Transcript of the Public Hearings of the Statutory Review Committee on Access to Information and Protection of Privacy

Date: Tuesday, August 19, 2014 (9:30 a.m.)

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ATIPPA Review Committee Members:
Clyde K. Wells, Chair
Doug Letto, Member
Jennifer Stoddart, Member

C. WELLS:

Today we are proceeding with the hearings that we have scheduled for this time period. And today we're going to hear the Minister, the Honourable Sandy Collins, and I know he has with him the Deputy Minister, Rachelle Cochrane. And I don't know what Victoria's title is but I know that Victoria Woodworth-Lynas works in the department of the Office of Public Engagement and runs the ATIPPA office, as far as I know.

V. WOODWORTH-LYNAS:

Yes.

C. WELLS:

Okay, I got it right. And I don't know, Minister, whether there is anybody else you would wish to introduce at this time, but if you would do it in your own time and just feel free to do it. So, we'll get started and we're ready to hear from you. Thank you very much for being here.

S. COLLINS:

Thank you for the opportunity and good morning everyone. It's a good thing we're inside today and

we're not holding these hearings outside, considering the damp weather. So as minister responsible for the Office of Public Engagement and certainly on behalf of the provincial government I would be here today, as I've said. I would like to thank the Review Committee for the opportunity to present.

In following your hearings over the past few months I'm appreciating the thoughtful discourse taken place during the review, along with the extensive efforts made by the Committee to engage the public. I am also honored to be joined today by my Deputy Minister, as Mr. Wells had pointed out; Rachelle Cochrane; as well as Kit Bonnell, Communications Manager who's sitting in the back of the room; as well as Victoria Woodworth-Lynas, Director of Access to Information and Protection of Privacy Office. I certainly want to recognize their efforts in preparing the data and information in our brief today. These efforts included consulting with government departments to assess what issues are most important for them in terms of access to information and the protection of privacy.

Also joining us today from the respective departments are: Ellen MacDonald, Chief Information Officer with the OCIO; Paul Noble, Deputy Minister with the Department of Justice; Genevieve Dooling, Deputy Minister in the Department of Child, Youth Family Services; and Alastair O'Rielly, Deputy Minister with the Department of Innovation, Business and Rural Development. I want to thank these officials for joining us and certainly they can speak to their department's thoughts on the legislation, should that they arise.

On drafting the terms of reference for the ATIPPA review earlier this year Premier Marshall and the Government of Newfoundland and Labrador made an unqualified statement that the Committee's work would be transparent, comprehensive and independent of government. We've remained strongly committed to these principles and we are so fortunate that such highly qualified and respected individuals in their chosen professions have agreed to undertake this important review. And thank you.

Governments function best when they are open to

the people they serve. And the provincial government strives to be open to meet the expectations of the people of the province. Some have expressed concerns that we are not open enough and it is important that we regain and renew their confidence. Addressing their concerns is exactly why we began an independent review of our access to information and protection of privacy legislation sooner than the five-year timeframe required by law.

Along with being relevant locally, the Committee's work is significantly both nationally and internationally, I believe. With governments and the people they represent living in an age of information, protecting privacy and providing access is certainly a balancing act. Whether it is deciding that information to share through social media, looking for health inspection reports for restaurants, or protecting the privacy of children in custody, all of us have an interest in achieving the right balance. As a Committee you are reviewing not only those amendments contained in Bill 29 but all aspects of the legislation. Ultimately, the provincial government believes that much more

information should be disclosed to the public, even before it is requested. We believe that information disclosure should be the default and that withholding information should be the exception. It is this belief that that prompted us to encourage government departments and agencies to disclose information as a routine way of doing business through our Open Government Initiative.

Launched on March 20th of this year, one of the main purposes of the Open Government Initiative is to share relevant, meaningful data and information that anyone can access freely online. And last week I announced public engagement sessions to encourage participation in the development of an action plan by the end of this fiscal year. The initiative's early focus had featured online engagement and stakeholder sessions designed to improve access to information and data, as well as provide people with new opportunities to shape policy and decision making in government.

The objective of the provincial government's brief to the Committee is to share our unique perspective

as administrator of the Act and to inform the Review Committee during its deliberations.

And at this point I certainly want to state, just to be clear, it is not intended to influence the direction of the review, nor is it designed to provide recommendations, as this is the role of the Review Committee and the basis by which government will conduct an analysis and bring forward legislative amendments as required.

The submission provides information on the operations and administration of the Act, including topics such as compliance with timelines, details on fee estimates and amounts paid, experience where (phonetic) provisions of the Act, such as cabinet confidences, third party business information as well as administrative data.

Government often makes difficult and challenging decisions that consider the human resources and financial requirements across all departments, and we have to be cognizant of that reality. The people of the province have high expectations for the services

they pay for, and rightfully so. The provincial government is working hard to meet these expectations both through our Open Government Initiative and in our day-to-day operations.

Government and the Review Committee, I think, share a common goal. We are both aiming to strike that critical balance between the public's right to access information with the need to protect limited sensitive information, including business information and Cabinet records.

In developing thoughtful, fair and balanced legislation the provincial government sincerely appreciates any advice and guidance that the Committee can provide on strengthening the *Access to Information and Protection of Privacy Act*.

So at this point I will draw your attention to the (inaudible) that's been circulated, I understand, and I just want to have some opening remarks before we get into the guts of it, if you will.

So particularly, we'll start with Slide No. 2, the

opening slide. Our brief is divided into five sections, as you will see there. In terms of overview, the Office of Public Engagement was created in 2012 within Executive Council to encourage greater disclosure of information across government. With this, the responsibility for administration of the *ATIPP Act* was transferred from the Department of Justice to the Office of Public Engagement, where the ATIPP office currently has five positions. The *ATIPP Act* applies to approximately 460 public bodies, and I will speak today to the data and our experience with government departments specifically.

The *ATIPP Act* is based on two fundamental principles - the public's right to access the information of public bodies, and the protection of personal information by public bodies. Departments receive about 300 requests annually; approximately 93 percent for general information and seven percent the remainder for personal information.

Since OPE was created - the Office of Public Engagement - there certainly has been a greater awareness across government to release information.

And examples of information now disclosed include the time it takes departments to respond to requests, bridge inspections and school infrastructure expenditures, to name a few. We're also trying to provide an Open Government lens and we have been encouraging departments to release information proactively.

In March 2014, we announced the Open Government Initiative and last week I announced public engagement sessions to encourage participation in the development of an action plan by the end of this fiscal year. And certainly, I would like to take advantage of this opportunity I have here today to encourage people to participate in those sessions that are upcoming. And a full schedule can be found on our website at www.open.gov.nl.ca.

Secondly, we'll look at the role of the ATIPP coordinator and there will be a separate slide to follow on such, so we can get into the details of that in a short moment.

As for the topics for discussion, the brief

contains 15 topics. These have been informed by the experience of the ATIPP office over the last six years and further to departmental consultations as we prepare for this review today. The topics are organized chronologically as set out in the Act. We have presented six years of data and provided annual averages pre- and post-2012. With pre containing four years of data and post containing two.

We have also provided a description of how the Act has been implemented pre- and post-2012 and a review of practices in other jurisdictions.

In terms of the 15 topics, they include operational matters such as privacy breaches and directory of information, administrative matters such as response time lines and fees, and legislative matters such as cabinet confidences and briefing books. Then, of course, we'll tie it together in a brief summary, and the summary notes that we are striving to reach a place where disclosing information should be the default and withholding information, the exception, as I had said earlier. However, we must do so while balancing the

fundamental principles of the Act.

And finally, we'll conclude. I also want to point your attention to the three annexes that follow. Annex 1 features more details on the role of the ATIPP coordinator.

Annex 2 contains a series of data tables generated from the database that contains the inventory of the requests consistently reported by government since 2008-09. And certainly if you would like other data we could provide this, if our system is able to capture that information.

Annex 3, finally, outlines the steps followed in the processing and completing of an ATIPP request.

Now at this time I will turn it over to my Deputy Minister Rachelle Cochrane to walk us through the 15 topics. Please feel free during that time, any comments or questions certainly just butt right in there. We'd be more than happy to try to answer. Either myself, Rachelle, the director, Victoria, as well as we have a number of officials here as well.

So, sorry go ahead.

C. WELLS:

Thank you very much for that comment of inviting us to ask questions. It seems to me it would be a more orderly and effective presentation if we sort of waited till the end of your presentation on each topic and then address the questions at the end of the topic, rather than have a whole raft at the end of an hour and a half or two hours. So if you don't mind, we will do it that way.

S. COLLINS:

That would work for us as well. Thank you.

C. WELLS:

The second thing that I think it appropriate for me to say is to comment on your expression that your appearance here today is not in any way meant to unduly influence or prejudice the Committee in the conduct of its hearings or in its recommendations. It is to provide information. And I had to say to you, Minister, the Committee certainly doesn't view it, has no apprehensions in that direction. Not only that, the Committee is of the view that without these kinds of representations we would be greatly deficient in assessing the work that we've been asked

to do and providing recommendations. So we're grateful to you for doing this. And I just want to relieve you of any apprehension along your response.

S. COLLINS:

I appreciate that. Thank you. And I will just finish up by saying if there is any questions that we can answer, either myself or the officials sitting behind us certainly will provide a written response soon thereafter. But I think we should be able to handle most every question, so.

C. WELLS:

And lest my failing memory do me in the at the end of the day, just that tweaks one other thing. If, other the next few weeks after we've had a chance to digest what you said we feel there's some other factual information that we would like, we would like to feel free to write the Deputy Minister to respond.

S. COLLINS:

We're at your disposal, so.

C. WELLS:

Thank you very much.

S. COLLINS:

You're very welcome.

R. COCHRANE:

And good morning, everyone. Mr. Wells, if I do forget to ask questions at the end of each slide, please could you interrupt me because I do tend to speak a bit fast? So don't hesitate.

C. WELLS:

Okay.

R. COCHRANE:

I'm just going to give you a bit of an overview on the general trends with respect to the operation of the Act. There's been an overall increase in requests made to public bodies over the last six years. In fiscal year 8-09, 493 requests were received. And by 13-14, this had increased to 553. Of those requests, 54 percent of these were received by our departments and 46 were received by other public body. So government is certainly getting a large share of requests for information through this Act.

Of the 299 requests received, 93 percent were general requests and seven percent were requests for personal information. Of the 15 departments that we have in government, nine received the majority of

requests. For example, Transportation, Works receives 14 percent, Environment and Conservation is another big one at 11, and Advanced Education and Skills receives 10 percent of requests yearly.

In terms of how they're responding to those requests, full disclosure of information was provided in 42 percent of the applicants and which represents a 40 percent increase over our pre-2012 average. At that time, only 30 percent of our requests were fully disclosed. So we've seen some trend in the change in the data in terms of our disclosure and it is probably caused by our experience with the Act and the rules and policies that we're establishing. Okay? Did you have any questions on this slide?

C. WELLS:

Just to note then, in terms of management and dealing with the requests as they're made and processing them through, that sort of averages one per working day.

R. COCHRANE:

Right.

C. WELLS:

It is not as much as people would think when they think of significant events. It is only on average

one per working day. Now there may be 53 in the system, going through the system at any one time, and so the workload is probably bigger than one per working day would indicate, but in terms of the total workload and the burden on government is one request per working day.

R. COCHRANE:

Certainly, that is true. And again, we have information, not about the amount of searching that's done at the front end, but we certainly have information on the number of records that we produced per request. I don't think we have that here but we can certainly get you that. Some requests are relatively simple. It is probably one or two pages and that's the bulk of our requests. However, there are others that take us quite a number of time and involves a massive amount of searching of more than one person in the department. It may involve our third party business interest, for example. May involve businesses. We may need to consult with them before we release the information. It also involves a lot of cross departmental consultations.

C. WELLS:

Ms. Cochrane, I'm going to ask you to pull that

microphone a little closer to you. It is not doing it's task as effectively as it should.

R. COCHRANE:

Okay, is that better?

C. WELLS:

Thank you.

R. COCHRANE:

So yes, absolutely, we do recognize it is one request per day, if you look at it that way, certainly. But I guess it's the volume sometimes, and it is not even about the records that we give out at the end of the day, it's about the effort that's required to get to that decision. And we'll give you some examples of the role of our ATIPPA coordinator. We try to provide a bit of clarity on the comprehensiveness of their functions on a daily basis.

So my next slide leads right into this. Of the 15 departments, we have four coordinators who have full-time ATIPPA responsibilities, and, again, it includes Transportation, Environment, Advanced Education and Health and Community Services. And again, these are the departments that have full-time coordinators are the departments that deals with the

largest number of requests. The remaining coordinators, the 20 of them, they have other job duties and that includes management information policy, research. They could be involved in multiple activities at a corporate level. So generally the corporate functions.

Available to the office on our website is a complete list and contact information for our coordinators and their response, and it includes a complete list of 400 departments - agencies, boards, commissions, municipalities, the whole list. So that's available for anyone seeking to write in. They can find that on our website.

The duties of the coordinator include receiving and responding to requests. This includes corresponding with the applicant, sending them an acknowledgment letter, sending them any fee estimates and discussing any modifications to their request. The coordinator will identify all departmental staff whose records must be searched, including a review of electronic and paper records. And that could be both on and off our site. We have a lot of regional

offices. Some of our staff, their information needs to be gathered from the regional offices.

Once the records are gathered the coordinator will review all the records to determine what exceptions apply, if any. The review includes a line-by-line review and any relevant information that may be applied and the information that needs to be redacted. Depending on the content of the record, the coordinator may need to consult, again, with third party business or other public bodies, as the records may contain their information.

The duties of the coordinator related to the protection of privacy are to ensure that the department has the appropriate procedures to protect personal information in their custody. This means they provide quality control and they advise the Deputy of their observations on how the department functions with respect personal privacy.

C. WELLS:

I have here somewhere, I think, this document - Access to Information Policy and Procedurals Manual.

R. COCHRANE:

Yes, it's on our website. Yes.

C. WELLS:

Now, I've read it through thoroughly and I have to say it's the most impressive document.

R. COCHRANE:

Minister, you should thank Victoria for that. She's been involved in this policy document for quite a long time.

C. WELLS:

It appears superb and the detail of it and the instructions, meeting the objective of causing disclosure to the maximum level that it can be done. You are, of course, limited by the legislation and that's one of the things that we're looking at, whether the legislation is too limiting or not, but that's another question. But in the context of the legislation as it exists, it's nothing short of a superb document and it spells out very clearly and, in particular, the role of the ATIPP coordinator to help the applicant get through the system and clearly states where the emphasis ought to be in aiding an applicant. And that everybody that receives it, as soon as it's received there is a duty to acknowledge

it right away. And within about 10 days or so as soon as possible get back and advise the applicant of the status and to keep the applicant informed throughout. So, it's most impressive. I have to say.

But, and there is a but, virtually everybody that has made a presentation to us has been complaining of a kind of service that bears no relationship to what I see in the document. That gives rise to some questions. And yesterday I got the biggest surprise of all when the CBC made a presentation and they were complaining, they were complaining about the difficulty getting information and the procedures and they didn't know and they weren't kept informed and so on. So I referred them to the document. They'd never heard of it. So that gives rise to some questions. Is this now in effect?

R. COCHRANE:

Oh, absolutely it is in effect.

C. WELLS:

When it did come into effect?

R. COCHRANE:

Victoria?

V. WOODWORTH-LYNAS:

It would have come into effect a number of months after the 2012 amendments. So as you can appreciate --

C. WELLS:

So late 2012, maybe?

V. WOODWORTH-LYNAS:

Probably into 2013.

C. WELLS:

Likely 2013. It is dated August 2013.

V. WOODWORTH-LYNAS:

There would have been some additional amendments to that manual in August of 2013.

C. WELLS:

So this updates it as of August 2013?

V. WOODWORTH-LYNAS:

Exactly.

C. WELLS:

And the original version of it was in effect prior to that.

V. WOODWORTH-LYNAS:

Yes, it would have been.

C. WELLS:

So it's been in effect and operational for well over

a year.

V. WOODWORTH-LYNAS:

Yes, and prior to this version there would have been an earlier version that spoke to the previous version of the legislation, the first round of the Act. So this would have been the updated manual. This speaks specifically to all the changes that would have resulted in the amendments.

C. WELLS:

What I don't understand is how a fairly significant body like the CBC, making the number of requests for information it would be making, would have no knowledge of this document. Does that betray some kind of weakness on their part in not seeking it out, or more likely on the part of the government in not making sure that everybody was aware of it and knew of it? Because if somebody seeking information followed this document and took the document and say, look, here what's your supposed to do, I can't see how any ATIPP coordinator couldn't be very proficient if they followed the manual, because the manual is detailed and excellent.

S. COLLINS:

I think it would be easy to put that off to the CBC

but think at the end of the day it is the government's responsibility to make sure they communicate what they have available. So it is great resource.

C. WELLS:

I appreciate you saying so, Minister. That makes a lot of sense. The other question that arises out of it, two or three of the people that made representations to us have indicated clearly there has been some improvement in the last year or so. They've been frank in acknowledging that it is not as bad as it used to be. That gives rise to the question: is that because of the manual? Because of training for ATIPP coordinators? To what extent do you have a training program for ATIPP coordinators to familiarize themselves with a manual, and not only familiarize themselves with the manual but really adopt and embrace the culture of disclosure that the manual really expresses?

S. COLLINS:

All new ATIPP coordinators would receive a one-on-one training session upon coming into the job as well as ongoing training that would last throughout. So it is very important, as you noted, that they would have

to have the proper training because they are the door, if you will.

Also, something important to note is the government employees now are over, I guess it is 900 employees that have received privacy training. So not only are we making sure our coordinators are educated and best informed, also the employees as well that deal with these things on a daily basis through their normal course of day-to-day operations. So I think education is a huge piece. Obviously, communications is a significant piece as well, making sure the people are aware of the resources we have because, as you know, they are significant resources. So I think that's why, if you look at those, just those couple of examples which I just noted, I think that's why it has been improving. Certainly, it is great to know that it's better than what it was but we'd like to make sure it's the very best it can be. So, I guess that's what we hope to get from this process.

C. WELLS:

I think full implementation of the procedures and policies expressed in that manual would go a long

ways to achieving that.

S. COLLINS:

Agreed.

C. WELLS:

But the people providing the information have to be imbued with the concept and the culture of doing it, and those seeking the information have to be aware of what the policy is. So education would seem to be of significance.

S. COLLINS:

Right.

C. WELLS:

Is that a role for the Office of Public Engagement?

S. COLLINS:

Absolutely.

C. WELLS:

Or it is a real for the Commissioner?

V. WOODWORTH-LYNAS:

If I may speak to that. I can say that the Office of Public Engagement, upon appointment of a new ATIPP coordinator, we do one-on-one training. We sit down with them and we go through in detail the ATIPP process, making requests.

We also talk to them about their obligations to protect privacy and ensure that the department is only collecting, using and disclosing the minimum amount necessary.

We also have ongoing communities and practice meetings, and we usually have a representation from the Office of the Information and Privacy Commissioner attend as well. They usually will come and speak on key issues, recent decisions, any specific sections that perhaps we're finding coordinators needing some additional information on.

So I think that there has been a bit of a dual role, although the Office of Public Engagement is generally the one that does the direct training with ATIPP coordinators. And in addition to that, we are also in the role of providing advice and guidance on a daily basis. So, we're kind of there as a resource to all ATIPP coordinators. We field, I mean, hundreds of calls a year from ATIPP coordinators asking for advice and guidance on processes, interpretations, recent decisions from the Commissioner's Office. So we are there to provide

any support as needed throughout the process. Because as you can appreciate, departments will receive quite a number of requests but there may be a lot of other public bodies that may not necessarily be receiving a large volume of requests. They may only receive one every couple of years, one every three years. So we're there to provide assistance in that respect as well.

D. LETTO:

How do people come into the role of ATIPP coordinator?

V. WOODWORTH-LYNAS:

It would be through the normal competition process in government. It would be advertised, typically. There may be a full-time coordinator position that's come up or it may be another type of position that has ATIPP responsibilities as part of the job. So there are some full-time ATIPP coordinator positions that would be posted and people would compete for those positions. Otherwise, it would be perhaps another role that has kind of part-time ATIPP responsibilities. It may be an information management role, it could be an IT role, it could be a policy research role that has ATIPP

responsibilities.

D. LETTO:

So somebody, then, now has that role and you talked about you sit down with them and go over in detail policies with respect to access and privacy. Could you explain what that means "going over with them in detail", how long it takes, what form it takes and so on?

V. WOODWORTH-LYNAS:

So, typically, we would meet with them for a number of hours. We have a deck that basically walks them through an access to information request process.

C. WELLS:

By deck, you mean a deck of slides or?

V. WOODWORTH-LYNAS:

Exactly. So we sit there with them and we kind of walk them through it and we say on day one you receive your request. Here's what you're going to do immediately upon receipt. You need to send your acknowledgment letter. We have templated documents for that. On day two, you will start doing this. So we walk them through on a very day-to-day thorough basis about what their obligations are. We also talk to them more generally about their duty to assist

applicants. You may need to clarify requests. You may need to have communications with the applicant to try and figure out what it is they're looking for. Sometimes they might be very broad or sometimes we're not sure exactly what it is they're looking for. So we do provide quite a detailed breakdown of what the day-to-day process is in terms of responding to an ATIPP request.

We can provide a copy of that deck to you, if you would find that beneficial as well. So that's typically what we do, is sit down one on one. We'll also provide them with links or electronic versions of things like our access manual, our privacy manual, let them know that there are templates available. We have all of these posted, of course, on our website. We let them know again about the privacy obligations under the legislation as well. We advise them of our Privacy Impact Assessment or preliminary Privacy Impact Assessment processes just so that they're aware because it may be something that they will need to participate in at some point in their tenure as ATIPP coordinator.

D. LETTO:

Do some of these people have prior experience with ATIPP or not necessarily?

