



STANDING COMMITTEE ON HOUSE SERVICES

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STANDING COMMITTEE ON HOUSE SERVICES

Hon. Dan D'Autremont, Chair
Cannington

Mr. Warren McCall, Deputy Chair
Regina Elphinstone-Centre

Hon. Ken Cheveldayoff
Saskatoon Silver Springs

Mr. David Forbes
Saskatoon Centre

Hon. Jeremy Harrison
Meadow Lake

Mr. Paul Merriman
Saskatoon Sutherland

Mr. Corey Tochor
Saskatoon Eastview

Mr. Doyle Vermette
Cumberland

[The committee met at 17:40.]

The Chair: — I'd like to call this meeting to order at 5:40 on Tuesday. The members present for the House Services Committee are the Hon. Ken Cheveldayoff, the Hon. Jeremy Harrison, MLA [Member of the Legislative Assembly] Corey Tochor, and MLA Paul Merriman. For the opposition we have MLA Warren McCall and MLA David Forbes.

Under consideration today is the first report from the steering committee on members' Code of Ethical Conduct. This proposal from the steering committee has been provided to the members. We also have Mr. Ron Kruzeniski with us today. Ron is the Commissioner for the Office of Information and Privacy, and Ron will do a presentation to us in what led to this, and with his recommendations which are contained in this report.

So welcome, Ron . . . Mr. Kruzeniski. I should not be so informal, Mr. Kruzeniski, and please proceed with your presentation.

Mr. Kruzeniski: — Thank you, Mr. Chair. Thank you very much for inviting me to be here today. And I realize in giving my presentation, what I'm giving to this committee and in turn, the Assembly, is my advice. And I certainly accept that the Legislative Assembly sets the rules that guides practices of MLAs, and mine is in the nature of advice.

I would like to talk about a number of things: how we got here, and I'll do that very briefly; some solutions, which include amendments to *The Freedom of Information and Protection of Privacy Act*, which I will, through this presentation, refer to as FOIP; talk about a code of ethics; and talk about some principles that might be in that code of ethics; and talk about a common form of consent.

So first of all, how we got here, and this is a very brief explanation. All of you certainly were here in March. We had a situation where a care aid came to the legislative building, wanted to share some information about care homes. Assurances were asked for in terms of his position. Assurances were given and he returned. There turned out being a suspension of the care aid at the care home that he worked at. Details of that suspension filtered through the ministry, staff in the Ministry of Health, the Premier's office, and information was released to the media. The individual complained to our office and I was seized with doing a review and providing a report. That report was released in August and it had certain recommendations. I won't go through all the recommendations in that report but a number of them I will certainly elaborate on today.

In doing the analysis of the information flows, resulting in the release of information that was regarding the person's suspension, there really turned out to be six different information flows. And as a result of analyzing these flows . . . Well we were mainly asking one question: who had the authority to either collect information, use personal information, or disclose personal information?

As a result of that analysis, in a nutshell, the health sector — which would include the health region, the care home — were

really under the provisions of the local authority's freedom of information Act and *The Health Information Protection Act*. The Ministry of Health was covered by the freedom of information Act. The Minister of Health and his office was not covered and the Premier's office and his office — when I say office, I mean staff — were not covered. In effect, over the minister's office and the Premier's office, FOIP or LAFOIP [*The Local Authority Freedom of Information and Protection of Privacy Act*] did not apply and thus I had no jurisdiction.

By extension, if the Act does not cover a minister's office, it doesn't cover an MLA's office and doesn't cover the staff in those offices. So what I sort of concluded was that the legislation has created a problem. It's created a divide and it's created a separation and it really has created where the rules aren't consistent across the whole piece.

So one of my recommendations was that the freedom of information Act be amended. Now the Act covers a number of things, but part IV of that Act deals with the protection of privacy and really recommended that certain sections of that Act, mainly sections 24 to 30, apply to ministers and MLAs. In addition to those sections, consideration could be given to section 59 of the Act apply. This would start to make the rules consistent and would make the rules apply to ministers, to MLAs, to staffs of their offices. And those would be rules around collection, use, and disclosure.

