second question, then, is: is it your opinion or the opinion of the Consumers' Association that the issue here really is about monitoring and enforcement of who is collecting this information and enforcing that it only be used for what the law says it's supposed to be used for? My impression is that we've got no idea because nobody is really monitoring and nobody is really enforcing. When we actually try and track it down, we're not finding that there's a lot of help for individuals, but there seems to be protection in the act for . . .

Ms Armstrong: Organizations.

Ms Blakeman: Yes. Is that fair to say?

Ms Armstrong: Yes, that's fair to say. In fact, we would see that there would be a relative imbalance in that. Again, even in the public-sector realm we have the freedom of information and privacy act, which recognizes that need for balance in terms of the large organization, government, that we as individuals need to have access about the organization as well as the organization having access to information under this. In PIPA there is no equivalent where I have the right to access to information. In theory I have the right to access some information about myself, but there's a lot of discretion about what I get. I cannot access information about the company or the company's agents. So you've got a real sort of difference in terms of the balance that's there.

I guess that from our perspective, and in response to one of your questions in here with regard to if there is too much discretion in terms of what they're allowed to do, the reasons for not providing information to people upon request are actually the very reasons that people would want access to their information. If I can just look at the question here, both the mandatory and the discretionary provisions. People want access to their information when there is perhaps a problem, a threat of a legal suit, when there's a court action, when there's an insurance claim that's being challenged. What's so

difficult is that the very situations that are the reasons that people would offer information are often precluded.

Another situation that seems rather ironic to most people is that in our experience this act significantly protects solicitor/client privilege. Well, if you walked out there on the streets of Edmonton and talked to people, most people, at least people over the age of 40, actually think that the physician/patient relationship is as privileged, as confidential as the solicitor/client relationship. They suffer great shock, actually, when they find out how far and wide their information is going.

8:05

It was only in 1994 – I mean, it’s a flashback. Twelve years ago was the time when Alberta introduced 5,000 new diagnostic codes. Prior to that even the billings that went into the government were relatively generalized, like if you went for a doctor’s visit. I remember part of a submission to the government suggesting that when you got down into detailed codes about what kinds of particular sexual taste you had, perhaps we were going a little bit too far.

The Acting Chair: If I may apologize. I think the chair has allowed you to wander quite a bit. We’re here for the Personal Information Protection Act, rather than HIA. I know that there are going to be some links to personal information, but I think we’ve digressed.

Ms Armstrong: Okay. I’m sorry. I just want to repeat, if I can, to the committee that our original request to you was clarification as to whether HIA, PIPA, or PIPEDA applies to the circumstances we identified there because we couldn’t make a recommendation unless we could identify which act applied to the circumstances that we were concerned about.

The Acting Chair: Fair enough.

Mr. McFarland.

Mr. McFarland: Thank you. Thanks for the presentation. I must tell you that when it comes to PIPA and FOIP, I’m not a fan of either. I’ll put it this way. The information that you provided as well as the bulletins here – my background at one time was actually in credit – what I’ve seen is a 180 degree change. Years ago – I won’t say how many years ago – when I was involved, if you applied for a credit card for an oil company, the oil company assumed that cost of the credit because they contacted one of the members of the Canadian Credit Bureau or the retail credit services or Dunn and Bradstreet if you’re a company. You as an individual or a company requesting credit simply filled out the application and relied on accurate credit information being provided to the person that you’d applied to. I assume that their cost of doing that business was recovered through the costing of the product that they sold.

Now it seems, as different ones have presented this evening, that if an individual is chased for a bad bill, it’s up to him or her to prove their innocence. Well, that wasn’t the case 30-some years ago. The onus was on the company to prove that the invoice that they were trying to collect was actually signed by yourself or purchased by yourself. It seems that everything is in reverse. My question to you is: instead of looking at all the things that happen today, is there anything that’s been done in the past that could be implemented today to improve what we currently have?