V. WOODWORTH-LYNAS:

It really depends. I'd be thinking quite a number. Particularly, I'll limit, I guess, my comments mostly to government departments because those are the ones that I would deal with, I would say, a more frequent basis. But, yes, a number of them will have had previous access and/or privacy background. Some of them may not, particularly in those roles where maybe it's a part-time ATIPP responsibility and the focus of the job may be more on policy and research. In that respect then, they may not necessarily have the same level of experience or background with ATIPP.

D. LETTO:

I guess what I'm thinking is that it could be a lot to take in over a few hours and also when you consider that people, all but four of them, have other duties. What's your experience been in terms of when people take on those multi-facetted roles and their ability to be able to take the training and understand it and incorporate it? Have you done any adjustment as you've gone on?

V. WOODWORTH-LYNAS:

Oh, absolutely. Our training, we try and keep that up to date. Oftentimes, as you can appreciate, when we moved from one department into the new Office of Public Engagement, obviously part of the mandate of the Office of Public Engagement was an increased focus on ensuring information is being provided. So we try and talk more about proactive release of information. So, obviously, we're having to change the tone of certain of our training with more discussions with coordinators, based on our new mandate of increasing access to information, proactive disclosure of information, making things available in accessible formats in different ways. So obviously we would keep our training up to date.

D. LETTO:

I won't keep going down this road but a couple of other questions. Four of the coordinators are full time and you mentioned departments involved. Their experience, what is their experience in terms of being able to meet timelines, being able to do the sorts of things that you can quantify in some way? And secondly, do they also have a role in mentoring people who might not have the same kind of experience

as they do?

V. WOODWORTH-LYNAS:

That's a great question. I mean in terms of timelines, I mean, as you can see, there's been, I think, a real big push and emphasis placed on the importance of meeting timelines. We've got some timeline information in our brief that indicates from early last year to where we are today we've come, I think, quite a ways. The last three or four months we have 100 percent on time completion rates for government departments. So we've worked really hard. Coordinators have worked really hard to ensure that timelines are being met. So I think that that demonstrates that timelines are achievable.

In terms of a mentoring approach, that has not been our practice thus far. As I've said, our office, the ATIPP office is there. We are constantly receiving phone calls, e-mails, things like that. So we've tried our best to ensure that we are providing adequate resources and guidance to coordinators to help them in their role as coordinator, but in terms of a specific mentoring program we haven't done that, although we have sent in, in instances where we feel

perhaps some coordinators may need some additional training or because maybe they're not getting a lot of requests and then as they're starting to get those requests we're stepping in saying please let us know. We are here to assist. We can point you in the direction of resources that we have available. If you need some advice and guidance, we're happy to help.

D. LETTO:

Just one more question on this. I guess it can be lonely being an ATIPP coordinator if you might be one of just a few people who kind of understand the detail of it all. What effort is made to implicate that kind of understanding about ATIPP throughout the entire public service?

V. WOODWORTH-LYNAS:

Well, as I said, we have recently developed a new privacy training through the Centre for Learning Development and so we've redesigned our online training. We had some previously but it wasn't unique necessarily to Newfoundland and Labrador. I believe we had a company from another jurisdiction that had developed training for us. So we worked closely with the Centre for Learning Development to

provide specific unique to Newfoundland privacy training. That's available to all government employees. And since it launched year, I think it was in July of last year, we've had approximately 900 staff complete the privacy training online.

As well, we have participated in the orientation sessions for new government employees. And part of our participation there is to speak with new employees regarding the privacy obligations of the legislation. We touch on the access side, but unless you're an ATIPP coordinator really it's the privacy obligations that you should really be focused on. I think everybody in the public service has a duty to ensure that personal information that they're handling is appropriately protected.

D. LETTO:

Thank you.

C. WELLS:

I'm just going to follow up on that if I might, Ms. Woodworth-Lynas. I was sort of expecting an indication that there would be some creating on access of the importance of facilitating and promoting public access to inculcate in the public

service as a whole the importance of providing the public with all of the information they want that can be properly provided under the legislation. So, I think there's a pretty good, only from experience, I will say there is a pretty good understanding of the importance of privacy in government. It might be desirable to have some emphasis and training on providing access to the public to information. That's where the bigger problem seems to be. There are problems, obviously, in privacy. We've had some indication of that but, generally, that's not the overwhelming problem. The overwhelming problem, about which we've heard complaints, is access. So as well as training the ATIPP coordinators, some education of the public service as a whole of the priorities expressed in this marvelous manual might be very valuable too.

V. WOODWORTH-LYNAS:

Sorry, go ahead.

R. COCHRANE:

If I may. We have a couple of venues where we could certainly work on and get that information, the culture issues (phonetic). And no question, we have work to do in this area. Absolutely, we would agree

with that. The deputy ministers meet every Friday morning and on a regular basis the topics of the day, the upcoming issues are discussed at deputies' breakfast. So that's an opportunity for us to continue to pass the message about our need to enhance openness. And our ADMs meet on a quarterly basis. All the ADMs get together. And we could always get a presentation ready and continue to advance the issue of openness and release of information in a more expeditious way. So we have a couple of avenues that we could certainly explore in terms of how to change the culture, I guess. And it needs to start at all levels, top and bottom, all the way through.

S. COLLINS:

And I think if I could just add as well with the Open Government Initiative, I think that that's government wide and certainly, if nothing else, it brings attention to it and lets the employees themselves know what government's direction is as well as public consultations.

C. WELLS:

And there is one other thing that arises out of the role of the ATIPP. Obviously you're more familiar

with and more directly with the coordinators in the departments but probably the largest single number of people that would have responsibility for discharging ATIPPA duties is in the municipalities. One of the things that we've heard is a wide divergence of practices and understandings and appreciations of people in the municipalities that are responsible for dealing with privacy and access. Some municipalities feel they cannot table a letter in an open public meeting that contains the name of the development company that's proposing and looking for permission to develop a major block of land. They can't disclose that name. And one municipality in particular, and these are largely the only municipalities we've heard from is in relation to their understanding that they can't disclose this information, and there just appears to be a great divergence of understanding. Some people say it's on instructions from the Department of Municipal Affairs.

What effort is made through your office to make sure that the Department of Municipal Affairs has the means of getting proper guidance out to the people in

the municipalities that are responsible for the administration of the ATIPP requirements?

V. WOODWORTH-LYNAS:

We've recognized the need for municipal specific or municipalities specific information relating to ATIPP because we do recognize that they have some unique challenges. So one of the things that we have been in the process of undertaking in our office is to work on developing specific materials for those municipalities, bearing in mind that there are other legislations at play besides our legislation, including the *Municipalities Act*. That legislation, of course, oftentimes will say things that may not necessarily be consistent with what our legislation would say, if you looked at it on its face.

I'll give you an example of the assessment roles within municipalities. Our legislation, of course, says you wouldn't provide names and addresses of individuals unless it was not an unreasonable invasion to do so. However, when you look at the *Municipalities Act* it specifically says you shall make available for viewing those municipal assessment roles, which include names and addresses. And as you

know, our legislation says that where another legislation says it's permitted, then ATIPP is okay with that, basically. I mean, obviously simplified but.

So what we have been trying to do is figure out the types of questions. We do log what we think are the types of questions, (inaudible) of questions that we're hearing from municipalities, we're trying to develop some materials that will answer those unique questions that municipalities are encountering where we have other legislations at play. So that would be something that we would be working with Municipal Affairs on. Once we get our information together we would discuss with them what we believe is kind of an appropriate guidance for those municipalities.

C. WELLS:

I'm concluding from your answer that there's been no specific effort to provide training program for ATIPP coordinators in municipalities?

V. WOODWORTH-LYNAS:

Not unique to them. So, again, we offer our standard ATIPP coordinator training which will give general overview of access and privacy but it may not

necessarily deal with specific municipalities issues.

C. WELLS:

And do I also conclude from the comment that there is no effort at organizing a training program for the ATIPP coordinators in municipalities?

V. WOODWORTH-LYNAS:

I think that's something that we would like to do. We have just launched, as I said, our online privacy training. It is something that we would like to do going forward is to develop a training session that's unique to municipalities. Again, we are experts, of course, in our view on ATIPP. We would need people that would be experts in the legislations that may apply to municipalities to also collaborate. So we would collaborate with them to develop something that would meet their needs. But we do recognize that there is a need there and it is something that we are hoping to further in the coming future, again pending amendments, pending potential amendments to the legislation.

C. WELLS:

Thank you.

J. STODDART:

Could I ask to follow up on that, when do you expect

to have finished this information from municipalities that you're developing in the future?

V. WOODWORTH-LYNAS:

We've been working on it for the last couple of months I would say but given that we're currently in a review process we're waiting to see kind of what the outcome is going to be so that we're not having to redesign, redo. So one of the analysts in our office has been specific looking at the general questions that we are receiving from municipalities, and also the legislation that applies to those municipalities, doing jurisdiction scans to see what other jurisdictions have that might be specific and unique to municipalities to try and develop something that will work for our legislation and our jurisdiction.

So as of right now we are in the process of the review. At this point I would expect that we would wait until there aren't any changes that would come to the legislation before we would release any specific municipalities training.

J. STODDART:

So that could be more than six months, another year?

V. WOODWORTH-LYNAS:

I guess it really depends on the length of time it would take to complete a review. Again, as I've said, we are still providing support for municipalities. We talk to them quite frequently. We do have a number of phone calls that we receive from municipalities. We try and make ourselves known as a resource to them and we will try and answer any questions. Oftentimes we're phoning other departments, other entities, to try and also get some information about their legislations because, of course, we're not experts in those legislations but we oftentimes are trying to track down information for them and find out the answer for them to provide them with what we think is hopefully helpful advice.

D. LETTO:

There is one other point coming out of that. The way it's been explained to us is that there is a fairly urgent need for some of this information. One of the people who appeared at the Committee in July, I think it was Kathryn Welbourn, *Northeast Avalon Times*, who writes about municipalities in her area, talked about how one municipality in particular was actually deleting the names from petitions that had been

generated in the town which obviously negates the value of a petition.

We had an e-mail from a town clerk/manager in another community on the Avalon who talked about they were confused about how to apply ATIPPA when it came to municipal issues. So we wrote her back and said could you explain what the problem is, and she said, "I have called Municipal Affairs and the ATIPP on a number of occasions about whether names can be included in the minutes. Both have stated we should omit names in the minutes for privacy reasons." And through our own research we found that towns and communities have very different approaches to this. Some people will refer to a residence, some people will refer to the civic address, other communities will use the person's name. So, it sounds that there's an urgency to it that might even be required even before there is a general development of guidelines and I just wanted to bring that to your attention.

V. WOODWORTH-LYNAS:

No, I appreciate that. Thank you.

S. COLLINS:

And if I may, if I can draw from my experience as an MHA, I've heard from town councils in my own area and there is a huge liability people assume. And a lot of times we talk about the Northeast Avalon where we have established councils with paid managers and paid office staff, and when you look at smaller areas, particularly in rural Newfoundland, it kind of gets a bit sketchier because there is a lot of people on a voluntary basis and people are saying why am I taking this liability on? I agree a hundred percent with your concerns and I'd be interested, actually, in hearing from MNL to see what sort of situation they could help us with, because, of course, we have a great relationship through Municipal Affairs with MNL and there is an annual meeting that goes ahead. And perhaps that's somewhere where we could focus on training sessions or information sessions as such. But there is a huge deficiency when it comes to municipalities. That's noted, so.

D. LETTO:

We're surprised, or I speak for myself, I'm surprised that they didn't indicate that they wanted to appear before this Committee, given the issues that have

been raised and the confusion that there appears to be on this issue.

S. COLLINS:

And not to speak for Churence Rogers who heads up MNL but I've heard on numerous occasions him raising concerns as well. So I think it is on everyone's mind. And if I'm hearing it as an MHA, he is certainly hearing it as MNL and as are people in Municipal Affairs and our office. So, noted and I think we should get started on that yesterday.

C. WELLS:

We've been shamelessly commenting on the fact that we've not heard from many municipalities. Have not heard from Municipalities Newfoundland and Labrador. On a quite of number of occasions but it hasn't produced any results, we've not heard from them. But we think there's enough concern out there that these issues ought to be addressed, as Mr. Letto says, rather quickly.

S. COLLINS:

And I think there may be a bit of an intimidation to this process. Somebody coming from out in my district perhaps in a town of 300 people. They are a part-time clerk. Maybe he or she feels these

pressures and the liabilities and the fears, but they're not going to come in and present. That type of dynamic is occurring as well perhaps. Not to say you folks are intimidating whatsoever, very comfortable, but I'm saying the process probably doesn't lend itself to having small towns come in and present. But I can guarantee you as an MHA I've heard those concerns. So, without question.

D. LETTO:

Ms. Welbourn related to us that often she had heard from people at the council level. It was the fear of being sued.

S. COLLINS:

Absolutely.

D. LETTO:

Which would drive most people underground, right?

R. COCHRANE:

If I may, when I return to the office today I will reach out to the Deputy for Municipal Affairs and I will arrange for us to get together, for her officials and our officials, and we will try to get something done prior to the end of this calendar year.

S. COLLINS:

And perhaps we could keep them updated on progress.

R. COCHRANE:

As we're going. I think we can probably, we can request them to make this a priority. I am sure they would love to hear our views on this. So I don't anticipate we'd have any negative reaction. So we would have some type of information or some type of training provided to the coordinators in those municipalities, either online or through video link or some way before the end of this calendar year. And then, of course, we'll have to do it again post changes coming out of this for you but better to have it done twice than done at all.

C. WELLS:

Thank you. Okay. Would you proceed when you're ready.

R. COCHRANE:

So I'm turning now to the next substantive section in our brief is related to the 15 topics that we've outlined for consideration. And the first topic we want to discuss is briefing books. It is section 7 of the Act. Before I start this I had a little note. Just so you know, over the last little while I have

reached out and Victoria has reached out to the coordinators and I've reached out to the deputies and I've asked them to come forward and help us develop a list. So this list is based on our experience with the data and pre- and post-legislative amendments in 2012, as well as the input from relevant departments. So I'm presenting largely on behalf of those departments. And I am very fortunate that four of my colleagues appear with me here today and they have some unique issues that we will get them to speak to so you can understand how it's operating in their agencies.

So in terms of briefing books, topic No. 1, prior to 2012 there was no exemption in the Act excluding briefing books from disclosure in their entirety. At that time, coordinators would review the book and do a line by line severing of any information that was considered policy advice, Cabinet confidence, or any other exception that needed to be applied, such that all that information would be redacted. During the last review it was noted that request for briefing books were having a chilling effect on the number of documents that were being prepared. There was

concern that ministers were not receiving the information they required to take over responsibilities for the departments that they had been assigned to.

During the four-year period prior to the amendments briefing materials were requested 48 times. And of these requests, 73 percent resulted in partial disclosure. The remaining 27 percent were for records that either did not exist, were publicly available or were abandoned by the applicant.

So post-2012, the exemption for briefing materials prepared for ministers for the House of Assembly and for new ministers who are assuming responsibilities for the Act was changed. The exemption applied to materials that were prepared for a five-year period. After which time the same line by line review prior to the amendment is conducted and any necessary information is redacted prior to it being released.

Since the amendments in 2012 there have been seven requests for briefing materials. All have resulted in the whole book being withheld in its entirety. So

we had a redacting process prior to 2012 and now we have a full withholding of the books.

D. LETTO:

So the chill is gone out of the air.

R. COCHRANE:

Yeah, I guess I would argue that is the case.

D. LETTO:

In a previous life I've seen the results of some of those request from briefing books and this is a question I have. It seems to me that the briefing book was comprised of not two sections necessarily but there is two types. There is policy advice for the minister and for the person who's being advised, and there is also a lot of factual information about the state of certain issues. Is it possible in the production of those books that those two matters can be separated and instead of this detailed redacting process that happened line by line, that the book is essentially comprised of two sections? Minister, these are the hot issues that are on the go. It kind of has the effect of educating the public about the sorts of things that the government is dealing with on a current basis and that the policy advice and recommendations are protected. Is that practical at

all?

S. COLLINS:

Personally, I don't see it as being as practical but certainly I would look forward to a little bit more if you want to continue down that road. I don't know how easily it would be to separate one from the other. And of course briefing books are a living document. Every day there is something else put it in. So I don't know the administrative toll it would take to try to separate those things, and then making sure those two are kept separate, ensuring those two remain separate. Is it practical? I'm not so sure. But like I said, if you want to go a little bit further I'd be more than willing to listen.

D. LETTO:

Well, I guess what I'm thinking is that when you hear a discussion of policy advice and recommendations a lot of commentators will talk about the safe place that officials and ministers and senior officials need to be able to be as frank as they need to be about the range of options for dealing with issues. So I'm thinking that fits in this box over here but there are is a separate list of issues that are important public issues that perhaps the public

itself would be extraordinarily interested in knowing about. An issue that you're dealing with, let's say in health care, in Grenfell Health, not using individuals names but just wait lists for procedures and so on. Bridge repairs and transportation, if you're the transportation minister. I'm thinking along those lines, that there's the factual statement of things that government is concerned with and wants to deal with and, on the other hand, there is the advice on the range of advice.

S. COLLINS:

Right. And I think much of what you're discussing there I think is already being proactively disclosed. You mentioned bridge repairs. That is a great example because that's something we proactively disclose in its entirety. So I think a lot of what you're talking about is probably already disclosed. My only fear is that it probably may not alleviate the chilling effect as the Cummings Review had noted. And I can talk not only as the current minister but in my previous roles I began as a CA and EA, parliamentary secretary, MHA, and here I am minister. So, I've got a couple of different perspectives. And during my time as an EA I worked for a minister who,

again, was suffering from the chilling effect that didn't briefing books prepared. So while he had verbal briefings, I don't know really if that was sufficient at the time. This was the Department of Health and now he felt quite comfortable in it. But still, it was that chilling effect. So I know as a minister I want to be best informed that I don't want people to have any hesitancies to include this or not include that. So, we have to answer for anything that happens in our department and certainly I'd want to be best informed. So I don't know if you begin with that cleavage of separating information. I don't know if it would serve a purpose or if it would serve the public good. I don't think it would serve my own good as minister perhaps. I don't know.

C. WELLS:

Minister, I would just like to follow up on that because I'm having a little difficulty understanding why it would be so difficult to have section A of the book, Minister, here is a list. This section outlines all of the problems that you need to be apprised of and it describes each one. And there is 18 different tabs on it. Got all the problems identified. Part B, the same book but it is part B,

separate and distinct. Minister, this is our assessment of policy issues that arises and the options that are open to you to address Item No. 1. Then, Minister, here is what's opened to you to address Item No. 2 and here are the risks and you might consider this before you do it or take this to your colleagues in Cabinet or whatever. Typical policy advice. There are two separate portions and doesn't involve redacting. And when somebody asks for the briefing book, you deliver Part 1. Here are the issues that have been specially identified. Is there some compelling reason why that couldn't be done?

S. COLLINS:

No. And I think I go back to my point. I think that's already being done through other means. But again, I understand where you're coming from. It would be a one stop shop. So we want to know point-blank what are the key issues. Not with regards to the policy advice but just the key issues. I'm thinking that's what you were ....

C. WELLS:

And it's not alone, what are the key issues. What are the issues that were brought to the minister's

attention, so that over time we can call the minister to account and see how he's addressed them. So that's a second and important part of that briefing book. Not just the details of what was covered on the issues but what was brought to the minister's attention. And you can keep separate the advice that the minister was given as to how they would respond. Is there some significant reason why that couldn't be done?

S. COLLINS:

I don't see a reason why it can't be done because by the very nature it's already being done, so this would just be through another way it would be done. So, certainly something we could consider.

C. WELLS:

And by releasing all that information, even though some of it might have been earlier released, the news person who seeks it gets the information as to here are the topics that were brought to the minister's attention and here are the detail factual issues that were brought to the minister's attention. And I think news people look for that.

S. COLLINS:

Absolutely.

C. WELLS:

And I suspect the public might be interested, greatly interested, in it, too.

R. COCHRANE:

Could I just because as the deputy I've prepared many briefing books in my time, and prior to 2012 we would prepare a book along those lines: here are the top 20 issues that we call hot button issues at this moment in time. The remainder of the materials in the book are public information. (Inaudible) your report, probably a copy of our legislation, our organizational chart, who are your key contacts, Minister. What directors are responsible for what programs. So that information exists and this is a continuous document. And as ministers change we will change the top 20 issues because some are resolved and some are added. In the top 20 issues that we put in what we call the Advice Documents to Ministers, prior to 2012, each of those 20 briefing notes would be severed line by line. So that's how we did it prior to 2012. So it's a 50-page because our notes are generally one or two pages, it would mean that our ATIPPA coordinator, this is how they operated, our ATIPPA coordinator would go through that and

identify so what is the word that says advice to minister that would allow you to redact that section? So am I correct in understanding that's the process you're referring to?

C. WELLS:

I sort of lost track, in part. One time when I was arguing a case in court the judge said to me, Mr. Wells, I'm really quite interested in what you're saying and I thought I was a forceful, effective speaker. But he said I really can't hear you very well. You might put some more force.

R. COCHRANE:

I'm sorry about that.

C. WELLS:

I'm not sure the mike is the problem that I anticipated earlier. Like me, you're contributing some to the problem too. So I didn't get the last part of what you just said.

R. COCHRANE:

So the process that you're referring to, we divide our briefing book into two sections - a public section of information that's available publicly today, and then a separate advice section that would include our top 20 briefing notes for the minister.

Is that kind of ....

C. WELLS:

What I'm saying is write down the top 20 section and identify what the issues are and keep separate in a separate section the advice as to how to deal with it.

R. COCHRANE:

Okay, I understood. Thank you.

C. WELLS:

You see what I mean?

R. COCHRANE:

It's different from what we've been doing.

C. WELLS:

Yes.

R. COCHRANE:

The briefing note itself includes all our background information and the public information and then at the bottom of the note historically, this is what we done in practice, is our advice. Minister, on this issue we would advise you to do the following.