[17:45]

I am very hopeful that the Ministry of Justice will develop proposals and I'm hopeful that the Legislative Assembly will look at those amendments, both government and opposition, and find some common ground in terms of amendments that could make the Act apply and make it more consistent across the whole, what I call government system.

Amendments to the Act do not solve the whole problem and one has to go further. And at this point I would like to speculate what it would be like to be an MLA or a minister. I've never been one. All of you may correct me in my assumptions as to what goes on in your constituency offices, but I expect that it goes something like this.

A citizen comes in, a phone call or a visit, and says, I have a problem and I'd like you to help me solve it. The government will not do, whatever the problem is; they won't do something or other. And that citizen is willing to share personal information or personal health information to help you go about solving his problem.

Now the minute he hands you some information, you're in the process of collecting that information. If, as probably occurs in many instances, he or she is giving that information to a constituency assistant, that assistant is collecting information and very quickly you or the assistant is using that information to try and solve that problem, and going further, disclosing that information to others to try and solve that problem. And most likely if the problem is involving Social Services, you go to the Minister of Social Services and in the process you disclose information, explain the problem. And at that point in the past, the minister probably has said, I will look into it. After publicity

and my report and the analysis, it's possible that the minister would say, show me a consent. And I want to return to the issue of a consent.

Either way, if the minister says, I will look into it, picks up the telephone and calls the deputy minister. In the past the deputy has said, I will look into it. With the publicity and analysis again from my office, there's a possibility that the deputy will say, can you show me a consent? I need a consent to protect me from being criticized for collecting or disclosing information to you.

To take the case further, someone in the Ministry of Social Services will phone up a health region and say, give me some information; I want to solve a problem. And that health region would say, what's your authority? In other words, code words for, where's your consent? And if it involves a care home, the health region picks up the phone and calls the care home and the care home says, you know what? Where's your consent?

So you can see how by maybe what's happened, by my analysis, by looking at the Act, that the system grinds to a halt and the problem isn't dealt with. The citizen says, those folks over there are incompetent. And what are they hiding anyway?

Now you might say, you know what? We've been solving problems this way for a long time, and it all works. And I agree. It did work. It had worked. And I suppose in some instances in an earlier position I assisted in making it work. The concern now is after reports like mine, after the publicity, after the front page, after the apologies, there could be a caution, a freeze, and there certainly could be a reluctance to do or provide information without there being a consent, and just a concern about the criticism and the media coverage.

So because of that, we need obviously solutions because it's extremely important that citizens have mechanisms to help them and allow you to help them solve problems. I think that's an expectation that people in society have of MLAs and ministers and those in elected bodies.

So changing the rules, and I've touched on the one. First of all we amend FOIP so that we end up with a consistent set of rules — and that involves part IV, not the rest of the Act, sections 24 to 29, and possibly section 59 which I can touch on later — rules that then apply to everyone and the rules are consistent. It applies to ministers, public bodies, care homes, MLAs, and the staffs of those offices.

But as I said before, it doesn't quite solve the whole problem and it really comes down to having some rules and some standards that MLAs are expected to follow. And all of you can advise me better in case I'm using the wrong term, but in my limited research it sort of came down to something in a code of ethics that would include some rules about MLAs which in turn would obviously include ministers.

And what do you put in a code of ethics? Well you put in some principles. And in the materials that I provided to the steering committee and to the Clerk, I proposed five principles, although they could be reduced down to four.

The first principle would be, well we follow the freedom of

information Act. It's an expectation on MLAs that they do that. Now if the amendments came through quickly, you might not need that principle because there would be legislation saying that was happening. But in the interim, until we see the amendments, sort of just a statement of principle that we'll follow the Act, you know, where it applies and in the appropriate circumstances.

The second principle would be, we protect citizens' personal information and personal health information. I expect many of you do that already, but just putting that into a principle thing.

Number three, that MLAs get a written consent, and I will come back to that.

And number four, that we use a consent adopted by, I guess recommended by this committee and adopted by the legislature. And number four, that we provide a copy of that consent to others as we work through the system. And I can touch on that later but, you know, in that scenario I gave when people say, and where's your consent, they obviously are looking for a copy of the original so they can put it on their file. And it's their proof that a consent was provided to them and gives them the authority to act and in fact a protection to then disclose information to you.