I have to leave it at that because when you get into the health care, when you get into all the other ones, I don’t profess to know that much about them. I do know from a personal point of view that I got a phone call from a credit company chasing a bad bill that

somehow was related to a cellphone number that I held that I thought was a brand new cellphone number. Go figure. I don’t know how that ever happened. There’s so much information floating around that I think we’ve gotten so far away from the basics.

Ms Armstrong: I appreciate, certainly, the information you’ve provided and totally concur. If I could just add that one of the things – and this relates to the accuracy question that Ms Blakeman brought up as well – that the Consumers’ Association did fight for was no-cost access to their records in order to ensure accuracy, recognizing that the easiest way for information to become inaccurate was for people not to have no-cost access to their records. Now, we do have that to a certain extent.

I’ve been there, you know, sort of in the same situation as you have been, in the enormous time it took my daughter and myself, probably, I’d say, 40 hours and three years, to correct misinformation in her credit file from RBC, actually. I don’t want you to think I have a problem with RBC.

Mr. McFarland: May I ask just one follow-up, very pertinent question?

Ms Armstrong: Yes. Sure.

Mr. McFarland: In your own opinion, would you think that part of the problem just might have resulted through incorrect inputting that can’t help but have happened ever since this computerization era?

Ms Armstrong: Sloppy data entry accounts for a whole number of errors in our experience. You know, it’s not deliberate malfeasance. The reality is that the challenge is the failure to acknowledge the potential of sloppy data entry being the cause of people’s pain and the challenges in correcting that. So right now if you have a problem with many of these agencies and the credit collection agency, what you have to do is convince the merchant, who really is far too busy to deal with you, to make the effort to remove that information off your credit record.

I did try contacting consumer services today – I see that there are individuals here from government services – in order to try and find out. Oh, I’ve got the minister of government services here.

Mr. Lund: Not any more.

Ms Armstrong: The ministry under Mr. Lund’s leadership actually took, I believe, one or two credit agencies to court for refusing to correct misinformation in credit records. I was trying to find out the outcomes of that particular court action, and I didn’t get a return phone call yet.

The Acting Chair: I wish I could provide you with the answer, but I don’t know what the answer is.

Ms Armstrong: Again, the question is: what can we do? Going back to the end of our presentation, I truly do believe that if people know what’s going on, if you can find a way to inform people, to provide them with some answers about what choices and options they have, they will go a long way to correcting this legislation because trust and confidence in businesses are absolutely critical to the functioning of the economy. If the business feels that they are going to completely lose the confidence of the people, they’ll change their ways.

The Acting Chair: That ends my list. I’d like to first of all thank

Ms Armstrong and Mr. Phillips for your attendance here this evening. As I mentioned earlier to other presenters, the *Hansard* transcript from this evening will be available by Friday, and you'll be able to view it on the Legislative Assembly of Alberta website, www.assembly.ab.ca.

Thank you very much for taking the time.

Ms Armstrong: Thank you very much.

Mr. Phillips: Thank you for your patience.

Ms Blakeman: Are we waiting for just a sec?

The Acting Chair: Yeah.

Ms Blakeman: Okay. Can I ask a question while we're doing that? Do we have a lawyer over here? FOIP? No lawyers?

Okay. I'll just put this on the record, then. Maybe you could get me the information back. A couple of times the idea of ownership of personal information has been brought up. There's something in the back of my head that says that although we'd like to think we own our personal information, we don't. Can I get the legal rulings on that? This comes up around information and medical records and people wanting to take the medical records, and the doctors saying, "No. They're part of my work product," I guess you could call it. So if I could get clarification on where that line is drawn, and if it applies differently in different pieces of legislation or sectors, then let us know. I think that's part of what we're starting to dig down to here: who really owns that information? If it's not us, then how do we get at it to correct it, and how many hurdles should we have to jump to correct it? Does that make sense?

Thank you.