C. WELLS:

We've been asked to make recommendations on how to deal with this and in order to make recommendations it's only half of the equation to hear from those who

are complaining about not getting it. The other half of the equation is to hear from those who have responsibility to provide it. So what we need to know, is there any compelling reason why you couldn't divide your briefing book now into three sections - the 20 hot button issues, the details of the individuals in the department, what they do and their contacts, and now the third section, Minister, here's our policy advice and guidance. And you could easily release the other two sections without releasing the third? So that the public has access to information, the media has access to what are the hot button issues that have been brought to the attention of the minister.

R. COCHRANE:

Thank you.

S. COLLINS:

And actually, if I could ask a question of my colleague expert. Rachelle has prepared two briefing books for me, so I have some experience with her. In your experience, do you think that limit what the deputy would put in and they'd be very sensitive as what the key topics are or what facts they want to get? Even though they are facts and they should be

public, or would it have an effect on the deputy preparing it because of the perceived liability of putting this in writing that's going to the CBC, VOCM, whatever the case? So whether it is right or wrong is irrelevant. I'm just wondering if there would be that chilling effect. And I don't know if there would be or not.

C. WELLS:

Well, there may be but then the question is should there be.

S. COLLINS:

Right. Well, exactly.

C. WELLS:

That's the other question.

S. COLLINS:

Absolutely.

R. COCHRANE:

To me it's an organizational issue, how we're organizing the materials. I think that we can find a way to organize it among that lines so that section 3, for example, can be just withheld in its entirety and the rest of it can be made public, because it is a mixture of public and policy in the notes now and that's what we'd need to separate, now that I

understand.

C. WELLS:

If you'd separate it, then you'd wouldn't have to worry about redacting or any release of factual sections.

D. LETTO:

And if you separated, of course, in the writing stage it's already done.

R. COCHRANE:

Absolutely. Thank you.

J. STODDART:

Ms. Cochrane, you just indeed pushed your mike farther away from you. I do agree with my colleague, Mr. Wells, that it is sometimes hard to hear you and we're fairly close. I don't know about the other people in the room, so.

R. COCHRANE:

Okay, I'll try not to move that.

J. STODDART:

So I suggest you stay close to the mike.

R. COCHRANE:

I will try to do that. Thank you.

C. WELLS:

And just a little more force.

R. COCHRANE:

That's usually the minister's job. The second topic in our brief relates to response timelines. Pre-2012, public bodies had 30 calendar days to respond to requests. The head of the public body could extend the time to respond for an additional 30 days in the following circumstances: if there was a lack of detail in the request, if there was a large number of records required, or if it involved third party business notification.

And pre-2012, the OIPC did not have the authority to grant extensions to these timelines.

Post-2012, the 30-day response timeline continued with the head of the public body able to grant extensions in the three circumstances I previously noted. Plus, there was one additional circumstance added. And that involves third party or other public body consultations.

In addition, the OIPC was given the authority to grant extensions for a period of time deemed appropriate for the four reasons as now we previously

discussed.

As well, the OIPC can grant an extension where there are multiple concurrent requests from a single individual or organization, or for other circumstances considered fair and reasonable. All jurisdictions in Canada allow for extensions and some allow for extensions with OIPC approval.

In terms of trends, for the first half of 2013 on average on a monthly basis 69 percent of our requests were responded to within the legislative timelines, either with the 30 days, with the 60 days or with the approval of the OIPC. This compares to 96 percent for the same period in 2014.

So Victoria mentioned earlier some of the improvement we've made and we have put this on as a priority from our office and we've asked departments to put it as a priority. And we think it's working but we can't always make the big number, but we certainly have told deputies and departments our goal is 100 percent. So everybody's kind of got that in their window now.

Many presenters have discussed our response timelines and we feel that we have (inaudible) and we wanted to share those experiences, something positive that we could share with you that we think we have made improvements in the last year or two in responding to timelines.

C. WELLS:

And to be fair to you, that is information that we received from at least two or three presenters that have presented and indicated that. But still we have to be concerned about any timeline structure that can go 30, 60, 90 days, six months. There is something wrong with that. There is some inefficiency inherent in it that isn't working, and a lot of the delays may be in the overview process. And I don't quite understand why there's a necessity to have an automatic 30 days capable of being implemented by the department concern. You got up to 30 days to do it, and then another 30 days by the department, now you're looking at two full months, and then you can go to the Commissioner and get approval for further extensions. That may be 60 or 100 or 200 days, if the case is made presumably. All of that just seems inordinate.

From a personal experience, I have a very clear impression that if the premier or the minister is looking for information I usually got it within the day (inaudible). Now, you have to allow for all of the checking that the ATIPP coordinator has to do and consultation with other connected departments and any redacting and meeting the privacy rules and so on. All that takes time, admittedly. But, is there any reason why 50 or 60 percent of the requests that may be a sheet or two or three involved couldn't be out in 10 days?

S. COLLINS:

If I may. It is good to, perhaps right from the beginning, that most requests are met within the 30 days, the first 30 days, from our experience. There is also requests that can be met very soon. I guess it all depends on the complexity of the request.

There is something else I wanted to touch on because that's a question I've been asked as well. As a minister you can receive information very quickly and I know in my short experience in Cabinet if I need to know something before I go to Question Period, usually a couple of hours I can get

something, at least. But I guess it is comparing apples to apples. So what I'm receiving as a minister is an answer to a single question, perhaps an issue, a small part of the issue, not the global picture as such. So when we go out to the public and we respond to requests we're disclosing the whole package and we want to make sure everything that we're disclosing obviously is what they're looking for. And then as you had said, you had to go through and redact. So I don't know, really, if it is comparable. And sometimes as a minister I may get partial information, if that's all that's available at that time. It's just a snapshot in time. So I think the information being provided as a minister would be quick and efficient, but maybe it wouldn't be the best possible information given the fact that they had the time to do their work and to consult other bodies and to do that bigger piece of work that I think the public not only requests but obviously what they deserve, if they spend the time to make that request.

C. WELLS:

And I acknowledge that and that's why I commented it's not the same. The ATIPP coordinator has to

follow the procedures and so on. So obviously needs a little bit more time. But I was struck by, and I hope Nalcor doesn't condemn me too seriously for doing this to them because we've tried to avoid disclosing representations that are going to be made, they have made them available to us to look at but I don't think they will be too upset if I make complimentary remarks about something they're proposing. They have a process for ATIPPA in their submission to us. And the acknowledgment, the submission consult (phonetic) comes in. The acknowledgment of the applicant goes out. Within two or three days it's done right away. It's instantaneous acknowledgment of the applicant. And then an initial response plan is developed within five days. Third party notice and/or clarifications go out and then there is a complete response plan and the applicant is notified of the response plan within 10 days.

That, it seems to me, is a reasonable ideal. And as I look at what's in that access manual, that's what it would lead to, that kind of timeline. I don't think we would have received nearly the number

of complaints that we did publicly or there'd been as much public criticism of the process as there has been if timelines like this had been met. The applicant got information within 10 days. Said here is our plan to provide what you want. Now we also draw to your attention that we could be speedier if you didn't want this or you narrowed the issue and so on, and we're prepared to help you narrow it. That goes out and a complete response and notification is gone in 10 days. Then the material is gathered and is checked and it goes out within 30 days. So isn't that an ideal to be pursued?

V. WOODWORTH-LYNAS:

Yes, and just further to that, Mr. Wells, I think that what happens oftentimes with coordinators is we will contact applicants informally so as not to add another, I guess, step in our process. We try and make sure that we are not adding too much paperwork to our coordinator's process. But oftentimes and we do always encourage and it is part of our manual is to make contact with the applicant and as part of that duty to assist and have those discussions over the phone. So it does occur. I can't say that it occurs for all requests or all situations or for

every request that's been received, but we would always encourage, I think, that there be contact made with the applicant throughout the process to advise them and it does happen. You've requested a large number of records. We're in the processing of doing, we have to search these records. There may be a lot to search. Is there a way that perhaps we can focus on one specific area and get some information to you sooner? So I think that we do strive for that kind of an approach, perhaps a little bit more informally in a written --

C. WELLS:

And that's what the manual spells out, to do just that.

V. WOODWORTH-LYNAS:

Yes.

J. STODDART:

Just for the record, I think I would be remiss if I didn't draw to your attention as the former Access to Information Privacy Commissioner of Quebec that most unfortunately Quebec is not faster in answering these requests than other jurisdictions. In your brief you say that there are 30-day timelines to respond to requests across Canada, except for Quebec, that has a

20-timeline. So it sounds like Quebec is very speedy in this. In fact, Quebec's timelines refer to something called juridical days, which would be like basically days the courts are open. So they are not weekends and they are not statutory holidays and so on. So, again, greatly to my regret I think things are just the same in Quebec as everywhere else.

C. WELLS:

Twenty juridical days is roughly 30 calendar days.

D. LETTO:

Just one question. In respect of timelines, where the head of the public body can delay by another 30 days the providing the information, I want to get your opinion on the appearance and the perception that that creates.

S. COLLINS:

Well, again, if I can speak from my own perspective. I know once being named in the Department of Tourism, Culture and Recreation having briefings with Ms. Cochrane I have said any time with regards to, because my understanding and from my practical sense now after being there for a number of months I don't have any dealings with ATIPP requests in my department and the only time I've asked to be made

aware of ATIPP requests in my department is if there they are of a public nature or something I'm going to be expected to speak to either in the House of Assembly or a media scrum following thereafter. So, I lost my train of thought. Just one moment, let me pull it back. So with regards to timelines, I was quite clear when I spoke to Rachelle and I said any time there is a request come in, let's get it out as soon as possible, because slowing it down does nothing to help me. If a member of the opposition stands up in the House of Assembly and says I put in a request for information. I haven't heard back and it's been 38 days. I have to stand on my feet to answer to that. If we can get it out quickly, as long as I'm informed of it, I'm able to speak to it. I want to have that information out ASAP because it is in everyone's best interest, including ourselves politically if nothing else, to have it out, so. Because perception is, you had said perception is everything. Perception is reality in this game we call politics (phonetic).

D. LETTO:

It could give the impression that you're trying to delay the release of information.

S. COLLINS:

Absolutely. Going back to the perception. So me personally, I want to get it out as soon as possible. I will think that my colleagues would be much the same. Obviously, there are issues if it does go past that 30 days and then with the OIPC then granting further delays, but I would have to think, particularly when it comes to the Commissioner, I would think it is for good reason that the delay is put in place.

D. LETTO:

So that leads to the question then: so you have 30 days to respond to the request.

S. COLLINS:

Right.

D. LETTO:

If you need more time does it make more sense from a perception and appearance perspective that you get the permission of the Commissioner for the second 30 days or maybe 45 or maybe even 60?

S. COLLINS:

Yeah, if we look at a request and we say this is quite tangly and we're going to have to consult quite a few public bodies outside, third party business,

whatever the case may be, we can ask for that extension up front. So we don't have to take the applicant down the garden path and say we're going to take another 30 days, then we're going to take another 30 days. We can do that up front.

C. WELLS:

I think you've missed the thrust of Mr. Letto's or at least the thrust of my concern with it. I think it was Mr. Letto's concern too. The perception of just unilaterally that's a problem. Perception can be as bad or worse than reality sometimes.

S. COLLINS:

Agreed.

C. WELLS:

So that when you get down 25 days and we just can't meet that, is there any underlying reason why you shouldn't go to the Commissioner then, even for 30 days or 15-day increase instead of unilaterally doing it? Getting the approval of the Commissioner so that the ATIPP coordinator who's doing it knows that he or she can't just say, oh, well, I can always get another 30 days. I can always extend the time. They would know that they had to justify the extension by going to the Commissioner and that would alter the

perception very, very significantly.

S. COLLINS:

That is a fair point.

C. WELLS:

I think that was the suggested time.

S. COLLINS:

Sorry for letting you down the garden path. But no, I understand fully and it's quite reasonable. And again, it would be the same length, just by an independent person outside, so.

C. WELLS:

So we can conclude, you can't think of an underlying reason why that shouldn't be done?

S. COLLINS:

Well, as long as the department is able to consult with the OIPC and explain their reasons for wanting the extension, I guess you'd be left in the same spot. And if it's relevant and reasonable I'd imagine the OIPC would grant that. So I think that's a fair comment.

R. COCHRANE:

And if I may because I've had, as a deputy in a former department, I had a couple of extensions that I granted and in those instances they were granted

because we had gone out to a party and it was 20 days in and they still hadn't responded. They weren't responding to us back. Just for consistency when I said, okay, give them five more days, then they were going to go ahead and send the information to the applicant. So the coordinator was kind of waiting and waiting and waiting for information to come in and it wasn't. The people we had sent it out, not within our organization but outside, were not responding in an expeditious manner. But I see no reason operationally why the OIPC in all instances if that's where you're going.

S. COLLINS:

It could be brought in at that point.

R. COCHRANE:

Operationally, yes, it could have been him made the call as opposed to a deputy. Absolutely.

C. WELLS:

So at the very least the public who's seeking this information doesn't have the perception that that ATIPP coordinator is not even paying attention. Just extending the time because it's convenient to do so or it suits their weekend plans or whatever the case may be. If the extension was with the approval of

the Commissioner that perception was dramatic.

S. COLLINS:

Right. And I can assure you that's not happening currently. But, again, back to your point of perception, I think that would clarify and give people a sense of comfort, yeah.

R. COCHRANE:

Certainly something we could consider. Absolutely. And just for the record, we have a very good working relationship with the OIPC. We have quarterly meetings and they discussed our cases and support us in our learning and vice versa, then in their learning. So there is a very cordial relationship.

D. LETTO:

Have you personally had an experience where you've had to ask for an extension?

R. COCHRANE:

No, I haven't. As a deputy, no. Not through the OIPC, no.

D. LETTO:

Okay, fair enough.

R. COCHRANE:

We've got it done within 60 days.

C. WELLS:

Okay.

R. COCHRANE:

So the third topic we wanted to discuss is related Cabinet confidence. Pre-2012, this section of the Act required information to be withheld that would reveal the substance of deliberations of Cabinet, including advice, recommendations, policy considerations, draft legislation or regulations that were submitted and prepared for Cabinet. This resulted in a line-by-line review of the records and information that would reveal the substance and the Cabinet deliberations would be redacted. In the event of a dispute, the applicant could request the OIPC to review the Cabinet records to determine whether this section was being applied appropriately.

On average, this section was used in 11 percent of our requests annually. Of these, 44 percent were media applicants, 33 percent were political parties, and 12 percent were individuals.

Post-2012, there were four changes to this section. The term "substance of deliberations" was

removed with the entire record now withheld. A definition of what constitutes a Cabinet record was included consistent with the *Management of Information Act*. And in that there are nine different types of records; for example, minutes agendas, policy considerations, et cetera.

Third, three new categories of records were added. 1) official cabinet record; 2) supporting cabinet record; and 3) discontinued cabinet records. And in the case of discontinued cabinet records, those include those records that may have been discontinued internally by a department themselves.

In the event of a dispute, the applicant can request and the OIPC can review Cabinet records with the exception of the official Cabinet record which is now reviewable by the Supreme Court Trial Division.

On average this section was used in six percent of our requests annually and, of these, 45 percent were political parties, 25 percent were media and four percent were individuals.

Since the amendments to the sections, no appeals have been brought to the court with respect to official Cabinet records.

C. WELLS:

If you have no objection, I'm getting a signal from my coordinator that I'm supposed to call a mid-morning break for about 10 minutes. And that will give you a bit of a breather and us one, too. And we will continue with the questions on this topic when we come back.

S. COLLINS:

Perfect, thank you.

C. WELLS:

Thank you very much.

(Morning Recess)

C. WELLS:

I should apologize for this delay. There is a difficulties with the technical audio and video processes and they tried to correct it but the correction didn't work, so we've gone back to the old and we're tolerating the defect on it that of every 30 or 60 seconds the screen goes blank for a second

or two, and it makes for a not very good video, but the people supplying it are having difficulties that they can't correct immediately. So rather than delay you any longer we decided to proceed and apologize to the public who are watching that you have to tolerate these defects. Ultimately, I suppose we'll be able to explain it but we've got to wait to get the full explanation ourselves.

Now, Minister, if you're ready we will proceed again.

S. COLLINS:

Perfect, thank you.

C. WELLS:

Oh I'm sorry, we had gotten to the point where you had presented topic 3.

R. COCHRANE:

Right.

C. WELLS:

And which was Cabinet confidences and the change that was brought about. Oh, I do want to talk to you about that because another change was brought about too at the same time. Solicitor-client privilege documents are also now able to be excluded. And it

seems the complaints that we've heard mostly about that is the ability of the public body to simply take unilateral action and declare that this is a Cabinet confidence or this is solicitor-client privilege and therefore we're not going to disclose it. And no ability to question it. No ability to check on the validity of the assertion. And the thing that struck me about it was the information provided by the information privacy commissioner when he made a submission to us early on. And I think this was in relation to documents that were solicitor-client-privileged documents where the public bodies had asserted that it was a solicitor-client-privileged document. And when the Commissioner advised that it should be released the attorney general took an action in court and ultimately got a decision saying that it should not be released and the Court of Appeal unanimously reversed that decision and said the legislation, as it stood at that time, authorized the release of solicitor-client-privileged documents, released not to the public but released to the Commissioner to review to determine whether or not the claim was a valid claim. As a result of that decision, the 15

different requests for information that had been refused on the basis of it being solicitor-client privilege suddenly had the documents made available to the Commissioner to check. And the Commissioner told this Committee that he found that 80 percent of them had no connection with solicitor-client privilege. I was a bit taken aback by that assertion. So I asked the Commissioner to confirm that the situation was marginally different or was he saying that there was just no connection at all, and he said no connection at all.

So, it's clear that the solicitor-client privilege is being abused and being asserted to prevent the release of the documents, and that was the case in 80 percent of those.

S. COLLINS:

That's concerning.

C. WELLS:

That's a bit concerning, to say the very least. So I want to ask you, is there any reason why the Commissioner can't see these kinds of documents, including Cabinet documents and solicitor-client privilege documents, for anything that is not going

to be released or that the public body refuses to release on the basis of claiming an exception, in order for the Commissioner to look at it and see whether or not that claim is valid? Is there any underlying reason why that can't be done, in case of solicitor-client documents or Cabinet confidence?

S. COLLINS:

Yeah. Well, I will allow Mr. Noble, Deputy Minister of Justice, speak to the solicitor-client piece. But as it pertains to Cabinet records, I guess, our intention was define exactly what a Cabinet record was. And again, as was said in the preamble, I believe I had mentioned to make it consistent with the *Management of Information Act*, it seemed to be some guesswork prior to this of what exactly a Cabinet record was, and obviously understanding the importance of Cabinet confidence and Cabinet records and fundamental principles under democracy that that holds. I guess it was again just for clarify purposes. Now, the resulting of fact is something, I guess, what we're talking about here today. But I guess that's where we look to you for some advice.

C. WELLS:

Okay. But before we can give you advice, it would be

easy for us just to sit back and we said, well, we advise you to make it all available.

S. COLLINS:

Right.

C. WELLS:

But if we're acting responsibly we've got the hear the government's view as to what's the underlying reason for taking this approach? Is there a good reason for doing it? If there isn't, let's go back and let the Commissioner look. It enhances confidence, public confidence in the system and makes documents more readily available. So what we need to know is what, if any, underlying reason exists. If there is any valid reason for having it the way it is or whether we should recommend to you that it be restored to the way it was.

And just before Mr. Noble answers, I would ask you to answer the question bearing this in mind: that the Commissioner also told us that the system worked very well for both solicitor-client privilege documents and Cabinet documents prior to 2012, when he could look at it and say yes, that's a valid claim or no, it's not. It worked very well and there was

no problem. He had not had any indication of any problems prior to the Attorney General taking the challenge that he did. And what appears to be the review, the abuse in that 12 out of 15 cases not being connected at all, and bear in mind that the review would be done by lawyers, the Commissioner told us that all of his analysts are trained lawyers. So I mean they would be very sensitive to the significance and importance of solicitor-client privilege and Cabinet confidence as well. So the review would be being done by them. And this factor: there are obviously very many other public servants in Executive Council, Department of Justice dealing with these documents. So if all those public servants can be trusted to deal with the documents, why cannot the dedicated staff of the Commissioner's office handle it with confidence when they've had a record of doing it before?

S. COLLINS:

Right. If I can say before Mr. Noble begins, I don't think it comes down to an issue of trust as such. But again, as I had said earlier, and whether you this as the reason or not, but I guess it comes back to government believing that it would make it

consistent with the existing *Management of Information Act* as well as provide clarification. Because as I understand, there was some confusion on exactly what a Cabinet record was. So I guess by these changes there was no issue afterwards but obviously the resulting effect is where we are today.

C. WELLS:

Just to be fair now, the question is not what is or is not a Cabinet record. And I saw Mr. Cummings' report recommended that this be done for clarity purposes. And that's understandable. The matter at issue here is whether or not the classification of it was being honestly asserted.

S. COLLINS:

Okay, understood.

C. WELLS:

And that's what the Commissioner would decide, not whether or not it was a cabinet record. If the law says it's a Cabinet record, it's a Cabinet record. Whether or not it's in fact a Cabinet record is what's at issue here. Thank you, Mr. Noble.

P. NOBLE:

Thank you very much. Just before I begin my comments, Mr. Wells, just for my own edification.

The abuse of the documents that you had mentioned, testimony, I guess, from an earlier participant, was that in the federal domain?

C. WELLS:

No. It was provincial.

P. NOBLE:

Provincial?

C. WELLS:

The Commissioner gave us in his submission here, he and Mr. Murray both provided information that in the circumstances where a public body in Newfoundland had refused to release something on the basis that it was solicitor-client privileged, the Commissioner could then review it. The Commissioner reviewed it, concluded that it was not solicitor-client privileged. And I don't know whether the Commissioner reviewed it and concluded that it was not, or asked for it and the public head refused to provide the document to the Commissioner, I think was the situation. And then took an application to the Supreme Court for a decision that they did not have to provide documents for review by the Commissioner that were solicitor-client privileged. The Trial Division judge decided that the government was right

on it, but when it went to the Court of Appeal, the Court of Appeal said no, that's clearly the legislation on the strict wording of the legislation. It does not preclude the Commissioner looking at documents to determine whether or not they are solicitor-client privileged. So in the meantime some 15 sets of documents had piled up in 15 separate applications that had been refused on the basis of solicitor-client privilege. And after the Court of Appeal decision, all those documents were made available to the Commissioner for review. The Commissioner's evidence to this Committee is that in those 15 cases, 12 of them had no connection whatsoever with solicitor-client privilege. It was just asserted and wrongly asserted.