Now I want to talk about consent, and a consent is important within the existing law under the existing freedom of information Act or LAFOIP [*The Local Authority Freedom of Information and Protection of Privacy Act*] or HIPA [*The Health Information Protection Act*]. They all have consent provisions, and a consent resolves a lot of difficulties. It's kind of like the trump card. Don't misconstrue this, but you can skip over or ignore sections of the Act once you have a consent. Why? Because the individual has consented to one collecting, using, or disclosing information.

So under the principles that I'm proposing that you consider, the consent really becomes key. Now I know some MLAs already obtain a consent and you might be saying, we already do this, so what's the difference? This is my expectation again, that your consent may be — maybe not all of them — is written in such a way that it authorizes you as an MLA, maybe your staff member, to collect or disclose information. But it doesn't go further. It protects you, but it doesn't sort of protect people down the line. And it's what I call a one-way consent. And really, in order to make the flow of information occur, we need something that I call a two-way consent that allows you and others in working with you in solving a problem to collect, use, and disclose personal information or personal health information.

If you have a one-way consent that only goes so far, it gets you to the same problem, that when you take the consent to the minister's office and the minister or the deputy says, where's your consent, and looks at the wording and says, well that doesn't cover me. It doesn't cover my backside so therefore I don't really have the authority to proceed.

So what I'm proposing is a common form of consent used by all MLAs. And I think it would create a playing field for reasonable problem solving. And at the heart of this consent is we let the citizen have the choice, and I want to elaborate on

that a little bit more.

Now the form of consent, I provided to the steering committee and to Mr. Putz a form of consent. And I haven't read the report that's in front of you, but I'm presuming it's pretty similar to what I provided. So hopefully as I talk about it, you'll be able to follow it.

First of all what the consent consents to, and I think most of the consents right now would do this, that the MLA can consent and use information and the citizen consents to the MLA disclosing. And then we get to the first check box, which allows an MLA to exchange that information with other MLAs or ministers or public bodies in a confidential way. It contemplates resolving a problem in private and confidentially. Now my expectation, and I don't know this for sure, but that I expect many problems are sort of solved at that level.

Now if you go to the next check box, it elevates it up one more step. And before I talk about that briefly, I need to go back to the MLA office. And someone is there, a citizen is there and says, you know what? Yes, I'd like you to solve this privately but, you know, I am so upset that if you have to go public, that's just fine with me. And basically then this consent would allow the person to check off, to say all right if you take it one step further, you are entitled to share this information publicly, and others may have to operate in the same realm.

Now this gets us very close, when we talk about publicly, to parliamentary privilege. And when you're going public — you're certainly going public when you're in the Assembly — this proposal, these principles, this form, in no way interferes with parliamentary privilege. MLAs are completely free to operate as they choose, as guided by your rules in the House. Now it does give an MLA some comfort if he or she has a form that says, and I authorize you to talk about it in public.

[18:00]

The problem that I foresee or foresaw was, all right, you're in the House in question period and you raise an issue. But after that, you walk out of the House and you go out into the rotunda, and there's the microphones and there's the reporters for the *Leader-Post* and *The StarPhoenix*. And at that point then again the consent becomes relevant. Has the citizen given you the opportunity to deal and resolve his or her problem in public? And if this check box is checked, then they've obviously said, you can disclose my personal information or my personal health information in public. Now the key concept here is the citizen chooses as to whether they're asking you to deal with this in private or deal with it in private and in public until you get results.

Now if I can bounce back to an MLA's office again — and I presume here as I refer to office, I really mean staff, constituency assistants — and basically for the smooth operation of this problem-solving mechanism, I presume that constituency assistants field most of the initial calls or visits. And they collect information, and people hand them letters and income tax forms and Workers' Compensation letters and whatever centres around the problem that they have. And I presume then the staff may brief you about the problem, but probably goes on to collect some more information, and again

in my previous lives, I know they certainly called me and wanted some more information. And then they start to use the information they have and disclose information to try and solve the problem on your behalf.

So the form has been developed in such a way that it not only covers the MLA, it covers the staff. And in the discussions along the way it was basically said, well our caucuses have staff, and people call caucus expecting matters to be resolved. And that is another way that personal information and personal health information can be dealt with. So that's been incorporated into the form.