8:15

The Acting Chair: Thank you. First of all, I'd like to welcome Ms Val Mayes, who is representing the Edmonton Chamber of Voluntary Organizations. Ms Mayes, thank you for accepting the committee's invitation to appear, even though your organization did not make a submission in response to the PIPA review discussion guide. If I may, I'd just like to set up a few parameters in regard to the process. You have 10 minutes to highlight the key issues relative to your organization. Your presentation will then be followed by questions from the committee. I'll give you a one-minute warning so that you can finish up, and then I'll turn it over to the committee.

The floor is yours.

Ms Mayes: Great. Thank you. Good evening. As you've heard, my name is Val Mayes. I'm the executive director with the Edmonton Chamber of Voluntary Organizations. We're very grateful for the opportunity to speak to you tonight. I will just let you know that the timelines on this have been very tight. It's been less than a month that I've had an opportunity to prepare, and I'm still preparing even as we speak. So I'll do my best to give you useful information, but that certainly has been a restriction.

The Edmonton Chamber of Voluntary Organizations, which I will just call the ECVO from here on in because it's much easier, is an umbrella organization that works for and with nonprofit organizations in the Edmonton region. So we do training, we provide support, and we connect people with appropriate resources as part of the work we do. We also work on some of the broad, cross-sectoral issues that the individual organizations themselves just don't have time to work on. So an example of that would be insurance-based issues. Small, individual organizations just don't have the time to

meet on a regular basis with people from the insurance industry. One of the roles that we've taken on is to speak, when we can, on behalf of nonprofit organizations.

I did take some time this evening to read through the transcripts of the meeting of I think it was April 20, so I will try not to repeat what you've already heard from organizations about some of the issues facing nonprofits, and I'll try to address some of the suggestions that you've already heard.

I thought that maybe some statistics would be in order to sort of give you some context, and I don't know if anyone has brought that. There are at least 19,000 nonprofit organizations in the province of Alberta, and that's a conservative estimate. We know that a lot of them don't make it onto the surveys that ask those kinds of questions. In fact, in the Edmonton area alone we could give you a list of 8,000 nonprofit organizations.

Those groups are serving Alberta communities in every way you could imagine. If there's a way for humans to organize themselves into a group for a particular area of interest or service, it probably exists somewhere in this province. People are working on sports, arts, culture, multicultural, health, literacy, and poverty reduction, and I'm sure you're familiar with all of the organizations that are doing that type of work.

Now, the interesting part is that approximately half of those do so with no staff. Half of those organizations are completely volunteer driven. Every one of those organizations, by definition as a nonprofit, is working with a volunteer board of directors. So the 50 per cent that do have staff – and at least half of them do have staff – are still governed by a board of anywhere from five to 12 to 20 people who are doing that on a voluntary basis. So that presents a number of issues.

I have read through the discussion paper and what other organizations have brought forward to you, including one of my colleagues, Russ Dahms, from the Federation of Community Leagues, who I understand you heard from. We've got a whole bunch of people out there trying to do a really good job. They're doing it in many cases with very limited resources, and they're expected to know a lot about a lot of things. They're expected to know a lot about the insurance that they need and directors' and officers' liability, and they're expected to know a lot about the particular topic area that they may be working on. For example, literacy or poverty reduction: they should be experts in that. They should know how to run an organization. Many of them are employers, so they need to know all about employment legislation.

So adding on an additional area of responsibility in managing personal information appropriately, yes, certainly there's a place for that. Many organizations are collecting personal information. I guess a key message I would bring forward as part of this consultation – and I just didn't have time to do line by line and question by question/answer. Anything that would increase the administrative burden to nonprofit organizations is going to be a problem.

We have groups that are already challenged to meet the requirements of having their annual general meeting, getting their books audited, getting their registration papers filed, ensuring that they remain current as a society or a nonprofit corporation or as a charity. Certainly, there's a recognition of the value of having legislation around protection of privacy. Groups would support that, but any change that would result in an increase, I would urge you to strongly think about that before going forward with it.