That obviously brings confidence and trust in this system to a very low level. So this is the thrust of this question. Is there any underlying reason why a good and faithful servant like the Commissioner, the Commissioner's Office, and the seven legally-trained people can't look at documents? All kinds of other people, not all kinds but certainly significant numbers of people in the public service see all

Cabinet documents. They see solicitor-client-privileged documents and they're trusted with it. They don't disclose it. And the Commissioner told us his office had a record of no complaints about their handling of documents that they were given to review to determine if the claim was valid.

So, what's the underlying reason for proceeding the way you do and, from our point of view, for retaining it in that way or should we recommend to you to go back to the old? That's our responsibility. It's what we're trying to get some help from you on.

P. NOBLE:

Right, I understand. So of course as you're aware, the Act as it's currently structured allows for that oversight responsibility, if you will, to be discharged by the courts. So, where the Attorney General or where a department claims a privilege, a solicitor-client privilege over documents and if there is any dispute over the nature and extent of that privilege there is the opportunity for oversight and accountability, but it's at the court level

rather than with the Commissioner. Those are the amendments ....

C. WELLS:

That's like telling me that I can get a really good meal if I'm prepared to go to South Africa to get it and incur all the costs of getting there. Now that's a bit extreme to say solicitor-client privilege, to go to court to get it. I mean it is just a massive time for the average person that's looking for information. You can go to court and get it.

P. NOBLE:

So, and that was the recommendation from the Commissioner in 2012, when he reviewed this issue. I think at the time the court case was ongoing. I think he had the opportunity to review the Trial Division decision but the Court of Appeal judgment was still pending. So in his view at the time, recognizing that solicitor-client privilege having evolved to a substantive fundamental right in the administration of justice, and, I think, drawing upon what the Supreme Court of Canada had said about the nature of the privilege, said that it had to be as close to absolute as possible. So his view at the time was that to preserve the sanctity of the

privilege and to ensure that it was as absolute as possible, it was more appropriate for the courts to review claims of privilege than it was for the Commissioner's Office.

C. WELLS:

See, you could always do that. If it had gone to the Commissioner for review and the Commissioner said it's not solicitor-client privilege and the government or the public body felt it was, you could take it to court. You would bear the expense then and the Commissioner would have to defend it. The individual who is seeking the information wouldn't have the cost. The Commissioner and you would have the difference, and that's the big difference. The individual then having to go to court is a hill that 99 percent of individuals can't really contemplate climbing. The occasional ones might but not very many.

P. NOBLE:

Sure. It's my understanding that the Commissioner will often advance that case or cause on behalf of an individual.

C. WELLS:

But not always.

P. NOBLE:

Not always, and it is the Commissioner's discretion, I would assume. But he does stand at the ready to do so when he thinks it's appropriate.

C. WELLS:

What you say, that he could go to court. The government could go to court too and the Commissioner could do it. And if it were done in the context of the Commissioner saying you should release it, then the public body asserting solicitor-client privilege would have the burden of saying it really is and, Commissioner, you're wrong. You haven't adjudicated it properly. We're going to court. And the Commissioner is there to defend his position and the public body can defend it or put its case forward, and the individual doesn't have the burden. That's what we see from the people who have made claims to us. So many people who have made representations to us say it's all very well to have a right to appeal to a Supreme Court of judge but do you realize what that means to me to have to do that? I just can't even contemplate it. So it's a major problem.

P. NOBLE:

I think we're talking about a classic real conundrum.

Obviously government, my client, has a right to receive legal advice and services in a manner that's private and confidential. So they have the benefit of that privilege, like anyone else. On the other hand, as you point out, we have an Act that the foundational principles are about openness, accountability, transparency, ease of access. And of course an Act where the Commissioner plays a substantial role in determining or resolving issues under the administration of the Act. So it is that classical legal conundrum between the rights of the client to ensure that the privilege is as absolute as possible and the rights or the principles of the Act and they come into conflict. How do you resolve that conflict? They are two models.

C. WELLS:

I'm going to suggest to you that the conflict can be resolved and what I'm asking you is: is there any fundamental or underlying reason why it should not be resolved in this manner - let the Commissioner review it and give you his opinion as to whether or not it is a solicitor-client-privileged document, and if you disagree with it you still got the ultimate protection of going to court? And you may well agree

with what the Commissioner says and at the very least you would avoid 12 out of 15 circumstances where it was just used as an excuse for not releasing the information. You would certainly avoid all of those and enhance the reputation of the government's handling of access to information procedures. You would avoid that. That, I think, is a better route. Well, maybe I shouldn't say that. On the surface of it, it appears to me to be a less problematic route than letting the Commissioner do the review. And if you disagreed with it, the government or public body take the application to court. You still got the ultimate protection. The Commissioner reviewing it doesn't diminish the absolute nature of it in any way. Doesn't alter it one iota. He just looks at it and he says I agree, it should be an absolute privilege, or I disagree. There is no basis for this assertion. This really is not solicitor-client privilege at all. And then if you disagree with that, take it. But I think if you had a circumstance where the Commissioner had a right to review it, very few public bodies would be prepared to wrongly assert, as it appears they were prepared to do so in the past. And I would have thought that would leave

government and leave the whole access to information process in a better approach. Now is there any underlying reason that you can think of why that approach wouldn't work?

P. NOBLE:

I want to come back to the Minister's opening comments, of course, when he said that we're not advocating particular position on a given issue. There are clearly two approaches here. Some of which have been used elsewhere in the country. An approach that we've adopted based on obviously the prior Commissioner's recommendations. I think that going beyond that, I think that once we hand over solicitor-client-privileged materials to an outside agency and the Commissioner's office is an administrative agency, I think some of that privilege has the potential to be compromised. Some of those issues are very complex and I appreciate the Commissioner has some legally-trained staff. I'm not sure if they're lawyers per se but I think they are legally trained. And then the other issue is: does the Commissioner's office then seek outside legal advice to assist him in reviewing those materials to determine whether the claimed privilege is

appropriate? If that is the case then it is very problematic again for us because the privilege has the potential to be very much compromised at that point.

C. WELLS:

Does the government refrain from seeking outside legal advice because it doesn't trust the lawyer to keep the privilege in confidence? That doesn't sound right, Mr. Noble, with great respect?

P. NOBLE:

I'm sorry, I don't follow.

C. WELLS:

You just suggested that privilege might be compromised if the Commissioner's office sought outside legal advice. Government frequently seeks outside legal advice.

P. NOBLE:

Yes.

C. WELLS:

Surely they trust the lawyers that they ask to advise to keep the matter in confidence.

P. NOBLE:

In that case where the client and the privilege belongs to us. But if the Commissioner seeks outside

legal advice on solicitor-client-privileged documents that we provided to his office, how do we know that the firm that's being engaged is not in conflict with government or on the other side of a particular file over that particular issue? So all I'm saying is that we would want to be sure that there are safeguards.

C. WELLS:

It is very easy to know. I mean, no lawyer would dare undertake giving an opinion on a matter in respect of which she or her firm, his or her firm, had a conflict. The Commissioner says he has a staff. All seven of his analysts are lawyers, legally trained, and that's where he gets his lawyer advice. Even if he did seek outside legal advice it wouldn't compromise privilege.

P. NOBLE:

The Commissioner obviously would be able to clarify this for you. My understanding is that he does have firms. They do seek advice from time to time with outside firms. So what people were talking about is how far do we go down that road before the privilege is potential is compromised. I'm not saying that there can't be safeguards that can be put into place

to ensure that doesn't happen.

C. WELLS:

Okay. So I have that and Ms. Stoddart is going to ask a question now, but I would like to come back to see if there is anything else after besides, if that's your only concern about it.

J. STODDART:

Thank you. Thank you, Mr. Wells. Mr. Noble, I'm just curious about the timing of the change to the solicitor-client-privileged treatment in the hands of the Commissioner and ombudsman in the Newfoundland system. In your brief, and I think you're probably referring to when you talk about fundamental rights to the *Blood Tribe* decision of the Supreme Court of Canada which was published in the end of 2008, given your concern about this I'm curious about the timing, why you didn't suggest to the government that you withhold, you change ATIPPA to withhold from the Commissioner solicitor-client-privileged materials over which his claim was sought, and you waited till 2002, in the middle of a process, which I understand was quite long and difficult from your department. I'm referring to descriptions of the implications of this process that I heard in a recent presentation of

the Canadian Bar Association, in a session entitled "The Financing of Muskrat Falls", perhaps, in which a representative of your department said several times that your department -- yes, it's called "The Muskrat Falls Project Financing." A very interesting Panel with four people, including one of your assistant deputy ministers, who referred to several times to the fact that you were wearing several hats and in the middle of this came a lot of issues with the legislature and major legislative changes. So I'm just concerned, if the solicitor-client privilege is so important that you have to exclude the Commissioner, why this was not done in 2008, for example, in the fall of 2008, and why it was part of a package in the middle of this two-year project and was described as kind of a chapter of the project of financing Muskrat Falls?

P. NOBLE:

Yes, I'm not sure I'm going to help you too much with the history and the background. I've been the deputy for just shy of two years now. So when the Act was amended in 2012 I wasn't part of that process. But I do know that the original court case where this issue was brought into play, I'm pretty sure it was

initiated around 2010, so at least since 2010 the Attorney General has taken the view that the Act, as it was worded prior to the 2012 amendments, didn't capture solicitor-client-privilege documents for the Commissioner's review. So it's been at least four years that the Attorney General has taken that position.

J. STODDART:

Okay. And you don't know why there was presumably no advice from the Attorney General as soon as 2008 to say, well, we should amend the Act because there's been a Supreme Court of Canada decision concerning an organization that has a similar structure to the Newfoundland Commissioner?

P. NOBLE:

Yes. I can't say for sure but if I could hazard a guess. At the time the Act didn't expressly speak to the issue. So I think that perhaps at the time the Attorney General's position was that the Commissioner didn't have the ability under the Act to review the documents which culminated, then, in the court cases from 2010.

J. STODDART:

Thank you.

P. NOBLE:

I'm speculating to some extent. You can appreciate that.

C. WELLS:

As I understand it, the situation was that up until about I think 2009 that court case may have started or may have been 2008, I don't know. Up until the time that the Attorney General took that application, the Commissioner was always provided with solicitor-client documents claimed to be solicitor-client privileged and provided with Cabinet documents to express an opinion as to whether or not the privilege was properly claimed. And if it was, it went back and no questions asked. And right up until then there had never been any concern expressed about the Commissioner's performance or any apprehension about the loss of the quality of the privilege in any way as a result of this process until this one particular case. And I think that whole case went through a trial judge. It went on to the Court of Appeal. It was heard and had been decided by the Court of Appeal prior to the 2012 amendments. It was all finished, I think, prior to the 2012 amendments.

P. NOBLE:

Yes. You may be right. I know that when Commissioner Cummings produced his report, I'm pretty sure that the case hadn't been decided by the Court of Appeal at that time.

C. WELLS:

That would have been 2010. It had not by then. It was decided, in fact, I think, in 2012.

P. NOBLE:

Yes, I think so.

C. WELLS:

So it would have been sometime before June of 2012 that the Court of Appeal decision was rendered.

D. LETTO:

I wanted to ask about Cabinet confidences. The Chair used the metaphor of a very steep hill to climb when it came to solicitor-client privilege, and it's fair to say it's an equally steep hill with respect to Cabinet confidences. Where in the 2012 amendments entire categories of documents were made exempt and there is no tests that applies in terms of being able to get access to them once the clerk or the designate decides that they are official Cabinet documents. The only way to compel the production of them is for

the Commissioner to go to the Supreme Court. And our presumption there is that the court would say yes, it is an official Cabinet document and that's the end of it.

To, I guess, use the phrasing that the Chair has used from time to time, is there a compelling reason to keep that system exactly as it is? Or are you able to reflect on your experience with that as it intersects with ATIPPA?

P. NOBLE:

Well, that's a good question and, actually, I think this whole process allows us to reflect. So while I can sit here today and tell you folks what our original intentions were, that's fine enough, but, obviously, now we know the result and I spoke about that earlier. But when you talk about how many cases, it is very concerning. So, I think this exercise allows us to reflect. And again, not to speak to what our intentions were, as I already have, but that's kind of irrelevant if it's not working or if it appears to be broken or causing issues, which you've raised some significant concerns, I think it is incumbent on us to reflect, so. It's an

interesting point and well noted. Absolutely.

I'm sorry, I was just going to say, it is something we wouldn't directly know the result of prior to the amendments but obviously we now have some time to look back and reflect, and after hearing from Mr. Ring obviously there are some concerns here, so.

D. LETTO:

It also plays into people's perception of the role and the power of the Commissioner.

P. NOBLE:

Absolutely. Yes.

D. LETTO:

Commissioner is the oversight body for the *Access to Information Act*, and in two extraordinarily important areas the Commissioner is not allowed to have any input unless he takes the matter to the Supreme Court.

P. NOBLE:

Correct.

R. COCHRANE:

And could I just add a little bit of clarification on the Cabinet records in particular, because it's been

an area I've worked in for quite a number of times? In our organization Cabinet records are supreme. I mean in terms of importance and the protection of those records. As a bureaucrat it is kind of like Public Service 101. So those records from the matter of deference we give them, we put them in secured directories. They are in locked cabinets. They're in vaults to protect them. It is our historical record but it is also our record that allows to ensure that the system speaks collectively without fear of the papers being compromised in terms of disclosure. And as a public servant, I mean we take, all of us - the admin staff, our directors and are officers and our executive - take extreme measures to make sure those documents are secure and safe. Again, I'm speculating, I know, but some of the discussion may have been down the road in terms of those documents and their security is, are they more secure in an adjudicative body like a court or are they more secure in an administrative body like OIPC? And again, I'm speculating. But just how we protect those records from my perspective is a matter of deference that we give them. I would expect that was some of the discussion at the time. The security of

them is very important, yes.

D. LETTO:

Right. So there is the protection of the records. Let's say the records all fit. These are all Cabinet records. They are all in that box. But what the Commissioner has told us as well is what he thinks is important to protect is the substance of the deliberations within Cabinet. So, in order to be able to ascertain does this reflect the discussions that took place in Cabinet or is it something else, he's not permitted, and his office as the oversight body, at this point isn't permitted to even have a look in unless they're willing to take this matter to court. So I was getting at the experience with that and anything that you'd like to say to us about that part of it.

S. COLLINS:

Yes. Well, with regards to my experience too, it would be rather limited, I will admit. But again, I understand the intention, why it was put in place. And Rachelle had touched on the fact of Cabinet confidences, how it is paramount. And certainly I can appreciate that as a new minister. But again, the result has resulted in - it's concerning. So,

obviously some recommendations around that, some advice on that perhaps.

If the system as it were today it was working correctly we wouldn't be having this discussion. So obviously there's some concerns there. And again, I'm not here to defend nor can I even give much background based on my short time in Cabinet, but I will say I really truly believe the intention was good, but.

D. LETTO:

And I'm trying real hard not to ask you to put your opinion on the record because I appreciate all that and how you see the Committee. I think at the end of this little discussion can we both see the distinction between the deliberations that happen in Cabinet and the other stuff that might be included in Cabinet documents?

S. COLLINS:

Noted. I see, yes.

C. WELLS:

Just one follow up on it. Ms. Cochrane spoke about public service being imbued with the importance of Cabinet confidentiality. Having been there in the

past, I remember that well and I perfectly understand it. But what I also would know is that a very significant number of people, including all of the secretaries and the senior staff of ministers and all of those in Executive Council who work in that area are all entrusting that confidence. And I understand that and there's never been any major problems that I've been aware of, until 2012 the highly regarded Information and Privacy Commissioner and his trained and skilled staff were amongst those who were entrusted with this to do whatever handling they had to do with it and then keep it in the confidence that was required. What happened? Or is there anything about which we know nothing, this Committee knows nothing, that justifies excluding the Commissioner and his trusted staff from also being trusted with those documents for the purposes for which they have it and to hand them back with the same confidence and to retain that confidentiality? Is there any underlying reason about which we know nothing that you can give us that would warrant keeping the Information and Privacy Commissioner excluded and not being able to look at the document and say yes, that is indeed a Cabinet document? The claim to Cabinet

confidentiality is a valid claim. Here it is. Back to you. No disclosure. They might not even have the documents. The Commissioner told us they were quite prepared to go and look at them if there was anything and not even have possession of them. To go to the Executive Council office and see them and view them. Is there anything compelling reason why that wouldn't work, because it would greatly enhance public confidence in the assertion that a document was a Cabinet confidentiality?

R. COCHRANE:

And, Mr. Wells, there was no specific trigger to make us want to do this. It was related to consistency of application and how we do the process in our province and in recognition for the deference that we give to those records in terms of the reviewing body being the courts as opposed to an administrative body. So I think it was simple as that. I don't mean simple as that but the main rationales was our need to ensure the protection of the records and to ensure that we were consistently applying the Cabinet record provisions that are outlined in the Act. From an ATIPPA coordinator perspective, in terms of the entire record is withheld as opposed to the line by

line redaction process.

C. WELLS:

So, do I conclude then that the only reason was apprehension, that the administrative body that is the Commissioner's office, it might not be appropriate to entrust the Cabinet confidential documents to an administrative body that is the Commissioner's office, but it would be appropriate to entrust it to the administrative body that is a court registry?

R. COCHRANE:

Right. If I could say it this way, it had nothing to do with the reputation or our concern with the OIPC, the administrative OIPC body. It had more to do with an adjudicative body like a court, being more comfortable using an adjudicative body such as a court to protect those records, and then a body, whatever body was responsible for the review. So it is not about the whether or not we had confidence in OIPC, it was more about whether the courts had processes in place that we thought were the best.

C. WELLS:

But does it not still get down to confidence in the OIPC protecting the documents?

R. COCHRANE:

Oh, absolutely, yes. You could certainly draw that conclusion. From my perspective, I can't speculate that there was concern with the respect to the OIPC's ability to protect them but I can confirm that knowing the deference we give to those documents I'm sure that our primary reason was where do we feel they are best protected.

J. STODDART:

If I could ask a supplementary question to Mr. Wells again. I don't understand why you didn't do this in late 2008 then, because you had a clear court precedent that would have allowed you to say well, given our search for maximum protection for privileged documents of any case we will take all of this out of the purview of the Commissioner and confine it to the courts? Yet you didn't seem to have developed this concern until 2012. I still don't understand why this concern was so long in being enacted upon. Although, I do understand that the Court of Appeal disagreed with that position in 2011 itself, but the Commissioner was a proper repository for the examination of privileged records.

C. WELLS:

Now, no, that's not the conclusion of the Court of Appeal. What the Court of Appeal concluded was that on the wording of the statute the words did not preclude the documents being produced for the Commissioner to examine.

J. STODDART:

Exactly. I totally agree with you. I am trying to put it in, in nonlegal jargon. So I still have difficulty understanding why this overriding concern was not acted upon till 2012. It is still a concern with you that it is still advice that you would be comfortable giving, that the documents of whose contents are of some sensitivity are better examined by the courts than by the Commissioner?

R. COCHRANE:

It is not for me to speculate on a position of government.

C. WELLS:

I understand that, Ms. Cochrane. We don't want to put you in an unfair position.

R. COCHRANE:

Could I talk just a bit about the timing? And I can't speak to this specific amendment in this but I

can explain to you generally how we do legislative drafting. So, for example, on occasion we have a number of statutes that are up for statutory review. Most departments, and I can't speak to this one in particular but, if I'm in a department and there is a statutory review coming up and it may be two years away, we will have a discussion among ourselves whether or not can we just bundle all our issues and prepare ourselves to get the statutory review completed. So in many respects we like to open up the Act at a certain point in time and then we would kind of close it and then we would do it again in a five-year period. Every time we do statutory amendments, and no disrespect, but it requires a fair bit of administrative burden. Our policy manuals are updated. Our staff need to be trained. It requires additional resources. So when we do those types of major reviews we would open it. Then we would close it and then we would next for the next review, unless it is your comment that it was substantive enough that it would warrant us to go in earlier. I suspect it was just, well, there's a review coming we'll carry it forward till that. Again, I'm speculating.

C. WELLS:

It may well be in fairness, Ms. Cochrane, to the actions that government took at the time, I would have to go back and check the detail on but I believe it may well have been the case that the Attorney General took the action that he did in the court in Newfoundland because of the decision of the Supreme Court of Canada in the *Blood Tribe* case. I think that may have been the case. Thank you very much. If we can move on now.

R. COCHRANE:

And the next section we wanted to discuss is Policy Advice. Pre-2012, section 20 provided a public body with the ability to withhold information that is advice or recommendations prepared for or by a minister as well as drafts regulations and legislation. On average, this section was used in 15 percent of our requests annually.

Post-2012, several other categories of records were added to this section, including analysis or policy options, consultations or deliberations, as well as draft research or audit reports, unless no progress has been made for the three years.

On average, post-2012, this section was used in 10 percent of our requests annually. And by way of information, there is also a subsection 22(2) provides a list of records that cannot be withheld as policy advice. This subsection is the same pre- and post-2012. For example, factual information or a plan to establish a new program cannot be withheld as policy advice.

C. WELLS:

Okay, we'll deal with topic 4, first.

R. COCHRANE:

Yes, okay.

C. WELLS:

The highest degree of criticism we've had in this area, of course, is the addition of the new areas and that's the concerns. And the one that seemed to have attracted most attention and most objection is the reports that have been submitted on the basis that they were incomplete or draft reports. And the concern was that what was being encountered was everything was sort of in draft form and was never concluded, despite the fact that even from an outside agency it had been submitted to government. It was said to have been submitted to government in draft

form. That effectively means that virtually all reports could be sort of treated in that way, even though work had been done, the outside consultant had been paid for it, and government had the report, but if it was said to be in draft form we could go back for a minor adjustment here or there. It was considered in draft and was not subject to release. That's the concern that's been expressed to us. And that apprehension is understandable. Is it real that most of these reports come to the government in draft form first, even when they are done by outside consultants and they are paid for and submitted to government? Are they mostly in draft form and still subject to revision?