Now moving on in the form, the next check box wouldn't have to be there, but it struck me that since we're having a form it might be wise to put it in there. And really, MLAs retire. I hate to speculate; MLAs lose, and in those cases what happens to the citizen's file? And this just seemed a perfect opportunity for the citizen to say, all right, if you retire you are authorized to pass this file on to my successor. And then the next check box would say, no I don't want you to pass it on to my successor; I request that you destroy it. So if you're leaving office and you have that sort of consent stapled to the front cover of the file, it gives staff in your office a clear direction as to what people expect to happen with the information that's on the file.

Now not everything on that file might be personal information or personal health information. I would have to leave it to you as to whether you cull out some and destroy some and not destroy others. You know, it can be a big job.

So in conclusion, thank you for inviting me today. I recognize that what I give you is advice and the Legislative Assembly in due course determines the rules that apply to all of you. And I do hope in that process that we can have a situation where citizens get their problems resolved in a quick, maybe confidential manner but then sometimes, if need be, in a more public manner. And I think the important part of what I propose to you is we, in effect, give the citizen the choice, and through some FOIP amendments that would create consistent rules that everybody knows about, some principles that all MLAs would know about, a common form that all of you could use would just bring some clarity to the system.

If you should proceed with this, certainly I would be pleased to work with the Clerk to provide anything for the MLA's manual on either how to fill out this form or what this form means, but that is down the road a way and would certainly take your direction as to whether that's necessary.

So thank you again for the time, and I'm certainly pleased to answer questions regarding this entire issue.

The Chair: — Okay. Thank you very much, Mr. Kruzeniski. To give you the *Reader's Digest* version of what the commissioner just said, the first report from the steering committee contains, first, the five additional points concerning the disclosure of personal information by members to be added to the existing MLA code of conduct, ethical conduct. Two, the five points are what the commissioner proposed to the steering committee without any changes. The commissioner also proposed a consent form, and this was adopted with two small changes. The changes added information on the individual's

name and address and also made the form applicable to caucus staff in addition to CAs [constituency assistant] and ministers' staff.

So that's basically the short form history of what happened at the steering committee and the changes that took place there. So I'll open it up now for any discussion or questions of Mr. Kruzeniski. David.

Mr. Forbes: — Okay. Yes. We had a very good conversation about this in caucus today, so I just want to raise some of those concerns. We really want to thank the committee and the commissioner for the advice. We know this is an important area and one that it's time to really tackle. So we really appreciate that, and they understand that. But again, any change, always there's concerns, and so I'll raise them.

And as we go forward with that, I'll just talk about some of the issues that we raised around the rigidity of saying, this is the form. I notice that there is a line about some appropriate modification dealing with issues around particularly . . . Some people raised the issue of distance. Sometimes things are phoned in. You know, especially in the North, it's hard to get a form. They don't have the technology. Faxing or emailing may be a problem. So at what point do we say, well is there another way to verbally, or some other way to give some permission?

And as well, just the whole literacy thing. Some people may not be able to read this, whether it's just English as an additional language, some of that, those issues. So there were questions around the rigidity of the form and saying, this is the form. And so I don't know if there's any comments about that but . . .

The Chair: — Ron, do you have a comment? Because I could speak a little bit to it.

Mr. Kruzeniski: — Well just some preliminary thoughts. We certainly do live in an electronic age, and certainly a form like this could be on the Legislative Assembly website. Maybe constituency assistants could email it out to people and people could reply and say, yes I consent. That reply might be a sufficient consent.

Literacy, Mr. Forbes, I don't know how to address. You know, I suppose the form could be in a few different languages. That might assist. I probably don't have more supplementary things, but I think we could find ways or suggest ways that it could be at least done electronically.

Verbally, in the health system, certainly verbally, and in the legislation verbal consents are contemplated. I guess in this case I did start with a piece of paper, and writing kind of is a start point. I frankly think it would be tricky just to do everything verbally. You could certainly start it verbally and eventually when you meet the citizen, have them do the consent or do the email, electronic consent.