I did try to consult with our members and our contacts, and we did manage to send out an e-bulletin on Friday, which we do every week, inviting our members and contacts to give me information, letting them know that I'd be coming here tonight. That went out to about 900 recipients, and one of them actually responded. So I

believe that tells us something. What it tells us, I believe, is that this isn't a top-of-mind issue for organizations right now. We have organizations in the nonprofit sector where staff turnover is now reaching 50 and 60 per cent. So they're not so much concerned about protection of employee records; they're just trying to keep employees. So this is an issue that I wouldn't go to nonprofit organizations and ask them to do a lot more.

I'm going to quickly try and reference some of the suggestions I heard from one of your other meetings about the possibility of including nonprofits in all the aspects of the act, not just the commercial activity piece. Again, I would urge you to think carefully about that. As an organization that works for and with the nonprofit sector – that's what we do – I'm here to say that I would certainly be willing to work with you. I can assure you that my colleagues in Calgary, the Calgary Chamber of Voluntary Organizations, would also be happy to provide more information and more background and access to people if you're interested in that opportunity.

The Edmonton Chamber of Voluntary Organizations and the Calgary Chamber of Voluntary Organizations are both members of the Alberta Nonprofit/Voluntary Sector Initiative Leaders Council, the ANVSI. Mr. Ducharme was the one who officially appointed us about a year ago to be members of that council. Our role there is to be developing a way that the nonprofit sector will work with the government of Alberta in an effective and mutually beneficial way.

So I guess my key messages are that I'm here to provide more information if I can and to let you know that nonprofit groups are hanging in there doing the best they can, but they've got a lot on their plate.

The Acting Chair: Thank you.
Ms Blakeman.

Ms Blakeman: Thanks, Val, very much for coming. I was particularly concerned that we hear from the not-for-profit sector. Your numbers are very helpful. I'm wondering if you have any idea of the number of people employed in the NGO sector and, even beyond that, in the public sector, which would include nurses and teachers and people like that. But I guess if you're dealing specifically with NGOs that are not part of that larger public sphere, could you give us an idea of how many employees we're dealing with? That's question 1.

Question 2. What we're talking about here is a capacity issue from organizations, which, to my eye, are increasingly fragile. There's nothing left to fill in when things go wrong: the basement gets flooded or another employee leaves. They just have nothing left. So how do we make this legislation protect the employees of NGOs, without subjecting NGOs to unnecessary work? Does the size of the organization matter? Maybe that's the break point or that's the kick-in or starting point.

I'll leave it at that.

Ms Mayes: Great. Okay. I think I can answer the question of how many employees. Again, this would be a conservative estimate, and I'm pulling the number out of my head, but I'm getting 176,000 people work in the nonprofit sector in the province of Alberta, and 2 million people volunteer. Certainly, I would be pleased to go and confirm those numbers. That's from the Canadian survey on giving, volunteering, and participating, but I will certainly make sure we get those accurate numbers.

How to make it work? Excellent question. I did read from one of the earlier presenters that simplifying the process and putting it into plain language as much as possible would be a good solution, tools

that really would give people the basic information that they need in an easy-to-understand format. I understand that there is a guide, and there is information available. The challenge, as it is with all the information that we try to get out to nonprofits, is on how to get it to the people who need it. So although we have 900 contacts and we know that that reaches thousands of organizations, we know that there are thousands more we're not reaching. So getting the information to the people is a key part of this.

8:25

Does size matter? Yes and no. So much depends on the nature of the work that the organization is doing. Organizations that are working with vulnerable populations and are doing counselling work and people who are working with people at risk are going to have different issues than people who are running a community choir. They'll all have issues, but it's not so much about size as it is about activity.

The Acting Chair: Mr. Martin.