R. COCHRANE:

In all of my years in the organization we have always had draft. In the 28 years I've been there they have always come in as draft. I've commissioned many reports and the consultants provide them to us in draft and then we would have a review to see if there is any supplementary information and we would review it in terms of the terms of reference as provided to make sure it is complete and that there are things that are captured appropriately.

C. WELLS:

And what proportion of those go back and have any significant revision?

R. COCHRANE:

It varies. Just from my own experience, I've seen some reports that I've been involved in some reports where I've asked the consultant to add a substantive piece on a financial implication, for example. To do the research to cost out some initiative. And from our view it was not full enough. And I've had other reports that are very minor amendments. So it can vary substantially. It depends on the consultant and the nature of the topic.

C. WELLS:

Can you identify any underlying reason why once the report comes to government, even though it's said to be in draft and it might go back for a relatively minor change or a more substantial reassessment of costs or something of that nature, is there any underlying reason why that couldn't be entrusted to the public to know what's in the report at that stage? Would the public interest be adversely affected by disclosing it at that stage?

R. COCHRANE:

And I would just take that question this way. Some of our consultants that we used, especially in the last 10 years, are out of province, for example, because it's an across the country bid these days. And by the very nature of it, in some instances the consultants may not understand the full, our geography is an example. It could be a study on housing and they may not understand the breadth of our province, and when they come forward with recommendations. I've seen one report in recent years we had to go back to the consultant and clarify that the recommendation that they had reached, and it's a draft recommendation, operationally would not work for here because of our geography. So there have been instances where some of that might cause .... In that instance if we had to release that report I would have been concerned about creating public anxiety with the way the recommendations were worded, if I was a client of government. It wouldn't have worked.

C. WELLS:

Would you still have the same apprehension if the statute provided for the Commissioner looking at it

and hearing your concerns look, Commissioner, there is a serious defect here? Or Commissioner, the defect is minimal, that we are not as concerned about that? Or here is what our concern is. And have the Commissioner, is there any underlying reason why that couldn't by employed?

R. COCHRANE:

Certainly that is one option. From an advising perspective, it would be fine. I mean, I can't speak to government broadly but in my operations I would have had the same issues with an incomplete report or just a minor editing report. We just would like to get it correct in those reports.

C. WELLS:

I understand. Okay. So there is no other underlying reason for concern, if we're considering recommending this as a potential solution, that you can think of at the moment?

R. COCHRANE:

Well, Mr. Wells, I'm only one of the deputies. There may be other deputies who have a different experience who have some substantive comments.

C. WELLS:

Perfectly understand. But you can think of any?

R. COCHRANE:

From my perspective in my own mind.

C. WELLS:

If you do, if in speaking with other deputies you identify any, it would be helpful if you would let us know, yes.

S. COLLINS:

I think the biggest part with that is obviously recognizing the fact that there are some issues around it and Rachelle brought up a good point with regards to putting something out prematurely that they may cause anxiety in the public. So as long as that can be addressed and whether it is addressed through the deputy and the departments itself or whether it is through the OIPC, as long as that need is met.

C. WELLS:

You get the opportunity to address it.

S. COLLINS:

Right.

C. WELLS:

Okay, if you'd move on to No. 4.

R. COCHRANE:

Thank you. And now Topic No. 5 relates to the

security of our IT information, and we have a substantive IT system operating within the organization. Post-2012, I'm in the wrong section, I apologize. Currently in the Act there is minimal language that allows OCIO to protect securely related information from disclosure. We have been using paragraph 22(1)(l) to protect the confidentiality of our security-related records. However, a number of jurisdictions have provided clear protection for their records, including Nova Scotia, Ontario, Manitoba, Alberta, BC and Nunavut. We are looking for your advice in this area. Ellen MacDonald is here as well. She is our Deputy Minister responsible OCIO and is entrusted with the function of protecting our assets. If you have questions she's more than prepared to speak to this issue. We just need a bit of time to change chairs.

C. WELLS:

If Ms. MacDonald would. Thank you, Ms. MacDonald. Mr. Letto has some questions for you.

D. LETTO:

I wonder if you would, first of all, maybe expand a little on some of the concerns you have about, we talked about there is minimal language in the Act

right now that relates to protecting security-related information from disclosure and what particular concerns you might express from your perspective?

E. MACDONALD:

I guess, first off, just to set the stage, OCIO has accountability for acting as the custodian of the government data. So all government data. We secure we protect against hacks through the internet. And as we know every time you pick up the newspaper there is increased number of incidents where there's attempted hacks in, and some people have problems as a result of that. And as we put more services online, it increases the risk that we face because I mean when you hook into the internet you're at risk. So we know that the more services we put online for the pubic, the more risk we have. So we try to take a proactive approach to be prepared for that. There is very smart people out there that are constantly trying to break into all government networks. So we are trying to be proactive.

Right now there's provision in the Act for us to not release information that might disclose the arrangements that we have around security which

actually we've successfully used to date in not having to disclose information that we think would bring harm to any of our systems. However, there's things that make us nervous about what's coming on (inaudible). It is very difficult to discuss. We typically tend to say we don't want to discuss our security posture in the public domain.

D. LETTO:

Do you get requests from people or organizations?

E. MACDONALD:

We have had requests about our security network, what kind of incidents we've seen and what we've dealt with as part of our security profile. We've disclosed information about yes, we have it as all standard people do and we're as safe as we think we can be today. Tomorrow we may not be safe because of the number of things that happen. But if I try to use an analogy without discussing IT security, just even the building security model. If we had a building that we had security guards that were lying around, we wouldn't need to disclose that. We wouldn't want to tell them you have security guards every 15 minutes going through. And that's something we could, using the legislation, not disclose. But

if the security guard took the security break twice to have a cigarette and somebody broke in the back door because that's our weakest link, disclosing that information, just talking about that would make hackers aware that hey, there is a weakness there. They can get in that back door. So we're just trying to protect our security profile in line with other jurisdictions. Most other jurisdictions have a bit stronger language than we do, the vast majority.

D. LETTO:

Do you have some suggestions then?

E. MACDONALD:

The other jurisdictions, actually we say we're (inaudible) arrangements is what we can restrict (inaudible) arrangements for the security of a property or system. Most of the other jurisdictions use harm the security of any property or the system. So it is just a very slightly stronger language that enables us to protect the information that we have.

D. LETTO:

Okay. I don't know if there are other any questions on that part of it. I was going to wade later into some other stuff but maybe Ms. Stoddart as well has some questions.

J. STODDART:

I just don't know. I'm obviously very interested in the question of data breach provisions and so I don't know whether it would be more convenient for you to just discuss that now or later. I guess it comes up at Topic No. 13. But perhaps I can ask you now that you are here. What has your experience been? I think it is in your brief, you do talk about a privacy breaches that you have experienced. We would be very fortunate if you were the only jurisdiction in Canada that didn't have major privacy breaches. Unfortunately, everybody seems to be subject to it, no matter how diligent they have been.

Have you used any notification procedures when there have been major privacy breaches in public bodies in Newfoundland? Have you had to go out and notify people as you yourself propose should be done in chapter 9 of your Privacy Policy Manual? You talk about how you evaluate the risks and notify affected individuals. Have you done that up till now?

E. MACDONALD:

I've only been with the OCIO for the past three years. In that time, there was really only one

requirement for us to kind of notify that there was a problem and to restrict some accesses till we fixed the problem. We've been very lucky that that's the only one we've had to. And we have a normal protocol around incident responses as to how we respond and who we notify and how we take action. So we followed our normal incident response and documented what we had and we notified government broadly as to what the issue was, and it was strictly within government departments. This one was managed within that, so. That's the only experience I've had to date.

S. COLLINS:

And if I can just also, if I can add to what Ellen had just said as well. There is guidance provided by the Office of Public Engagement around what should be disclosed and we have regular contact with departments. However, there is no notification required under the Act.

J. STODDART:

No, there is not, Minister. Thank you for pointing that out. And indeed, that's something that we're interested in and your very comprehensive privacy manual that looks, if I may say so, extremely real done, you do talk about, at page 65 and 66, step 3,

Notification. And that is not unusual. In most jurisdictions now either it is mandated the legislation or in practice you ask yourself the question, are there people who should be notified of a privacy breach because of some kind of harm that could befall them if they didn't know. So you've never had to notify individuals outside government employees who are involved in this?

E. MACDONALD:

No, I haven't.

J. STODDART:

No. That's an enviable track record. So then of course you haven't had to mitigating steps to help them face some kind of harm that would happen to them. I'm thinking in other provinces. For example, there had been new driver's licenses that have had to be issued to folks after the breach of a driver's license bureau and so on. That's never happened so far?

E. MACDONALD:

No.

J. STODDART:

Would you consider data breach protection in any forthcoming legislation to be a help to the

functioning of your office in that it would make steps subsequent to any breach clearer?

E. MACDONALD:

I guess for clarity purposes, most of the requirement to notify about data breaches, the actual ownership of the data resides in the departments. We strictly act as a custodian of the data. We store it. We back it up. We make sure it is safe from the internet. But we don't own the data from a communicated (phonetic) there's been in issue or dealing with, say, for example, the reissuing of licenses. The department owns that full responsibility.

J. STODDART:

Okay. So you would get back to the department. Say look, there's a problem, this is what you should do about it and then the department would take any remedial steps, if necessary?

E. MACDONALD:

Correct.

J. STODDART:

Okay, thank you.

E. MACDONALD:

Okay.

C. WELLS:

Ms. MacDonald, I conclude from the last line of this, "We are looking for advice in this area". To be asking this Review Committee to consider the purpose of the Act in providing access to information, including security information, IT security information, but to provide you advice as to what should be the extent of access in the context of, according to IT, the security of the nature that police provide. When they have procedures in place to protect against criminal activity they don't announce what the procedures are. So you're essentially seeking legislation or seeking suggestions for legislation that would enable you to provide the necessary security but still provide reasonable access to the information. But assure you are being able to protect the ID.

E. MACDONALD:

Correct. We would like to strengthen the language about what we disclose about our security profile.

C. WELLS:

Okay. All right.

D. LETTO:

I'm thinking this is as appropriate a moment to ask

about this. When it comes to protection of security as it relates to IT, does the government have arrangements with external third parties where they have either access to your system or they provide services to your system?

E. MACDONALD:

Yes, we do.

D. LETTO:

Okay. What type of security protocols are in place to make sure that there is not an infiltration of your system through that door?

E. MACDONALD:

We secure, we have an external provider who is a recognized expert across Canada, a very large footprint across Canada to provide security services. We use them. We awarded them a contract through a competitive position or we would have checked references, or we would have worked closely to determine could they bring the kind of profile we use. So they come in and we bring them in when required. If we had a breach, we would bring them in. When Heartbleed showed it, it was all over the media and we said how are we positioned? We brought them in. They worked very closely with a couple of

branches in my department, that they only get access when they approve the access. So it's a controlled access to our system. When we ask them in, they come in. It is a full disclosure. We give them full access. They've signed the security information for us, they've signed the contract, and we rely on them to provide us safe and secure guidance.

D. LETTO:

Are you in any way able to monitor the work they're doing to see if there is anything untoward that happens?

E. MACDONALD:

Yes, we can. We have in the past actually done spot checks to see where they've been in. When we've asked them to come in, have they come in and done the work that we expected them to do and not wandered around else. So we do check them.

D. LETTO:

Recently in my driver's registration there was a card that suggested I can now renew my driver's registration. There is some involvement with Epost, which I presume is a Canada Post subsidiary. Do they have any access at all to the government's infrastructure, IT infrastructure? And how do you

protect that and to make sure that there is no problems that result from it?

E. MACDONALD:

I believe that Epost is used as a bit of a payment broker. That you can pay for the service through Epost. So we would have a system that manages your records as an MRD, has a holding license, and your records financially. And there is a secure pipe. Sorry, a secure method for us to communicate with Epost. And we would just send them the information that they need and they would respond that it was successful or not. They don't get into the system at all. They send outside the perimeter that's secure.

D. LETTO:

So it is always a good gap. You hand it over, they take it.

E. MACDONALD:

It goes through a secure pipe, essentially, and then you would give them what they need to deal with the cash, to deal with the payment, and then they would just respond to us saying it was successful and then our system takes over again.

D. LETTO:

And I guess this issue is instructed in the area of

there are a lot of public private partnerships that exists across the whole range of areas and concerns that get raised increasingly are IT concerns and privacy concerns and what are public bodies in these instances doing to ensure that there is no risk or no greater risk than you can contemplate. Is that stuff that keeps you awake at night?

E. MACDONALD:

Pretty well. There is risk every time we connect to the internet. And it is constant and it is ever changing and we update our systems every day for security patches.

D. LETTO:

You're telling us you're acutely aware of all this.

E. MACDONALD:

Yes.

D. LETTO:

Yes, fair enough.

E. MACDONALD:

Very much so.

C. WELLS:

Thank you very much. I've been getting nods that indicate I'm trespassing on lunch break and that I have trespassed somewhat. So we adjourn now until

two clock. Is that all right with you, Minister?

S. COLLINS:

Sure.

C. WELLS:

Okay, we'll get back together at two o'clock. Thank you, Ms. MacDonald.

(Lunch Break)

C. WELLS:

Okay. We are ready whenever you are.

S. COLLINS:

So we'll continue on with No. 6, I believe, Third Party Business Interest.

C. WELLS:

We're up to No. 6.

R. COCHRANE:

So the topic is Third Party Business Interest. And pre-2012, section 27 required the head of a public body to refuse to disclose information that if disclosed could result in harm to the business where a three-part test was met. The test includes trade secrets for commercial or financial information; 2) supplied in confidence; and 3) harm to the business.

On average, this section was used in 10 percent of our requests annually.

Post-2012, following concerns raised during the last review, a one-part test was adopted to provide increased protection for third party business information. The information was withheld if it met a one-part test. That is: 1) trade secrets; 2) commercial financial information supplied in confidence; 3) commercial or financial information that could harm the business. And in this instance they are "or" as opposed to "and". So one of the three have to be met.

C. WELLS:

Any one of the three instead of all three.

R. COCHRANE:

Yes, absolutely. In post-2012, on average, this section was used in six percent of requests annually. And then, Mr. Wells, we have with us today Alastair O'Rielly. He's the Deputy Minister for our industry department and he's prepared to speak to the issue of third party business interest.

C. WELLS:

Okay. We do have some questions on this issue

because it has occupied the interest of a number of our submitters. Mr. O'Rielly, good afternoon.

S. LETTO:

Good afternoon. The Commissioner has told us that the approach that was in place prior to Bill 29 struck the right approach in his view. That it was the gold standard in Canada having to meet this higher level test. Is there a compelling reason why that pre-Bill 29 system should not be reintroduced?

A. O'RIELLY:

Thank you, Mr. Letto. I don't know there is a compelling issue in terms of empirical evidence that I can cite. I can only speak to our experience in dealing with our clients who, as a regular course of events, ask about confidentiality and express their concerns about disclosure of personal corporate information. This is especially the case, of course, with companies that are not publicly traded which are predominantly the companies that we deal with, and they're very cautious about public disclosure of information. In some cases, they've asked for the completion of a nondisclosure agreement with our department, which we've done on occasion. The sense that we have is that if we were to go back to the

pre-2012 arrangements and test requirements it would be very difficult to give any real comfort or assurances to our clients that the information that they are concerned about can be protected, even with a nondisclosure statement. So, the feeling we have is that the existing arrangement post-2012 does offer the right balance in terms of ensuring that if there is information that it can be disclosed it is readily available to the public or to applicants.

The other observation I would make is that we don't really get a lot of requests for this kind of information. The numbers I think that Ms. Cochrane referenced, referenced the issues of section 27 and a number of inquires. In the case of our department, I think we had eight inquiries last year and 10, I think, the year before. Not all of those had to do with requests of disclosure of this kind of information. So our experience is that there is not a lot of people really interested in this kind of information in any event and readily accept that this information that's been put forward by prospective clients of the department is accepted as being confidential.

D. LETTO:

We've had the Canadian Federation of Independent Business appeared here in, I believe it was, July and their view was that when taxpayers' money is being spent on goods and services there is a public need to know. There is a public interest aspect to all of this. And their concern is that the changes that were made in 2012 are being used and could in future be used to prevent this kind of disclosure. In that respect, so businesses provide, it seems, information to government in two kind of separate ways. One is that they're required to by law do certain stuff; and the other is that in the context of bidding on tenders they have to provide information. Is there any reason for treating those two types of information in the same way?

A. O'RIELLY:

I can really only speak to the issues of economic development or business development as it relates to our Department of Innovation, Business and Rural development. But you're right, I think, in as much as these are very different set of circumstances in terms of the public's interest in knowing about government procurement practices and the terms and

conditions under which contracts have been awarded and to whom. In our case, as I said, the level of interest as to who is seeking public sector support, what the business plan is, what the strategy is, we really don't see very much of that at all. So I think there is a clear distinction between the requests that have been made for the purposes of determining what's happening in government procurement versus the few requests that we've had concerning applications for public sector financing of business development.

D. LETTO:

Well I've seen, for example, on the ATIPP website where a completed access request is published or posted, and one I'm thinking of in particular was a wharf project in St. Alban's, I think it was. And the requester wanted to know how much rock was used and how much of this and how much of something else. So the answer was provided but the quantities were all blacked out. It would seem on the face of it, and maybe you can educate me on this, that there is a public interest in releasing a lot of this information because it can perhaps do two things. One is that it can sharpen up competing bids for the

next time, because there is always a next time. And that might also improve the chance the public body gets the same level of quality in a bid for a better price. So, there's more competition and the public body is able to benefit from a better price. Does that make any sense?

A. O'RIELLY:

I can't really argue the point. I mean in as much as it is not our area of responsibility. I mean I see your point and I don't disagree that there is merit in that issue from a procurement point of view and the question is I can't really speak to what balance there is in terms of the bidder and the disclosure of their bid versus the public's right to know it is a legitimate issue. I am only speaking to, I can only speak to it in the context of the economic development initiatives where it is a very different set of circumstances. There may be a reason to consider the application of section 27 differently in these cases.

C. WELLS:

I was thinking in terms of there being two kinds of information. Information government requires businesses to provide as government as regulator

require. They regulate an area of activity and businesses are required to report this, this and this and so many other things. That's required by law. They're compelled to give it. It is not a voluntary thing.

The second one is they are suppliers of goods and services to the government as customer and the government is spending taxpayers' money to buy these goods and services and they're bidding competitively to get it. Most members of the public as taxpayers are interested to know the government is properly making decisions to spend taxpayers' money. So that information, all of it involved, in the ordinary course you would expect it to be made available. There is no reason to protect it. And people who do business with the government, according to the Canadian Federation of Independent Business and one or two other businesses who have a appeared before us, we expect to have our bid prices and our quantities and so on, everything, all made available to government. This is the price of doing business with government.

But then there is a third kind and that's the one you're talking about, where government has been asked to provide developmental support, financial money guarantees or other forms of publicly-provided support for the development of economic activity and you're provided with certain information. That's a new kind and one can understand that that's being provided not voluntarily in the conventional sense, but I guess it is really, but there is a different, slightly different character to it. But is there any compelling reason that you can think of why businesses who are seeking to do business with government and compete with others in the public sector want to hide any of the information, want to retain it or would object to its being released, except to get an unfair advantage over other competitive bidders?

A. O'RIELLY:

I think I can muse about it, I guess, or speculate that somebody may have some comparative advantage in terms of a unique source of supply, or some sort of a special arrangement they would not want to have disclosed, in order to give their competitors the same advantage or the same opportunity that they

have. But I mean I'm speculating. There might be something of that nature, something unique. But I don't know. In the normal course of events, I don't now what the case would be for not being required to disclose quantities in a bid or the amounts, no.

C. WELLS:

If that were genuinely the case, wouldn't it be better to revert to a standard prior to 2012 when you could assess that and test it? And if that was a peculiar trade secret or something of that nature that you're talking about, then that could genuinely be protected but all other information be released in the ordinary course?

A. O'RIELLY:

I think I'm inclined to want to suggest that I defer this to perhaps my colleague that is responsible for government procurement and the Government Purchasing Agency.

C. WELLS:

Is that colleague available here with you?

A. O'RIELLY:

No. I'm sorry, no. It isn't really within my area of responsibility and I don't know what else considerations there may have been.

C. WELLS:

I understand. See, we've had representations made to us and on the surface of those representations it is difficult to refute them or ignore them or say they're wrong without something on which we can rely. And so far I've not seen anything from government that would give us comfort that we could safely rely, could safely say no, there should be no change. At the moment the case seems to be more strongly made towards reversion to the status as it was prior to 2012.

It's difficult to justify refusing it merely because the business supplier didn't want it released. That's part of the price of doing business in a democratic system where you're competing fairly with others for government business. It is part of the price that you disclose. Everything is going to be disclosed because people expect governments to disclose that kind of information.

S. COLLINS:

I was just going do say, Mr. Wells, with regards to the questions surrounding Government Purchasing Agency this may be an instance where perhaps my

officials can go back and we can have that discussion and provide something in writing, as opposed to us speculating or trying to speak on behalf of someone who is representing ....

C. WELLS:

I think you're quite right. I think that's the better course.

S. COLLINS:

You have a good question and hopefully we can get you a good answer.

C. WELLS:

Have we made the question fairly clear?

S. COLLINS:

Absolutely. Absolutely.

D. LETTO:

There is something else I did want to put in front of you before we moved on. I don't wish to do as a former politician would always be quoting things, people, but Leonardo de Vinci said "simplicity is the ultimate sophistication". And that leads me to, we've been looking at laws from other countries and just trying to get some understanding of how they grapple with the very same things that we are. And the UK *Freedom of Information Act* with respect to

commercial interests, I don't expect you to be able to read it, but the first two sections are essentially where the protection is. And it says, "Information is exempt if it constitutes a trade secret. That's in the Newfoundland and Labrador Act. "Information is exempt if its disclosure would or would likely be able to prejudice the commercial interests of any person or the public authority holding it." And "person" is defined as an organization as well. And the extra protection that's built in there is that it is also subject to a public interest test.