That's just some preliminary thoughts, but my desire would be to still see a quick problem-solving process that helps the citizen most of all.

The Chair: — If you look at the fourth paragraph under the proposed recommendation, it says members of the Assembly

must use the consent form outlined in this code with appropriate modifications.

Appropriate modifications, according to Ken, was not to envision a change in the intent of the form. If you look down at the bottom of that page, it lists where the person lives and says, Saskatchewan consent to you and your staff — so you know, town of Alida in Saskatchewan. But let's say a person lived on the border of Manitoba or Saskatchewan, utilizes Saskatchewan health, their home address though was out of the province, then an appropriate change could be to say Melita, Manitoba.

It doesn't change the intent of the form or the authority, but it changes the form in the sense that it's appropriate that Manitoba be there rather than Saskatchewan. Yes. So nothing that would . . . I think that it's up to the committee obviously to change the form and say, well I don't want all of these things included in there; I just want to tell my MLA and he can't tell anybody else. You know, I think that's changing the intent of the form, you know. So any other questions, David?

Mr. Forbes: — Well I have three other points.

The Chair: — Or did you have a comment on this particular issue, Jeremy?

Hon. Mr. Harrison: — I'll comment on that issue when I comment on the . . . [inaudible].

The Chair: — Okay.

Mr. Forbes: — Okay. Well I just want to say that we need to flag that because accommodation is very important. And in terms of do we give people service for what their issue is or do we give people service for their privacy — and there's the balance, right? — in terms of, you know, if somebody needs service quickly we have to ensure their privacy. But that's the thing.

I just have a question about especially the timing of the second check box, or the first check box. So you know, I'm just seeing how this rolls out. If somebody comes in, they're kind of mad, we do the steps. And we send, you know, the permission form in. None of the check boxes are checked off, so the minister thinks this isn't going to go public because that check box wasn't there. And then the constituent comes in and says I'm really mad, I want to go public. And we check the second box. The MLA knows that, the constituent knows that, but the minister doesn't know that. They think this is still a private matter. Have you contemplated what happens then?

The Chair: — Well again this is just my personal . . . I think at that point in time it would be, obviously if you have gone public with it, then it's incumbent on the minister to ask, do you have the second box checked off?

Mr. Forbes: — And it's the second round of . . .

The Chair: — Yes.

Mr. Forbes: — Asking. Okay, fair enough.

The Chair: — That would protect the minister, but it would

protect all of those institutions that that information request may be going to because they're the ones who need it.

Mr. Forbes: — Right. Yes. And I think the commissioner really alluded to the two-way statement. And that was one . . . Like I know WCB [Workers' Compensation Board], they're not actually interested in seeing our form. They're interested in us making sure they have their form filled out because they want to be protected in their work.

Just in terms of privacy itself, I note that the report calls for, you know, the telephone, the home phone number, but then you get into cell and email. Is it necessary to have the cell and email on there, or are those optional because you would just want one contact information point?

[18:15]

The Chair: — Not everybody has a cell or an email address.

Mr. Forbes: — Right. Yes, so we won't say this is incomplete. Just for the record, we're all in *Hansard* right here, so those are all optional?

The Chair: — Yes. Well you know, if you look today, more and more people do not have a telephone number, they only have a cell number.

Mr. Forbes: — Exactly.

The Chair: — You know, so they maybe want, they want you to get back to them to explain, you know, what the result was of your queries, but you need to be able to contact them.

Mr. Forbes: — Sure. I mean, there is that concern about gathering a lot of data about people and say, listen once I've got your permission form and I do destroy your file, but I do keep your email. I do keep, you know, the fact that you came in. Is that part of the destruction of the files?

The Chair: — That one I'll leave up to the commissioner.

Mr. Kruzeniski: — What I contemplated, destruction of a file is when you retire from office. I suppose if you destroy a file earlier it's your choice as to what you retain. If the FOIP amendments were in place, there'd be an obligation on an MLA to protect whatever he or she retained, whether it's an email or cellphone or whatever.

So the form itself just contemplated really, you know, the end of the road. I'm leaving office and there is someone to take over or there isn't somebody to take over.