Mr. Martin: Yeah. Following along the same line, I think we all recognize – I deal with a lot of community groups, and it's the same sort of thing – the pressures that they're facing, and fewer and fewer are doing more and more, and just to add something else would make it very difficult.

To follow up in a similar vein, he seemed to suggest that we need to do more advertising. I guess that you said it all. You said you were coming to this committee, and you got one response. People don't say, "What committee, or what are they all about?" until they run into trouble. Right? They have the names, and all of a sudden they're all over and they're in trouble. So I think that's when people need it. But he was suggesting advertising, simplifying things, as Laurie was talking about, advertising and somebody specifically that they could call that could give them quick advice. Is that the same sort of suggestion that you'd make? You know, you read his thing, but then would you follow along and say: that would be helpful too?

Ms Mayes: Yes, a resource person who actually speaks nonprofit would be really helpful. That would be good.

Mr. Martin: What about an advertising campaign?

Ms Mayes: Yes, although of course the question would be: who would pay for such an advertising campaign? Certainly, more information needs to be made available to organizations but . . .

Mr. Martin: Simple.

Ms Mayes: Simple and more information about so many things needs to be made available. I mean, we're all being consulted on the community spirit program right now too. I would be nervous about us getting lost in a sea of information about other stuff, but we do need to provide better information for nonprofits.

We're doing two workshops in June on risk management for nonprofit organizations, and I think it would fit within that, within the concept of good risk management for organizations. We just need to keep pumping that information out.

Mr. Martin: A simple sort of dos and don'ts is what I'm thinking about.

Ms Mayes: Yeah, and case studies examples: if you do this, this will happen; if you don't do this, this will.

Mr. Martin: Thank you.

The Acting Chair: Mr. Lund.

Mr. Lund: Well, thanks, and thanks very much for the presentation. One of the issues that I'm pretty sure we're going to spend quite a bit of time on and have to wrestle with, and you alluded to it on two different occasions tonight – you talked about not-for-profit, and you talked about commercialization. Where's the line? I'm trying in my mind to wrestle with: is a campaign of selling chocolate bars a commercial enterprise? Is a larger one, like building homes for humanity, a commercial enterprise? It's all by not-for-profit. They're doing it for the betterment of the community. They're doing it as a volunteer group. Somewhere along the way, I'm sure, we're going to have to say – I mean, the easy thing to say is: well, everything comes under PIPA. I cannot support that and won't support it. For example, from my days as minister of government services I know of one not-for-profit funeral home. Think about that. So I'm not prepared to go all the way and say that anything that's not-for-profit or calls themselves not-for-profit is not going to be covered by PIPA. Have you got some advice where we draw the line?

Ms Mayes: My advice would be that you are going to need to define what you mean by commercial activity. Is it commercial activity resulting in profit or commercial activity resulting in revenue? Those are two different things. It's only going to get worse because we are seeing more and more organizations where the grey zone is growing, with the concept of social enterprise, where we are seeing organizations, because they need to generate revenue, who are creating what looks like a business arm of the work that they do, which is all perfectly legitimate, so organizations like Flavour Budzzz, which is a catering company run by a nonprofit that gets people with mental illness working, or Women Building Futures, again a social enterprise. So I don't think that I can tell you how to write the definition, but I can certainly agree with you that you're going to need to clarify your definition of commercial, and that may be where it's problematic, the commercial. Is it revenue generating or profit generating, might be the way to go.

Mr. Lund: Well, I would suggest that you wouldn't be out selling chocolate bars if you weren't intending on making a profit because that's what the whole thing is about, to generate revenue so that you've got profit so that you can spend it. So I don't agree with you totally on saying that there's a big difference. I know that there's a difference. I as a farmer generate revenue, but I have no profit.

Ms Mayes: And a lot of our groups would be in the same situation. I think the difference is in whether or not it is profit that is returned to individuals, to shareholders, or to the organization.