I wanted just to kind of put that into the record because there are alternate ways of looking at this. This takes up three or four lines and I think the section in the current Act takes up maybe three quarters of a page with spelling out the exemptions. Does that, Mr. O'Rielly, on the face of it, does it capture or not capture the harm that you think could come in the sorts of cases that you've identified to us?

A. O'RIELLY:

On the face of it, it does sound like it offers some

protection for the kinds of interests and concerns that we see in our representations from companies that are wanting to do business in the province and are seeking public sector support. It is fairly clear in most cases and it is fairly straightforward how the disclosure of that information would be damaging to the company and available to its competitors and so on which would be covered in that case. So my initial reaction, I think would want to reserve to look at it more closely and get back to you, but my initial reaction would be that sounds like it would meet our requirements.

D. LETTO:

Yes. And the UK Justice Department then gives some guidance on how to interpret that. And they say, "It's important to note, however, that a simple assertion by an individual or body that there would be prejudice to his or her interests is not sufficient. The assertion must be supported by reasoned argument and, where practicable, by empirical evidence. In particular it is not sufficient for a body simply to mark a document 'commercial in confidence' for the information in it to be exempt."

So it's more than saying it. There has to be proof. And I think in answer to one of the questions earlier you said you don't have the empirical evidence to, let's say, answer a question. But it requires, obviously, that it be more than just saying that it be exempt.

And I just raise it because people in various parliamentary democracies with Westminster style of government as we have are dealing with the same issues in their access and freedom of information acts. And some of them are in their second iteration of the Act. The UK one is, I guess, almost 20 years after the various Canadian ones have come about. So there has been some chance to assess and reassess the thinking on some of these things. So, I just wanted to put it on the table. I wouldn't expect you to say yes, give us that section but it's just something for us all to think about.

A. O'RIELLY:

If I may offer a comment on that. I think it would be useful to look at it in the context of the existing language because there is a burden of responsibility right now from our perspective that we

either have to show that it's confidential information or show that it's probably going to cause damage. So there is some clear protection in the existing arrangements post-2012. I'd be interested to look closely at the UK language and see which offers the greater level of protection of the public interest and of the protection of clients.

D. LETTO:

Yes. And the public interest is a whole set of tests that have to be met both for disclosure and for nondisclosure. So it is not a matter of just saying, well, it's in the public interest that people have it. It has to be weighed by wise people.

C. WELLS:

One of the express directions, and as a matter of fact it is the first one in our Terms of Reference, in describing the scope of work is identification of ways to make the Act more user friendly so that it is well understood by those who use it and can be interpreted applied consistently. We interpret that to mean that we are being asked to look to more simplistic approaches like what Mr. Letto just mentioned, the UK approach. It is considerably more simply expressed and covers the same areas fairly

well than our present statute. Can you think of any reason why we shouldn't try to go in that direction because that's what the Terms of Reference really ask us to do? Not necessarily to reduce the size but to make it more user friendly which means simplifying the more complex processes.

A. O'RIELLY:

I think that's desirable from a number of perspectives - from the public's comprehension, from the application of the policies by public servants and inconsistency in terms of how we deal with these types of requests, so.

C. WELLS:

Thank you, Mr. O'Rielly. We appreciate it.

A. O'RIELLY:

Thank you.

R. COCHRANE:

Okay. The next two sections that we're going to discuss, the first one relates to No. 7, Personal Information. Pre-2012, public bodies were unable to disclose personal information unless it was included in a list of exemptions. The exact salary of public employees was disclosed.

Post-2012, this section was replaced to include a harm test to allow the release of personal information that would not result in an unreasonable invasion of an employee's privacy. The number of factors were added to section 30 to consider when determining whether the information could be disclosed. A substantial number of factors are listed in section 30 to consider and I think there is a couple of pages if you turn to that piece of the Act.

C. WELLS:

I'm sorry, I'm not hearing you.

R. COCHRANE:

Sorry, Minister. Okay.

C. WELLS:

And I should say to you, Ms. Cochrane, I'm not alone. My colleagues have similar difficulty.

R. COCHRANE:

I understand. I will speak a little bit louder, how that's?

C. WELLS:

That's fine. Shout at me.

R. COCHRANE:

During the review, this was post 2012, during the

review it was noted that some employees expressed concern about the disclosure of their exact salaries for privacy reasons. As a result, the section was amended to allow disclosure of salary ranges of employees and where there are no ranges the exact salary is provided. And that's the practice that we follow today. So that was the change that brought about the amendments to the personal information.

J. STODDART:

Yes, I have a series of questions on personal information but, first of all, I would like to say to you, Minister, that I think the 2012 changes that you brought to broaden the coverage of incidents dealing with personal information are generally very good, the changes in 2012, and on something that's excluded from the scope of our review because there is no necessity for it to be reviewed at this time. Your *Personal Health Information Act* is widely seen across Canada as being a leading health privacy protection Act and is often held up as an example. So I just wanted you to know that.

S. COLLINS:

Thank you.

J. STODDART:

I have some concerns dealing with the Act but I also have concerns about things that are not in the Act that might possibly be, so I'm taking advantage of this moment here to ask you about them. The first one is an issue that came up. Several people mentioned it. The two leaders of the opposition mentioned it, as well as another person. And this was about a new policy whereby requests to the governments from the Members of the House of Assembly on personal matters of their constituents must now be by this channelled through the executive assistant of the officer of the minister whose department is concerned. And so, they were concerned about political staff seeing the personal information of citizens without their knowledge or consent. One person said well, when she had to go back and explain that to her constituent, they would have to go through the aid of the minister of the department concerned, the request would be dropped. I wondered if this seems an unusual and perhaps, technically speaking, a legal practice. Is there any reason why we should not recommend this be changed? That requests go directly to the department and the

department could inform you from time to time of the type of requests they got and the replies it gave, but the practice of going channelling requests through the executive assistant of the minister be stopped? Would there be any problems with us recommending that?

S. COLLINS:

Well, I don't know how efficient the other process would be. For example, if you had an issue with the Department of Health, the Department of Health is a massive department, as you can well appreciate. I don't know who that one person would be. An executive assistant could act as a liaison between the personal asking the question and the person who would answer the question. With that being said now, that isn't in the Act as such. It's been a policy, I guess, that's been at the discretion of each individual minister.

J. STODDART:

Yes, it's not in the Act.

S. COLLINS:

Right.

J. STODDART:

Yes, we understand it, sir.

C. WELLS:

With regards there's been a practice that (inaudible).

S. COLLINS:

Right. Yes, and to my knowledge not everyone employs that and I am not even sure if anyone employs it at this point. But again, I draw my experience as an executive assistant in the past. So I know used to get calls from not only residents across the province but from the opposition office as well and then I could act as a conduit then to make sure they get the right person. Sometimes it would be as simple as me putting them in contact with the right person as opposed to me speaking on behalf of the person. So, I think the process can - and I say can - lend itself to efficiency and getting answers out, getting correct answers out quickly. I understand the perception though, however, could be something a little bit different from that.

C. WELLS:

That certainly is a different perception that's been put before us -

S. COLLINS:

Yes, understand.

C. WELLS:

- by not only the two opposition leader who have made representations each of those have spoken about it. But at least one or two other presenters as well raised the issue. One can easily see it as a political practice that is not quite acceptable or doesn't seem to be quite kosher and we have been asked to recommend that there be a provision in the statute that would preclude that. And when we press on the point they kept emphasizing the real risk is loss of personal information for the constituent on whose behalf the MHA was making a representation.

S. COLLINS:

Well, something else that I've also heard from public servants - there is a perceived liability with regards to talking to someone from outside of your comfort level, we'll say, or someone you deal with on a daily basis in the department, whether it be an executive assistant or some sort of inquiries person. Once you go outside that level of comfort, of course people know who opposition members are but they don't necessarily know who their staff are. So I think there's, again, perceived liability perhaps on behalf of the staff people in the departments that are

answering these questions. And sometimes these questions can get political, and I don't think they want to be brought into that either. So to have an appreciation for that, understanding, again, that the perception may be not kosher, as you had said, but being able to put something in practice that can work and that's reasonable and suits everyone's purpose in an efficient manner, I'd be more than willing to hear what they'd be. But recognizing the fact would that, then, have to put an inquiries person in every department to be that person? How would it work is what I'm getting, I guess, understanding the limitations of the current system?

C. WELLS:

Well, I don't know. We want to hear both sides of the issue before we gave my substantial thought to how it might work. But I'm trying to find whether or not you see good reason to retain that practice or not to express a prohibition against that practice, and that's what I'm soliciting from you when you just told me that staff members may not have a comfort level dealing with staff of the opposition office that they don't know. They might know the opposition members but they wouldn't necessarily know all the

staff. That's one concern. I don't know. Do you have any other concerns that we should take into account?

S. COLLINS:

Well, again, like I said, I don't know if it would speed up the process or if it would make it more convoluted trying to get answers from a department. The other thing, and more to the point that you just expressed just previous, I've heard staff people say before how frightened to death I'm going to get on the front page of the newspaper if I say something that maybe I worded differently because I don't have a filter. And by filter I mean the wording and the way you convey a request. What's to be disclosed and am I disclosing something too much? I take the Department of Health, for example. There are so many sensitive matters. You can look at other departments as well. Child, Youth Family Services as well, very sensitive matters. And I think if you were to put that off onto a staff person who could potentially be someone new, just in the job for a week with no experience, straight out of university, it is quite intimidating. So, while I understand your concerns, I don't know if there is a better way of doing it as

such. And not so say it is not happening already but I think those would be some concerns I would have.

J. STODDART:

You mentioned liability, Minister, and that brings me to the fact that the Speaker of the House of Assembly wrote to us recently and he's proposing that we recommend an amendment of section 71 of the Act in order to limit the liability of elected members for perceived breaches of personal information.

We were quite puzzled on receiving this letter and I just wondered if as Member of the House of Assembly is there a problem, is there a current problem of liability or misunderstandings when Members of the House of Assembly handle personal information of constituents? We just didn't know what the problem was that needed to be addressed?

S. COLLINS:

I haven't experienced it firsthand in my six years of being elected but I have experienced from speaking to other colleagues of mine a perceived liability. So I think that's where it really comes down to. So it may be something that would clearly outline if we were to be educated around it maybe would solve that

problem in itself. But there is definitely is. And, again, I draw my own personal experiences. You get all sorts of calls from constituents, from the very sensitive to the most mundane. So when you're dealing with those types of issues you want to make sure, once you get that information, how you perceive to find out answers for them. And so, again, I think it's perceived and for good reason.

J. STODDART:

And just what are the members worried about? That they'll be accused in the media of mishandling people's personal information or they're actually going to be sued or?

S. COLLINS:

Well, say, for example, if you get a call from constituents regarding a marital dispute or there's something of that matter where there is a couple of parties involved and how you handle that and the advice you give, it is hard, perhaps, to give one concrete example. If you were to give me time I'm sure I could dig up a few, but I just think, again, going back to the sensitivity people are wondering, well, if I were to do this, what's the repercussions? Am I speaking to the right people? Am I speaking to

too many people? What should I disclose? And a lot of times when constituents disclose to their member, there is no filter. They say whatever is on their mind. And sometimes there is accusation involved. And sometimes they can be serious as well. So there is a bunch of different steps you have to go through. I feel as though that could give to that perception of liability because I'm handling this information. I want to make sure I handle it in the right manner.

J. STODDART:

Okay. Well, I find that helpful. I guess I was looking at it in terms of an access request or request for one's own personal information. You're describing to me a situation where people come with a whole series of human problems to you hoping for some kind of advice. And this has nothing to do with the administration of ATIPPA.

S. COLLINS:

Okay. So do you want to give me an example of what you were referring to again? Sorry, if I missed the boat on that, but.

J. STODDART:

Well, it's just that the Speaker of the House of Assembly wanted coverage for liability for perceived

breaches of personal information, and we had breaches of the confidentiality of personal information. We had problems understanding what the issue might be. From what you are telling me, it's perhaps in your constituency work people confide a lot of personal information to you that makes you a bit nervous about receiving and handling it. Would that be a fear?

S. COLLINS:

Absolutely.

J. STODDART:

It doesn't have to do with access to information requests or formal requests of the government tell me what personal information you have on you. It is just things that are confided in to you because you are a public official of trust.

S. COLLINS:

Correct.

J. STODDART:

Okay. Well, thank you, that's very helpful. I will go on to an issue that certainly isn't in the ATIPPA and hasn't been discussed at any extent here, but this is something that is part of a growing discussion across Canada. You may not be aware of it but I'm sure your staff is. And that is the

questioning on the part of Canadian citizens about the personal information held by political parties. There have been several incidents in recent Canadian political scene involving the personal information of Canadians that's led the Office of the Privacy Commissioner of Canada bring out a study by a political scientist on this issue. More recently, the Chief Electoral Officer of Canada formally recommended that political parties have at very least a code of conduct for handling the amount of personal information that they collect and that increasingly they process using sophisticated software.

So, I wondered, given this, could you tell us if there's any concerns of this kind in Newfoundland? Have you heard this issue brought up or discussed, or would you welcome a code of personal information handling practices for the personal information that is in the hands of political parties at the present time?

S. COLLINS:

I would absolutely welcome and see the value in it. I haven't heard, to be honest with you, that discussion on a local level here provincially. I am

somewhat aware of the national attention that's drawn that you've referred to but nothing as such that's come forward. But any time that we can help with the privacy, obviously, of individuals, whether it be through government or political parties or wherever the case, I think there's an onus to do so. So we'd welcome direction on that if you were to offer it.

J. STODDART:

Okay. Thank you.

S. COLLINS:

Thank you.

C. WELLS:

Just to go back to the House of Assembly question that Ms. Stoddart raised. What it was, what the speaker noted in his letter was constituents of Members of the House of Assembly often ask their members to assist them in resolving issues related to employment, health care, financial support, or other personal matters. And the MHA, in the course of doing so, accesses private personal information. And their concern is the information is released to a member by the public body, is then used by the member to advocate for his or her constituent. It is not for his use. And it goes on to say, "however, in

releasing the information required the public body is protected under section 7.1 of the Act" and he quotes that. And he says that the member is not specifically protected but he's asking that the member be included in this exemption from liability. And what Ms. Stoddart is really seeking is: do you have any reason, know any reason why that should or should not be recommended from your point of view?

S. COLLINS:

Well, for the same reason the public body will be covered off, we're dealing with the same information, sensitive information, so I would think the same reasoning would apply to the MHA.

C. WELLS:

To the MHA.

S. COLLINS:

I would think, yes.

C. WELLS:

Okay. Thank you, Minister.

S. COLLINS:

Thank you.

C. WELLS:

Okay.

R. COCHRANE:

The next topic that we wanted to raise was the term of OIPC, the Privacy Commissioner. The Commissioner is currently appointed for a two-year term. The average term of privacy commissioners across Canada that we've researched is, on average, five years. When we appoint privacy commissioners and general appointments in government overall issues that we consider include competency, a consistency in terms of the term of the appointment, and their commitment to maintaining in their function. In terms of the terms of appointments of other bodies in Newfoundland, it ranges from five to 10 years. For example, our Auditor General is appointed for a 10-year term and not subject to reappointment. Our Commissioner of Legislative Standards is appointed for five-year term with eligibility for reappointment. Our Child and Youth advocate is appointed for a six-year term with eligibility for reappointment, and our Office of the Citizens' Representative, Mr. Barry Fleming, he is appointed for a six-year term. So we just put this issue before you because if you have some advice and guidance on that we would certainly appreciate it.

We have a two-year term currently and if you think that needs to be changed, we wanted to give you some background information on that.

C. WELLS:

Okay. I think it's fair to say that the overwhelming majority of people who have made submissions to us have raised that issue. And have noted the perception that appearing to hold the Commissioner on a very short lease is almost an inducement. They are seen as an inducement to the Commissioner to make the right decision on any issue that comes before him, which is unfair to place the Commissioner in that position and it creates an unacceptable perception of the situations is the view that's been expressed by most people. One presenter went very far, went quite far - you may have seen it. I'm not sure it is posted online yet. If it isn't, it will be - to note that when the 2012 legislation was being brought forward the Commissioner expressed a view that it was still a robust piece of legislation, even with this proposed amendments. And a couple of days later the legislation was passed by the House of Assembly and two or three days after that the Commissioner's term was extended for another three years. And juxtapose

those events to say look at what that appears to be and the impression that creates of the system and the unfairness to the Commissioner being placed in that kind of situation, do you know of any or can you point to any reason why the term is as short as it is or any reason why you we ought not to recommend the significant extension of that term?

S. COLLINS:

No, we cannot. And I think if you look at what Rachelle had just said with regards to other commissioners and appointees, when you look at 10 years, six years, five years, there seems to be some sort of a trend with regards to appointments. So this certainly seems to fall outside of that, but, so, we don't see any reason as to not extend that. That's not a recommendation as such but I'm just saying in light of what we've presented.

C. WELLS:

I understand. I'm not asking you for a recommendation.

S. COLLINS:

Right.

C. WELLS:

I'm asking if you know of any reason why we ought not

to?

S. COLLINS:

No, we do not. No.

C. WELLS:

That's what we have to weigh in is the fact, not what you recommend to us, a good valid reason for going one course or the other.

Another issue that was raised, that speaks more in favor of a longer term, a much longer term, is that there shouldn't be any possibility of extension and then no commissioner can ever be said to be looking at reappointment and making a decision in contemplation of doing it in such a way as to make more likely reappointment. As a matter of fact, the Federal Information Commissioner, when she was here yesterday, recommended that it be a lengthy term like that and that there be no reappointment, for just that concern. Do you have any reason to suggest that that would be an unacceptable approach, a very long term with no potential for reappointment?

S. COLLINS:

Well, I understand outside the Auditor General whose tenure thinking you can't get reappointed, I think at

the end of the day we're dealing with human beings that are in jobs, and very important jobs, and sometimes you get someone who may not be able to perform their duties to the high standard that we require of them. So I think when you lock someone in to, say, for sample, a ten-year, that kind of handcuffs governments because we want to make sure ....

C. WELLS:

That is a reason not to do that.

S. COLLINS:

Absolutely. Absolutely.

C. WELLS:

Okay. So where do you fall down? Is there a solution to it? Might there be a solution, for example, if you had it for a five-year term with reappointment only with approval, at the moment it is only with the approval of the House of Assembly, but instead of simple majority approval of the House of Assembly, it be with approval of the majority on both sides of the House of Assembly? Do you see that that would cause a problem?

S. COLLINS:

No. I guess looking at what we already have in place

with regards to those that are five and six years with the chance of being reappointed, I think that's worked. It is nice to have the option to reappoint. If for no other reason, if the person is doing a stellar job you'd like to be able to keep person in the position.

C. WELLS:

Exactly.

S. COLLINS:

So how do you arrive at whether you want to keep that person then I guess that's, as you're suggestion, right now it is with House approval.

C. WELLS:

I'm looking for a solution that deals with avoiding the unacceptable consequences of a very long term, that you just mentioned, or avoiding the consequences of the Commissioner appearing to make decisions favorable to the government because of the potential for reappointment. And I just raise the question of whether requiring the approval of the majority of each of both sides of the House of Assembly might eliminate that (inaudible)?

S. COLLINS:

It may very well and if we can't alleviate that,

again, I always use the word "perception", because a lot of this is perception.

C. WELLS:

That's right, it is.

S. COLLINS:

We can alleviate that perception and provide that role to be as independent as it can be. I think that's a valuable comment.

J. STODDART:

Minister, it's not required by the Act and I don't know what the person's practice is but were you to have to fill such a position in the future would it be publicly advertised? As these positions as officers of the legislature publicly advertised? Do interested people know that they can apply for these jobs? How does this work?

S. COLLINS:

My understanding, it is not public advertised. They would be appointments and I guess there is protocol to appointments or you probably could ....

G. DOOLING:

I could probably speak to that from my previous role, if you wish.

J. STODDART:

Oh, certainly, Gig.

S. COLLINS:

Gig Dooling is the Deputy Minister of CYFS.

J. STODDART:

Okay, thank you.

G. DOOLING:

Good afternoon. I will speak to it in my previous role as the Assistant Deputy Clerk of the House of Assembly, of executive council. Normally what happens with the officers of the House appointees government will look throughout the executive ranks or throughout the community itself to see if there is an individual who they may be interested in pursuing for particular officer of the House. For instance, the Auditor General. Okay, so, we'll look within our current executive team first to see whether or not there are any potential candidates and invite, I guess, an application or an interview from those individuals. So sometimes it is done basically just from within the executive group or people that show interest within the public service. In some cases, we may go outside and post the particular position. I know the last Child advocate, the position was

actually posted and applications were invited for the position of the Child Youth advocate. And then, of course, there was a selection board that was formed and that would form members of the Clerk's Office, the Assistant Deputy Clerk, the Public Service Commission and perhaps somebody with experience in the role. If it was (inaudible), maybe an accountant. And then there would be interview process. And based on the interview process a candidate would be selected. Okay, so it works both ways, depending on the position and depending on the potential candidate you have internal that you may want to promote.

J. STODDART:

Okay, thank you. That's very helpful. Would you see that there would be any kind of functional problem if it were ruled that such positions given the responsibilities attached to them were publicly advertised and that there was a selection board?

G. DOOLING:

I wouldn't see a problem per se because if somebody internal was interested in applying they could submit their application as well, as long as there was a competitive process that gave weight to both

individuals internal and external. I think it would be fine.

J. STODDART:

Thank you.

G. DOOLING:

You're welcome.

C. WELLS:

Thank you, Ms. Dooling. So that's fine, thank you. Now we're up to topic 9. But essentially, we've already covered it.

R. COCHRANE:

We've done 9. That's correct.

C. WELLS:

So we don't need to repeat it, unless there is something you might want to add.

R. COCHRANE:

No.

C. WELLS:

From the Committee's point of view we don't need to have you repeat anything on that.

R. COCHRANE:

Okay, we'll go right into 10.

C. WELLS:

Just so that it is clear on the record what topic 9

is, is the suggestion that the Information and Privacy Commissioner should be able to review solicitor-client claimed privileged documents for purposes of seeing its valid and the same with respect to Cabinet records, official Cabinet records.

So we go on to Item 10 which is disregarding the requests on the basis that they're frivolous or vexatious or some other valid reason. You want to address that now?

R. COCHRANE:

I will. Pre-2012, a public body was able to refuse to respond to a request if it was repetitive or incomprehensible. Post-2012, a new section was added to allow a public body to disregard certain types of requests; such as repetitive requests that would unreasonably interfere with the operations, those that were frivolous or vexatious, trivial requests or those that were made in bad faith. In addition, public bodies can disregard a request if it is excessively broad with prior approval of the OIPC.

Our experience post-2012 shows that no department has used this section to disregard requests. It has

been used by two of our public bodies involving seven requests. One applicant made six requests to Nalcor and one applicant made one request to the English School District, and these did not involve excessively broad requests.

D. LETTO:

So that would suggest then. The public bodies dismissed those requests without having to consult the Commissioner?

R. COCHRANE:

Correct.

D. LETTO:

Is there any reason why the Commissioner shouldn't be involved in -- well, let's accept that not every request is either well-founded or that people may contravene certain rules of civility and everything else, including harassing public officials, let's assume that that stuff happens, would it be in the best interest of everybody perhaps you get the okay of the Commissioner before you disregard? And the independent body has no history with that person, has no involvement with that request previously in that respect and the Commissioner says yeah, this suits the pattern that we should be able to ignore this

kind of request. Would that be a way?

S. COLLINS:

One thing I'd probably note is that the Commissioner obviously doesn't have an intimate understanding of how departments work or what they deal with. So, for example, if there was a request put in and, again, I go back to the Department of Health, Community Services due to just its massive size, there is so much subject matter there for someone who is not intimately familiar with it, it perhaps wouldn't seem vexatious perhaps or frivolous but for someone who deals with it on a daily basis perhaps they could discount it very quickly as something that is of that nature. I think that's pretty well. I understand a lot of these things go back to the OIPC and what the power they could be granted and, I guess, it's much of it is up to opinion. I understand where you folks are coming from. It is hard to dispute if people are involved in matters. We have a great working relationship with them as it stands now and I understand why it would be a normal place to go. Why wouldn't you allow the person to have more of an influence over the decision? So personally, I can't offer much outside of the fact that the being

familiar with the department could be one of the small points I would probably draw attention to.

D. LETTO:

I guess what I'm thinking is that the law tells me that I have the right to request information. If the person to whom I am make the requesting also has the right to disallow the request without any oversight from anyone else, it gets back to this idea perhaps that the process is not near as independent and transparency as it might need to be. And that's what I'm trying to draw out some comment on.

C. WELLS:

Again, perception is the problem.

S. COLLINS:

Absolutely. And my only bit of comfort, and not my only, but where I draw my comfort from is when I look at the fact that it hasn't been used. And I know I sat through the filibuster in the House of Assembly during the Bill 29 debate. That was something that was pounded time after time after time, and it was almost put forth as if it was going to be used to shut down every inquiry that came in, every request, but it hasn't been used. And that's something I think is very important to note first and foremost.

So has it been abused? I don't believe so. Is there ways to improve it? Well, I will allow you to arrive at that conclusion.

C. WELLS:

I would like just to raise with you the one objection you did make, that the Commissioner wouldn't be as familiar as the department group. That, of course, is what can and is said about everybody who sits in judgment or adjudication on some issue. That judge knows nothing about leg surgery or amputation, so how do you expect him to adjudicate? Well, you do it by informing the judge as to the issues so that the ATIPP coordinator, who thinks it's a frivolous and vexatious request, can go to the Commission and say look, here's the way things work in the department. This is totally frivolous, that person did so on so on. So the Commissioner invites the individual who's requesting it to justify the position and comes to a conclusion. I think that's probably a far better method, wouldn't you say?

S. COLLINS:

Fair point.

C. WELLS:

Yes. Certainly perception wise.

S. COLLINS:

Absolutely perception wise. Yes.

C. WELLS:

Okay, thank you. Okay, we'll move on to the next one then.

R. COCHRANE:

Topic No. 11 relates to fees. Pre-2012, the fee schedule set out a $5 application fee for general requests, general and personal information requests. It provided two hours of free processing time and, following this, a $15 per hour fee was charged for locating, retrieving and producing a record. Applicants paid 50 percent of the fee upfront and 50 percent was paid upon completion of the request. On average, of all requests, 13 percent of them resulted in a fee estimate being provided to an applicant, while six percent of all requests resulted in fees paid.

Post-2012, the $5 application fee remained. The free processing time was increased to four hours and the processing fee was increased up to $25 per hour for locating, retrieving, producing and, now, in 2012, contemplating the use of exceptions. Of all

the requests, nine percent resulted in a fee estimate being provided, while three percent of all requests resulted in fees being paid.

D. LETTO:

Why is there a $5 application fee?

S. COLLINS:

Well, simply put, I guess, it shows somebody's level of interest or commitment to a request in that they're not just putting in things willy-nilly. And I've heard the term used "nuisance fee". I don't really like the sound of that but I have heard it quite some time and I guess it all comes down to the fact, is it cost restrictive? And I don't think $5 is. Most individuals go their entire life without putting in a request. So it is not a daily fee. It is not something you're putting in once again and again. So I don't see it as being cost restrictive. We're not getting back what we put out. It is not cost recovery in any sense of the term whatsoever. So I think it is just put there. It shows the level of commitment by the person that's putting the inquiry forward, putting the request in, and, again, I don't see it as cost restrictive whatsoever. So I know most jurisdictions do have a fees and they

range, they can range from $5 to 25, I believe. I understand New Brunswick, actually, recently within the last three years has taken away their fee structure and that's resulted, from my understanding, in more requests and with regards to the scope of the request. Because, again, if you don't have to physically fill out a check, $5, and put in the mail you can be home popping off things from your internet asking for everything under God's sun - s-u-n. But anyways, so, again, and I go back to my term "nuisance fee", while I don't necessarily like that term, I think that really kind of puts it in perspective. So I would love to hear your reasons if you were to recommend to move away from the $5 fee. I doubt you're going to suggest increasing it. So I'd be interested in hearing your reasons for and if certainly it would be of interest to know why you would think that would be a reason to do so.

D. LETTO:

I'm not that transparent, am I?

C. WELLS:

It comes in the report.

S. COLLINS:

Fair enough.

D. LETTO:

I suppose in time, even if New Brunswick has experienced an increase in requests you could say that's a good thing and, in time, in the fullness of time, and we talked about Open Government earlier, that it will help inform the people involved with Open Government about the stuff that people are interested in, because I think when it comes to the discussion *it*, reports and annual reports and so on, they're interesting but they might not be what it is that people want. I ask it because most of the emerging thought about access to information suggests that you not charge fees. That the information belongs to the people. They paid for it as taxpayers. Why should there be a price of admission to actually ask for it. I get your point because I have heard that many times as well.

S. COLLINS:

Well, I guess, more to your point with regards to the taxpayers' dollars, they also pay for the people who would be looking at those requests. So if we get an increase in the requests coming in, obviously we need people to be able to move those requests and move them in a timely fashion. So if we have to put

increased resources in. I don't know if at the end of the day it helps. I know, again, perception wise, free information, fair enough and that's why I'm proud of the Open Government Initiative where we're proactively disclosing information. With regards to reports and whatnot, we're trying to push all of that out there online so people can just access that as they wish. It is completely free. But with regards to the $5 fee, again, I think there is good reason for it. Whether the reasons is good enough, you'll judge. But I don't see it as a restriction.

D. LETTO:

No, I don't have a magic thought about it or anything.

C. WELLS:

What you say is interesting, Minister. You say if there is no $5 fee, a nuisance fee, it's not much of a deterrent and it probably costs you $25 to administer each $5 check by the time it goes to the process. So you're not getting any revenue.

S. COLLINS:

It is not cost recovery whatsoever.

C. WELLS:

It is not cost recovery by any means. But I

understand your assignment of value to it for the purpose that you said. And you raise the prospect of anybody just sitting down at the computer banging off requests and clicking send and that's it, and there is no more effort to it than that. Might the $5 fee still be served by requiring submission in writing? Because if you got to issue, a check you got put it in the mail or hand deliver it. Might you choose the same thing by simply requiring that the request be expressed in writing and signed and delivered by mail or by hand or?

S. COLLINS:

It would be to speculate but, no, I would think most people, $5 is $5. So, while again, it may not restrict them from picking up next week's groceries, it will make them think before, is this serious enough that I want to be able to spend $5 and put that request in. So, again, if we were talking a $100, I would think that in itself, the dollar amount would be restrictive but I think it is actually the motion, going through the motions and having to pay $5 perhaps would be part of that. But I do get your point with regards to writing a letter as opposed to typing it.

C. WELLS:

It's going through the motions, that substitutes of going through the motion. Now probably far more extensive than writing of the check.

S. COLLINS:

Potentially.

D. LETTO:

It is possible that also plays into this idea. As I've read this Act, and not only this one, all access and freedom of information acts purport to make information accessible to people to promote open and accountable government and then there is a whole range of barriers that show up. And in my thinking I'm wondering if that $5 cost is one of the little barriers that kind of make it clear to people that yeah, you've got the right to have this information but you've got to cross this hurdle, this one. Meet this test, meet that test. You can't have access to certain other things. And if you don't get access you have no one to appeal to except go to court. So part of it fits in with the tone of what open and accessible information should be is what informs that kind of thinking.

S. COLLINS:

Fair enough and, again, I go back to the Open Government Initiative, being able to proactively disclose a lot of the information that would generally be what people are most interested in, whether it be reports like bridge reports, restaurant inspection reports, those types of things with wide appeal or wider appeal. So now they have access to that. So, but, again, we can only look to New Brunswick. To the best of my knowledge, they are the only jurisdiction now that has and it is only recently, correct?

V. WOODWORTH-LYNAS:

Yes, they would have eliminated, I believe, their fee schedule in 2011 but I believe that's the only jurisdiction at this point in time within Canada that has no fees, no application or no processing fees associated, or even copying fees, associated with their requests.

C. WELLS:

The Federal Commissioner was here yesterday and said they have no fees except a copying fee. The actual reproduction cost. No charges for searching.

D. LETTO:

That's her office, I think.

C. WELLS:

Her office.

J. STODDART:

Her office, yeah, Not the federal government.

V. WOODWORTH-LYNAS:

Right. So the federal government does speak to you. They have an application fee. I believe it is a $5 fee as well. They have an hourly processing rate.

C. WELLS:

Okay, that's for her office. I'm sorry, I misinterpreted what was said.

D. LETTO:

And at the risk of stealing Nalcor's thunder again, they will tell us tomorrow that they've never cashed a $5 check.

S. COLLINS:

Fair enough. And moreover, with regards to having that now as opposed to two hours free, we now have four hours free, we find that many of the requests now can be done within that four-hour time period. So you are literally on the hook for $5 and nothing more. So that's also an important ....

C. WELLS:

We've doubled the time, free time.

S. COLLINS:

Right. So it went from two hours to fours.

D. LETTO:

But you've also included in that four hours any time that's spent making decision over whether to redact information or to subject it to exemptions.

S. COLLINS:

But from our data thought, it hasn't showed to push you into five, six, seven hours type thing. Things are getting solved within that four-hour timeframe, even with that new piece.

J. STODDART:

Minister, is there any reason why in this day and age people should have to pay by check, let's put aside whether or not there is $5 or more of the processing fees? In the age of mobile payments it seems a bit anachronistic. Would there be any problems if we just suggested that people pay and then a legal process for legal tender is they could pay that way?

S. COLLINS:

Right. Recognizing, of course, perhaps for you and I that wouldn't be an issue and we could do an internet

transfer, whatever the case, something much more efficient and fast. But obviously, I shouldn't say obviously, but I don't believe that everyone would have access to other means. So maybe a check would be the only mean or the only sensible mean by which to do that.

J. STODDART:

Oh, I quite agree with you but we've heard that you can only pay by check.

S. COLLINS:

Oh, okay. Okay.

J. STODDART:

So that folks who live their lives online or work online are fumbling around for a checkbook that they may no longer have.

S. COLLINS:

Right. Exactly. We've actually spoke about that. That came up in our discussions and I asked the very question because being a fellow in his mid thirties, I don't usually checks, to be quite honest with you. We have a book on hand, myself and my wife, in case. Not for filing access to requests, but. Anyways, I do have one on hand for when I need it. But, no, that's noted and actually we had discussed it as

well, so it would be nice to be able to expand that and move into the next generation.

V. WOODWORTH-LYNAS:

And just to that point, Ms. Stoddart, that is actually one of the commitments that we have made as an early action item for our Open Government Initiative, is to modernize the ATIPP application process, because we do recognize that providing a check, similar to the minister, I don't have checkbooks. I do all my banking and things like that online. So we recognize that as being perhaps something that we can do to help make it a little bit easier for people to make ATIPP requests directly to us.

J. STODDART:

Okay, thank you. And just one final question. In your submission, and I think it is perhaps Ms. Cochrane would do this. So, the last line post-2012 says, on average of all requests, nine percent, 27, resulted in a fee estimate being provided while three percent, eight of all requests, resulted in fees paid. We've heard here several quite sad stories about individuals asking for information. The request involved a certain volume of information and

when the person in charge of looking for their request came back and then quoted a figure in the hundreds if not in thousands of dollars they then abandoned their request because not only was it costly but the value of the information and for whatever purpose they wanted compared to a payment fee, I think somebody quoted $1500, was excessive. So would I correctly conclude from this last sentence that two-thirds of those to whom a fee estimate was given abandoned, then, their access to information request rather than pay those fees?

V. WOODWORTH-LYNAS:

I can get the exact numbers for you. There will be some of those that may have abandoned as a result of the fees but there also would have been a number that the ATIPP coordinator would have worked directly with the applicant to try and narrow the scope of their request so that we could provide information without there being an inordinate fee being paid, which is why we do see a reduction from the number of fee estimates issued versus the number of fee estimates actually paid. Absolutely, there are some that do end up abandoning requests but we also try our utmost as ATIPP coordinators to work directly with those

individuals to say what is it exactly you're looking for and is there a way that we can get it to you in a way that shouldn't cost you anything additionally.

J. STODDART:

Okay, thank you. Well, that information would be helpful, if you have it. Thanks.

V. WOODWORTH-LYNAS:

Absolutely.

C. WELLS:

We're going to try and speed up so we can cover the remainder of it to the extent we need to within the next 45 or 50 minutes. So we will go on to the next topic now -- the Directory of Information.

R. COCHRANE:

Right. The topic is No. 12, Directory of Information. And section 69 has existed both pre- and post-2012. It requires the minister responsible for the Act to publish a directory to assist in identifying and locating records in the custody or under the control of the public body, not just departments. In Newfoundland this would apply to more than 460 public bodies.

In mid-2000, we undertook a process to publish

this directory. During the compiling stages of the information considerable efforts was put into producing the document and a draft was prepared. Prior to its completion the information became outdated and government has not pursued it since that time. And we have located our only copy of this report that we have here today and we're prepared to leave it with you but our goal would be to get it back. So it's here. It is called "The Signal" and it is there and you can quickly see the way that it's organized, that the information could become outdated before it even hits the stands type of thing.

C. WELLS:

Is there a possibility of organizing it differently?

R. COCHRANE:

Our work includes, as part of our OGI work, includes our online access. So the paper documents, obviously, is a very big challenge because of the processing involved. But there may be ways when we finish our Open Government Action Plan that we're able to organize our information online more appropriate from a client perspective than it is today. Today we have it by department. So there may be some work that we can do there through our Open

Government Action Plan.

C. WELLS:

Is this where the Trim (phonetic) Program comes in?

R. COCHRANE:

A fair number of departments have Trim but some don't, but a large number do.

C. WELLS:

That would facilitate it, would it not?

R. COCHRANE:

Trim is a very great tool for researching, so we could quickly search records absolutely with trim and our ATIPP coordinators use trim to help in locating records. Victoria, did you want to add to this one?

V. WOODWORTH-LYNAS:

In terms of the directory for information, one thing, I think, that we did note, again, it's quite an old directory that we found, that draft directory, one of the comments I think that we heard was given the scope of it in that this section applies to all public bodies and the minister responsible would be responsible for publishing that information, there was a bit of a question, I think, that was raised about given the economy of a number of these public bodies, how practically we could gather that

information in an efficient and effective manner. I'm thinking specifically we have quite a number of municipalities that are defined, that are captured under this legislation. They would be then required, as part of this particular section, section 69, to also be included in our directory of information. And practically speaking, how do we get that information from them without putting a lot of burden on them to be able to put together such a directory? Departments, I think, probably are a little bit easier for us to manage, practically speaking, but other public bodies - municipalities, corporations, boards, commissions, educational bodies - I mean there is a quite a number of entities outside of core government that that directory would apply to. So any advice or guidance that you might have I think would be very much appreciated.

J. STODDART:

I would just have a question, perhaps a suggestion, that you look at the model of the UK Access to Information Protection and Privacy scheme and one of the interesting and innovative features of this legislation is that public bodies covered by the Act are required to publish their own information, and

the Commissioner, the UK Information Commissioner sets out model publication schemes, like a template. A template for municipalities, you can see it online. A template for different kinds of bodies. I believe there is one if you are a school or if you are in the educational, there quite a few. The question is who is better to set out those templates, the government or the information commissioner? In their case, they opted for the information commissioner as being an objective body compared to all the others. And these are, I gather, discussed and adapted from time to time but then the burden of publishing the list of the information that's available to the public is on each body.

V. WOODWORTH-LYNAS(?):

Oh, okay, that's a good idea.

J. STODDART:

Which seems to me a very sensible solution but they have general guidance - this is how you structure it and so on and then they kind of fill in the blanks and put it on their website and are responsible for updating it.

V. WOODWORTH-LYNAS:

That's very helpful, thank you.

J. STODDART:

I could suggest you look at that as a model for modifying the information.

C. WELLS:

Okay, we can move on to the next item.

R. COCHRANE:

No. 13 deals with privacy breaches. Pre-2012, the Act did not include explicit authority for the OIPC to investigate alleged privacy breaches. Even though there was no explicit authority, the OIPC would investigate breaches if complaints were made and they would do that using their general powers.

Post-2012, the OIPC now has explicit authority to investigate privacy breaches if a complaint is made by the individual whose information has been breached. The OIPC cannot initiate an investigation of a potential breach on its own volition. In practice, although there is no requirement to notify the OPE, OIPC, or the affected individual, we do note that many of our public bodies do notify in the event of a breach. OPE provides resources. We provide them with regular resources to assist the public bodies in responding to privacy breaches, including

we have a privacy breach protocol that's online for viewing.

In 13-14, the OPE provided 21 training sessions to our coordinators. We participated in six orientation sessions involving new government employees to advise them of their privacy responsibilities and obligations and we also had a provincial development day for our coordinators and it was a community practice. Since its launch in July of 2013 the online privacy training through our Centre for Learning and Development, I think Victoria mentioned this earlier, we have trained 900 staff in one year. So we were pretty happy about that.

GNL (phonetic) policy requires that all new or redesigned programs that handle personal information must complete a Privacy Impact Assessment. So in 13-14, OPE, we have reviewed 34 Preliminary Privacy Impact Assessments and we provided one full Privacy Impact Assessment to our departments.

In addition, a total of 11 of our websites have been reviewed to assess whether or not any personal

information is being collected and treated appropriately.

D. LETTO:

Would there be a value in having all privacy breaches, no matter how large, reported to OPE, to the Commissioner so that it's possible to see if there are any systemic problems in public bodies? Because it would seem that it's not that it's arbitrary. I don't think that you've said that it is arbitrary, but some don't have to be reported. So I guess somebody has to decide the magnitude of them. But perhaps if they all were you could actually end up putting your finger on some problems that you'd want to solve.

S. COLLINS:

Right. Well, we have concern with respect to the subjectivity that's in this process. Someone that's been affected by a privacy breach themselves and in the not so distant past. I know I would like to be aware of any privacy breaches that I'm involved in. Now, obviously, I'd more concerned about the ones that shared my SIN or those types of sensitive matters as opposed to just maybe my name and my address, which some may even think were serious given

different circumstances. So, but, I think there is some deficiencies here. Again, it is great when you report but if you don't report it, no one ever knows it ever existed, particularly a person who was subject to the breach. So, I think we're open to some suggestions here because, as I said, I think there are some deficiencies, maybe even glaring.

J. STODDART:

And, Minister, it is not clear on reading the Act and indeed one struggles to find how the Commissioner could on his own initiative investigate or look into potential privacy issues where he had reasonable grounds, objective grounds to think that there was a problem. He doesn't also seem to have the power to audit from time to time personal information handling practices in order to perhaps make helpful suggestions. With the addition of these two powers to the Commissioner's range of functions pose any problem?

S. COLLINS:

No. Perhaps if we were to keep it status quo as it is now maybe that would be a nice piece to add to it, but I think you could even do better than that perhaps. But again, I'm not here with suggestions.

I only know as someone who's familiar with it and who's asked the questions, there are deficiencies. So what you suggest maybe I think that would perhaps maybe be an improvement. It is hard to prejudge that but I think we could probably do better. So with regards to what we can do in the front end.

J. STODDART:

In what sense?

S. COLLINS:

Well, as I had said, with regards to the subjectivity that now exists, maybe if we can curb that and get something that's more formalized and as opposed to it being at the discretion of someone to disclose if they have to disclose it. And I think that would, in itself, solve much of the problems.

J. STODDART:

There's a common test used to cross several Canadian jurisdictions in legislation or in pending legislation, real risks that sometimes you have to inform the privacy commissioner everything, sometimes you have to inform them significant privacy breaches, and then often you have to inform third parties who are affected where there is a real risk of significant harm.