Ms Blakeman: That actually is the definition of NGOs, that any surplus or profit goes back into enhancement of the services or of the program, not to an individual shareholder. I, too, have concerns about this, and I think the committee needs to be charged to develop this definition because increasingly these groups are supplying services or programs that used to be delivered by government. They're now being contracted to provide them in the NGO sector. They have to subsidize it by raising money, but the money is often matched with a grant. So your grant is going to be higher if you make more money, and you'll have a higher matching grant.

I'm hard-pressed to think of any NGO that isn't involved in some kind of money-making venture now, even those that don't want to

be, like the churches. They don't want to be involved in commercial enterprises, but they have to be in order to raise the money to get the matching grants that are available through government. So it's a real issue for us.

The Acting Chair: Any other questions? Seeing none, I'd like to thank you very much, Ms Mayes, for the excellent presentation. As I've indicated to others that presented this evening, the *Hansard* transcript will be available on Friday at the Leg. Assembly website. Once again, thank you very much, and on behalf of the committee please thank the volunteer groups that are out there doing a great job for all Albertans.

Ms Mayes: I will do that.

The Acting Chair: Thank you.

That concludes all of our presentations for this evening. I've just got a few other housekeeping items I'd like to discuss. Basically, the only announcement I have left is that the committee should consider holding its next meeting sometime during the last week of May or early June, and the chair will provide some dates for the committee clerk to poll the members with.

So with that, I'd seek a motion for adjournment. Mr. McFarland.

Ms Blakeman: I didn't talk fast enough. Do we get any idea of what dates we're looking at here?

The Acting Chair: The chair did not share those dates with me prior to my taking over this evening.

Ms Blakeman: The chair might want to do that before she absents herself next time.

Mrs. Sawchuk: Actually, Mr. Chairman, as staff we were looking over what still needed to be done in accordance with the revised timeline that the committee adopted. So it was just that we were kind of looking at dates at some point – that's a month away – if members had any dates available. There's the one-week break, the week of the 21st, the long weekend. We know that will be out.

Ms Blakeman: Yeah. I'm wondering if we have resources in this committee to commission a research paper. Are you aware of anything there? It's springing from conversations that Mr. Lund and I have both contributed to repeatedly. I'm wondering if we have resources to either charge one of the staff people or hire an independent researcher to develop a background brief for us, a paper, an argument paper, about where it's most appropriate to put these NGOs, whether they should be in PIPA, partially in PIPA, in FOIP, or where. But I don't at this point feel that I've got enough background to argue that appropriately.

8:35

Ms Lynas: I could say that that is something we're prepared to provide to the committee. We've actually started to work on one. It would provide options in terms of leaving the situation alone or making different decisions to include different groups of NGOs. So that's something we're prepared to do.

Ms Blakeman: Well, I welcome that, but I would also want to make sure that appropriate groups are consulted in the community. There are also resources like the Broadbent report and the ensuing voluntary-sector initiative, which has since been disbanded but the work they were doing. There might be information to look at, but I

think that would be a helpful backgrounder to the committee because it's clearly one of the issues we're going to have to decide.

Ms Lynas: Thanks.

The Acting Chair: Any other questions? Yes.

Ms Denham: Would the committee also be interested in some statistics from the office of the Information and Privacy Commissioner about the not-for-profit complaints that we've received and the ones where we've deemed something to be a commercial activity and those complaints where we have found that it's not and therefore

outside the jurisdiction; in other words, what kind of traffic have we seen in the office from the not-for-profit sector? The other suggestion is that in B.C. not-for-profits are fully under the act, and it might be interesting to know what kinds of challenges the not-for profit sector has faced being under that statute in that province.

The Acting Chair: Any information you'd be prepared to provide would be very beneficial to the committee. Thank you.

I have a motion for adjournment from Mr. McFarland. All in favour? Carried.

[The committee adjourned at 8:38 p.m.]