S. COLLINS:

Right.

J. STODDART:

And that's increasingly written into legislation in order to protect the public.

S. COLLINS:

Sorry, go ahead.

V. WOODWORTH-LYNAS:

I was just going to say that yes we do see that it is in a number of legislations across the country. We've tried to mirror that at least in a policy or procedural document knowing that there is nothing specifically laid out in the legislation as it currently stands but recognizing that notification to affected individuals is absolutely critical, specifically in those instances where there may be significant risk of harm. So we do lay out what we think is consistent with a number of jurisdictions in Canada, the factors to consider, which do try and provide some clear guidance around who should be notified, under what circumstances and appropriate ways to notify affected individuals as well as the information and privacy commissioner, so his office is notified of certain breaches. Again, it would be

at the discretion of the public body who, I guess, has discovered the breach within their own entity.

J. STODDART:

Thank you.

D. LETTO:

Just interested to get a tiny bit of information on something. You reviewed 34 Preliminary Privacy Impact Assessments, one full last year. I'm just interested, were you able to catch stuff that you thought this could lead to the privacy breach or could be privacy breach?

V. WOODWORTH-LYNAS:

In our perspective, as far as I'm aware, each and every Privacy or Preliminary Privacy Impact Assessment that is completed through the ATIPP, through the Office of Public Engagement will result in specific recommendations. So I guess in that vein we are always seeing opportunities to better protect personal information. Sometimes it may be a questioning of whether or not the collection user disclosure of personal information is necessary or if there is a less privacy invasive way to accomplish the same goal. We will often recommend things like auditing procedures. So if you have an IT system,

for example, that's being implemented where personal information will be housed, perhaps clients, we would recommend that there be regular audits and an auditing capability. That there be limited access to these things. So there is quite a number of things that we try to put in place up front when a program is being designed or is being redesigned to try for that exact reason, to try and stave off any potential risk to those individuals whose personal information is being handled by these public bodies. So I would hope that the efforts that we undertake would result in fewer or less, it would be great to say no privacy breaches, but I would expect that or I would hope that at least those efforts are helping ensure that there is better protection.

D. LETTO:

Thank you.

C. WELLS:

This may be a convenient place to draw to your attention the Commissioner's submission that he should be empowered to do audits, not alone in respect of privacy issues but in terms of the departmental's performance on access matters. Particularly, do it on a sporadic basis, I assume, in

much the same way as an auditor general would do random checks now and then. Do you see any reason why that would be problematic if that were to be recommended?

S. COLLINS:

I don't see any issue. Again, it would be kind of hard to prejudge that but I know we deal with the Auditor General and I've sat on public accounts for number of years and that system seems to work. To draw a parallel, I'm not sure exactly how it would work but.

C. WELLS:

So there are several methods. I suppose the Commissioner could just decide to do random check of different departments or go around over a period of time and check most departments. It might even be better if he was experiencing an inordinate number of complaints from any particular department to just audit that department, or to put in place a process requiring that department to provide information on the how it was handling every request as it came in and then relieve the department of that burden when it reached an acceptable standard. There is a variety of possibilities but I just wanted to check

and see whether government saw any underlying reason why that should not be contemplated.

S. COLLINS:

With regards to oversight in that manner, I don't see anything arising, no.

C. WELLS:

Okay, we'll move on to the next matter.

R. COCHRANE:

Okay, Topic No. 14 deals with child protection and adoption information. And my colleague, Gig, is here as well and I will step away in one second there. The definition of personal information, paragraph 2(o) defines personal information as recorded information about an individual including an opinion which is being interpreted to include a reference check. In the case of potential parents involved in adoptions or child protection itself, reference checks are done on these parents. In general, the *Child Youth Care and Protection Act* and the *Adoptions Act* provides protection for these records. However, there are instances where some information may be accessible under ATIPPA and we would like to discuss and explain to you in detail where those concerns are coming from. So I'm going to turn it over to Gig

Dooling, if that's okay?

C. WELLS:

Okay.

R. COCHRANE:

She's the deputy responsible for child protection.

G. DOOLING:

Good afternoon.

C. WELLS:

Good afternoon. Sorry, I was thinking about something else. And one of the statutes listed in the regulations is the *Child Youth and Protection Act*, is it not?

G. DOOLING:

Child Youth Care and Protection Act, yes.

C. WELLS:

Yes. And it provides that the relevant sections of that statute are exempt from ATIPPA.

G. DOOLING:

Correct. Okay, perhaps if I could just focus on the adoptions process first and go through example and that may clarify the point I'm trying to bring to the committee today. So, Mr. Wells, as you would know and the Committee as a whole would know, the adoptions process generally is a long process.

C. WELLS:

Yes.

G. DOOLING:

And I will break it down into four very simple stages. Okay. So the first stage is when a set of parents, potential adoptive parents, express an interest in wanting to adopt a child and they fill out an application. That's their information. We accept their information. Then down the road, of course, as they identify in that application the type of child they would be willing to adopt. Once we get to a stage in the process where we have a child that may be available for them the department then starts an assessment process. So we start engaging with the parents, basically review their application to make sure everything is in order, to look at what are the reasons for adoption, can they support the child, those sorts of things. So that's the second stage. Again, all of that information of why they would want to adopt, what sort of child they were willing to take, all of that again is their own personal information. All the information with respect to the child now, the child is in care so that information would be protected under child protection

legislation. Okay.

The third stage is when we actually start a matching process. So we want to match a particular child to particular set of parents that are willing to adopt. And in that stage there is a number of clinical assessments and reference checks that we need to do to make sure that we're completing the right match. We have one time to get this right because we are going to sever all times with the biological family, we then basically match the child to who we think is the most appropriate adoptive parents. Perhaps in about 95 to 99 percent of the time through the clinical assessment we get a match on the first time.

So, Mr. Wells, if you were interested in adopting a child, you've gone through the three stages and we're ready to introduce you to a child that we have what we feel is a good match for your family for that child. And again, the clinical assessments and the reference checks all of that are done, but we may have a case where once we start doing some more assessments we may actually present the child to you

and your wife that there may be some concerns. And this is very rare so we want to ensure the Committee it is rare, that we might say this is not the right match for this child or this is not the right match for this set of parents, and it could be a number of really good clinical reasons why. Okay. Doesn't mean that I'm not going to give you and your wife another child or try to profile another child to you, it simply means this is not the best match at this point in time. It is that piece of information, that step 3 in the matching process, that could be open to ATIPPA.

C. WELLS:

How?

G. DOOLING:

How? Because the potential parents may come in and request a clinical assessments then and the reference checks because this is an emotional time. They're wondering how come I'm not going to get this child. Right. Normally what would happen 99 percent of the there if is a match, so things close under the *Adoptions Act*. It is only in that rare case where a match is not done the first time that ....

C. WELLS:

And you don't become aware of the reasons for not doing it until you get to that stage.

G. DOOLING:

Exactly, sir. Exactly. Right?

C. WELLS:

And the parents could access that through ATIPPA.

G. DOOLING:

Exactly. Exactly. We might think Mr. Wells and his wife, we still want to keep them on the list, it is just this child isn't the right child for Mr. Wells and his wife. We may continue on with the process and I may introduce you to a second child, another child, but if you have access to all of my clinical assessments and my references beforehand how you react when I present the second child to you may not be the way you would without that information and that clinical assessment. So really, I could be putting the second child at risk by giving you all the clinical assessments of you and your wife and how you behaved towards the first child. Now it is very rare. It is very rare.

C. WELLS:

It is the clinical assessment of the reaction of the

adoptive or proposed adoptive parents to that particular child?

G. DOOLING:

It is, sir. We don't want to jump the gun and (inaudible). We want to give people a fair chance to become a family but at the same time we need to protect the child. Right? So, I may very verify some of my concerns, my clinical decision making with outside people, with their family doctor, with a clergy or with somebody else, okay, because I want to still keep you and your wife on the list to adopt a child but at the same time I need to address some of the concerns that have come up clinically, okay. So if you access those files you're going to say to your wife well, we won't say this and we won't act like that, when the child comes in we'll do certain things, things we've identified as probably concerning in the first interview and the first assessment. You're not going to be true on the second assessment because you know beforehand the things we're going to be watching now, right. Now it is rare but it is a gap because you would know, sir, that normally when we get a match all that clinical assessment for both the child and the family close as

part of the adoptions record. So I have the small loophole there now. If I put one child at risk, that's one child too many. So I wanted to bring that to your Committee today so that you could consider it, I guess, in some of your deliberations on what could be accessed and what couldn't be accessed.

C. WELLS:

Would that be protected from access by an amendment to section 68 of the *Adoption Act* and adding it as information that could not be disclosed specifically, because those sections of the *Adoption Act* are protected under the regulation adding statutes under ATIPPA?

G. DOOLING:

Bear with me one moment, please.

C. WELLS:

Subsection (3) provides that "An adoption agency or authority shall not use or disclose" and it specifies certain information. Could you not add that to that to prohibition?

G. DOOLING:

This generally, this section, sir, generally talks about when the adoption is basically becoming closed. I'm caught in the loophole of when the adoption is in

process, right?

C. WELLS:

Okay. But could you not add it in another section, or wherever is the appropriate area, could it not be added and included?

G. DOOLING:

Included as an amendment to the *Adoptions Act*?

C. WELLS:

Yes.

G. DOOLING:

I guess it could be, sir. Yes.

C. WELLS:

It seems to me that it's related specifically to adoption rather than. That's the driving focus of that provision is the adoption and making sure that adoptions are done properly rather than access to information. But if it's precluded for a good reason there ....

G. DOOLING:

I guess the thing, sir, our fear was that the parents could because it's their personal information the majority of cases. Stage 1 and stage 2, it's for lack of a better phrase but it is tombstone data. When it gets to stage 3 with the matching, the real

clinical decision making then, and the way they could access it is through ATIPPA. That's why I came forward today to see whether or not it could be addressed in their ATIPPA Review, and this only came to me very recently. We had one particular case. That's why I said it is very rare.

C. WELLS:

Well, obviously we can take your concerns into account as to whether it is best addressed by an amendment to ATIPPA or an amendment to the *Adoption Act*. Government may be in the best position to decide but we could certainly give it some information, but it would seem to me because the full focus is adoption rather than access that might be the best place. But anyway, thank you very much for that explanation, Ms. Dooling. I appreciate it.

G. DOOLING:

You're quite welcome. And if I could take just one more moment to speak about the child protection legislation, I'd appreciate it? If I could take one more moment just to speak about child protection, I would certainly appreciate.

C. WELLS:

Yes, by all means. Yes.

G. DOOLING:

Just to bring, I guess, some light to your deliberations as you're reviewing ATIPP legislation. And I guess I will draw your attention, Mr. Wells, you may be familiar with the case between CBC and Child, Youth and Family Services, the department?

C. WELLS:

Yes.

G. DOOLING:

Wherein a report was conducted by an outside expert in child welfare and this report was conducted and an investigation of a number of years ago and it was on two families and the department refused to provide the report to the media who had requested because of the personal nature and the personal family situations that were involved in that report. And the matter went before the court and Madam Judge Gillian Butler heard the matter, and she took the report and she redacted for the department all the personal information relating to the two families. What's important to remember in that particular case is also one of the families who were involved wanted the information released publicly. I can advise that we are getting an increase in the number of requests

for individual case file reports, whether that's reports that we do ourselves in internally, because I have a quality unit, a quality assurance unit, or whether or now it is a report that's done by an external consultant. I would ask you to respectfully in your deliberations consider whether or not ATIPPA was meant to be requesting those sorts of personal family and very traumatic sorts of cases for public consumption. I'm caught in a position where I'm trying to protect the families and wanting them to come to me very willing so that we can help the families and then not having their stories released publicly. And, sir, as you would know, we have a Child Youth advocate who's the statutory office who can come in and she can request any of my files at any time and we will work through an investigation process with her. So she would have access to all the information, including the personal information, and she could make, I guess, a balanced report. When individuals and media come looking for the information obviously I need to protect the story, the family story and the identities. So it leads one to wonder what sort of a balanced story then is out there in the public and is there unnecessary alarm

within the public by the wrong people looking at these individual case files. And I would just ask the Committee to consider that in their deliberations, please.

J. STODDART:

Thank you for your presentation. I'm a bit puzzled about these circumstances you describe; first of all in the adoption process. How many times has harm come to a child because the parents or the, I don't know whether they're finally the adoptive parents or the applicant parents have accessed their own records?

G. DOOLING:

As I indicated, there is only one case that I'm aware of where we didn't get the match and it was our view that the parents were considering going to ATIPPA. They did not go to ATIPPA because they think it doesn't mean that you may not get matched to another child it is just not this particular child. And as you can appreciate it is a very emotional ....

C. WELLS:

And presumably they accepted that.

G. DOOLING:

They did, sir. Yes, absolutely.

J. STODDART:

So basically with respect there is no factual basis for your concerns?

G. DOOLING:

What I am saying is ....

J. STODDART:

You've never observed this, that you're worried about this?

G. DOOLING:

I see it as a loophole there now that may come at us in the future. Obviously, the number of children that we have to profile for adoption, obviously the number of healthy young babies is not what it was many years ago. So when emotions are running high people are going to try to, I guess, put their best case forward. We want them to put their best case forward in a very honest and genuine manner for the child. Okay. So it's a lot of disappointment if they don't get matched to the first child. Then it is where, as I had said, generally 99 percent of the time the work is done, it is the very rare case that we will profile and match a child to a parent that it doesn't result in a final adoption. Right. So right now this is just recently come to our attention that

would people request if they didn't get matched on the first time around. So just it's more precaution than anything.

J. STODDART:

Usually in a privacy legislation there is a general provision that personal information can be withheld if it would cause harm to the person it's about or to a third party. I don't see this but perhaps I'm not reading. Would that respond to your concerns? The agency then could refuse to release that information because it has, I presume, a scientifically-based assessment of the harm that could come to the child?

G. DOOLING:

There would be a clinical assessment and, as I had previously said, we would try to do some referrals as well to make sure that was substantiated, whether it was a pastor or a clergy or a doctor. It may be one particular item that we're not comfortable with. Maybe by gathering more information you do become comfortable. It may not be for this child but our fears or concerns may be (inaudible) with another child. I don't know if I'm explaining this?

J. STODDART:

Yes. No, no. Thank you very much. And I don't

understand your second series of examples, why the existing personal information protection parts of ATIPPA, why you cannot rely on them to refuse to give information about families that are composed of individuals after all.

G. DOOLING:

If I'm redacting all the personal information and the circumstances about a particular family, there is very little left in the report when it goes public. So then people surmise, I guess, for lack of a better word, what's happening. When in reality it is a completely different situation that's happening. We have an advocate. She has access to all the information. She can make a balanced assessment or investigation and report on all of the information not just part of the information. That's my concern.

D. LETTO:

In some jurisdictions they've resolved this, not in this sort of case but in cases where they present a severed report, by making sure they provide the context for the information that is made available.

G. DOOLING:

I certainly appreciate your comment. I guess that may be difficult in individual child protection cases

because then you almost be tipping your hand to what the situation was. With some of these, especially when you get rural families, smaller communities, larger families, that comes almost, if you give the situation around it then you've almost inadvertently given the identity of the family. So it's slippery slope. It is trying to find that delicate balance of protecting the families that you have and the care and the services you are providing with the public's right to know about certain situations. And I guess my view is the advocate has all the information. She could tell a more balanced story about what actually happened.

D. LETTO:

So there could be cases where it's more difficult to establish the context. Fair enough, yes.

C. WELLS:

Ms. Dooling, thank you very much.

G. DOOLING:

Thank you, Mr. Wells. Thank you, Committee.

C. WELLS:

We'll move on to now the last topic 15 and then the summary.

R. COCHRANE:

And I'm thinking Mrs. Dooling spoke quieter than I did, I hope. And I won't be very long on the last slide, No. 15, from my perspective. It is just a couple of things we wanted to bring to your attention. And it is how we're doing with the proactive disclosures. Since OPE was created in October of 2012 there has been an emphasis on publicly releasing information without the need for a formal request. Some examples of initiatives that we're engaging departments on include posting our responses to general requests online and doing that in as an expeditious manner as we can. And there is about 400 requests online today. So I notice Mr. Letto indicated that he had read a few. So that was great.

D. LETTO:

I find them very interesting.

R. COCHRANE:

That was good. Excellent. Our Orders in Council are also now online. Our response timelines since January of last year are posted online and we post those monthly on a go forward. We have been doing that every month. And in departmental specific

initiatives and it goes back to this Open Government lens, we engage departments all the time in trying to encourage them to release information publicly. And some things that have been done include health professional vacancy report, a position report. Our restaurant and bridge inspection reports are now online. Our school infrastructure expenditures are online. And we think that we're going to continue once we get our Open Government Action Plan with some formal structures upon which we're going to start releasing reports in a more systematic manner. Okay. I just wanted to bring that to your attention.

C. WELLS:

Thank you for that.

R. COCHRANE:

I'm going to turn it back to Minister Collins to give closing remarks.

S. COLLINS:

Were there any questions with regards to disclosure?

C. WELLS:

None for me, thank you.

D. LETTO:

I've got just one little quick thing which is: do you ever see this transitioning to let's say school

infrastructure expenditures, where instead of just school infrastructure expenditures, it's a, let's call it a critical thinking report from the department about the areas that actually we've not done enough work on the school roofs in the province for the last ten years and 67 out of 115 are reporting serious leaks? That's the stuff that generally people want to know. What I'm thinking of, and this has come up in other places, the information the government chooses to release through proactive disclosure may not necessarily be the stuff that people are interested in. And do you see it evolving to a point where you'll sit down in various departments some day and say the school infrastructure report, what do you people really want to know about that?

S. COLLINS:

I would think that would come in our public consultations. That's where we go.

R. COCHRANE:

That's why we are doing it. Absolutely.

S. COLLINS:

But I think, as you had mentioned, there is a number of those up now and a lot of those maybe wouldn't be

favorable for government. I know our bridge inspection report, that got a lot of media attention and there was some stuff in there obviously of some concern but it was put out in its totality and people were able to read it there. So, I think through the public consultations that we're going to be having, not only have we consulted with departments and within government, we're also going to be consulting with average folks in the province.

D. LETTO:

So as the process evolves it's possible that people in public bodies will become much more comfortable?

R. COCHRANE:

Absolutely.

S. COLLINS:

It's just in its infancy now but we would hope to have something. Yes.

V. WOODWORTH-LYNAS:

We would say that it's really at a starting point right now. And although government departments have worked really hard to try and identify information within their own entities to make available, we haven't necessarily prescribed specific types of information as of yet that would be disclosed because

for that very reason that you raised Mr. Letto, which is we want to know what the public wants to know. We don't want to spend all this time putting information out there and saying we're going to make these types of information available if there is not really an interest in doing so. If we can better meet the needs of the people, I think that's really where we're trying to go. So we're continuing to release. We don't want to stop releasing information while we're doing these engagement sessions, but I think that's really what we're wanting to achieve is, is finding those pieces of information or data that really is of interest to the public. Some of it we've done already through assessing our ATIPP request to see if there are particular trends for information that's being requested, and in some instances that's resulted in information being proactively released so that they're no longer needing to make a formal request for that. But that's, I think, really what our objective is.

C. WELLS:

Thank you.

R. COCHRANE:

And I just had one other point, and when I go back to

the office if I don't raise it they'll mention it to me, I'm sure. While I was at lunch the manager for our CDLI, our training branch, e-mailed and reminded me that we are now in the process and we have piloted Open Government training program. We piloted about a month ago. The curriculum is now being refined based on the results of that pilot and we're hoping to launch that in the fall. So we'll spread that throughout the Public Service to try to - it is the culture issue again - to try to make sure that we're all putting the lens on it. So she did e-mail me and said you should put a mention in for, so I did. Thank you.

C. WELLS:

Thank you.

D. LETTO:

Thank you.

C. WELLS:

Minister?

S. COLLINS:

Okay. Well, we thank you, folks. I opened this presentation with our vision for openness and, of course, disclosure (inaudible) withholding the exception. I'm very hopeful that this review will

give us valuable information. I absolutely look forward to the recommendations. Hopefully our unique perspective that we were able to bring forward, not only myself but certainly my officials from the Office of Public Engagement, as well as other various deputy ministers from other departments, hopefully was able to give you a wide lens view and most all of your questions were answered, I would hope. Anything that wasn't certainly we'll be getting back to you within the next couple of days, if not week.

It is all about balancing and, of course, that's where all this comes from. You look only behind you at the banner with access and privacy in it. It certainly is a balancing act and we have to be cognizant of the fact that while as an elected official that sits in the government I want to have sound legislation, reasonable legislation, legislation that works, but I also want something that people of the province are comfortable with. And so while the amendments in 2012 I thought were sound obviously, we can argue whether they were perfect or not, but there was obviously feedback from the people of the province that there were parts of

it they didn't like. So Minister Marshall, when he came out with the statement and announced the review committee, that's where his head was. He wants to be at a place where the people who elect us are comfortable with the legislation, the people who we represent. So hopefully by working together and, like I said, the recommendations come forward, hopefully we can get to a place where people are indeed comfortable because they deserve no less.

C. WELLS:

Minister, I want to express again the Committee's very sincere appreciation to you and the staff who are with you for taking the time to present us with this very detailed information. We were concerned that we have both sides of the view in order to be in a position to weigh all of the factors and ensure that we provided you with sound recommendations with respect to necessary legislative changes. We think you've made a great contribution in providing it and we thank you very much for it.

S. COLLINS:

Thank you so much. Thank you for the opportunity.

R. COCHRANE:

Thank you.

V. WOODWORTH-LYNAS:

Thank you.

C. WELLS:

We are adjourned today. We are adjourned today until tomorrow morning at 9:30.

C E R T I F I C A T E

I, Beverly Guest, of Elite Transcription, of Goulds in the Province of Newfoundland and Labrador, hereby certify that the foregoing, numbered 1 to 234, dated August 19, 2014, is a true and correct transcript of the proceedings which has been transcribed by me to the best of my knowledge, skill and ability.

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