The Chair: — Can I interject for a second? Ron, on the information collected for the file which would include name and a contact, under your legislation is it permitted to use that contact information for some other purpose, not the information collected other than that name and contact information?

Mr. Kruzeniski: — I certainly contemplated the form — and certainly I might ask the Law Clerk to take a second look at it — when it says personal information, it would be all personal information, you know, that you have on the file, which would

include the form itself.

The other thing is as the person fills out the form, certainly they're voluntarily providing that information to you, and then they're signing the bottom of the consent. So I think they've given it to you voluntarily with consent.

Now as Mr. Forbes has said, you could get into some situations where people don't want to give you the address or don't want to give you the phone number, and I think that's certainly acceptable. And I guess we, when you posed the question, Mr. Forbes, I automatically thought, so many forms start this way that I guess I did this one automatically. But certainly I think the citizen can choose what information he or she gives you when it comes to filling in the details here.

The Chair: — Mr. Ken Ring has a technical response to that question. Ken.

Mr. Ring: — So I would suggest that, if I understand part of your question, Mr. Forbes, if you would like to keep some of the information for statistical purposes in your constituency office, that's fine. It's really . . . You can't disclose it to anybody else, but you've been provided with the information. If you don't disclose it to anyone else, then it remains private and there's no issue.

So it's similar to other statistical information where you have 15 constituents came in with a health issue, and then the second part of that is you have a contact number, phone number or you have their address. You could retain that information so you can contact the individual, but you can't give out that piece of information to someone else because then you're disclosing the information. So if you keep it private between yourself and the constituent, you're not disclosing it to anyone. So subject to what the commissioner may have to say on that, that would be my point of view.

The Chair: — Okay, Mr. Forbes.

Mr. Forbes: — Yes, this was sort of . . . A bigger one was around adjudication and the difficulty, and the commissioner has alluded to it. So if somebody doesn't use the form, and what happens then? And you know, it becomes really an issue of this committee. Then this committee would report out to the legislature, and that's the process.

And so it really becomes . . . And hopefully we are considering merit in that, you know, as opposed to the majority rule. But we are what we are and, you know, in a legislature and a democracy, that may not be the most appropriate way of resolving some of these concerns that may arise up because we may be more technical or whatever if we can. But it is what it is, but we wanted to flag that. The adjudication process is that. And I don't know if the Speaker . . . This is maybe more a question. I don't know if anybody's ever been brought forward under the code, which means we all pay pretty well.

The Chair: — Or in cases that could have been, there were other recourses.

Mr. Forbes: — There were other recourses, yes.

The Chair: — The one area that was mentioned was verbal or oral permission. I can see that one being problematic down the road. So orally, for you may collect my information, but as soon as you want to go someplace else with it, to a minister's office or your staff or your assistants, they're going to need that protection that they don't have with simply a verbal approval. How do they then prove that yes, I had permission because Joe told David? I see that as problematic.

Mr. Forbes: — And my last point is more for the committee. Some of you may have seen me holding this up, and I think it's a pretty good-looking document. We should have one all on our wall. But the consent form at the bottom would not be . . . I don't know where you'd put the consent form on this poster.

A Member: — It's more of a coupon.

Mr. Forbes: — More of a coupon. Well I'll just leave that with the committee.

The Chair: — Actually if you look in the rules, there is a form in there for something else, but it's not part of the actual code. Mr. Merriman.

Mr. Merriman: — Thanks, Mr. Speaker. Just a comment on the oral. I think that within everybody's constituency office, they would have the capacity to be able to tape-record a conversation. And if they read this to the constituent and tape-recorded that conversation back and saying, I agree to this, this, and this, wouldn't that solve the problem of an oral consent?

The Chair: — I would have to ask the lawyer again, or the commissioner. Mr. Kruzeniski.

Mr. Kruzeniski: — I think that solves half the problem. And it solves the problem that you do have consent and, you know, you've got a recording of it and that sort of thing. The only problem it doesn't solve, as the Speaker has said, as you move down the line and as you go to the care home or wherever, and the person says, well give me something that protects me. And I guess you could duplicate the recording, but it starts to get technically awkward. So I think it goes halfway, but it doesn't sort of meet that down the line, probably how people will react to you.

The Chair: — Mr. Harrison.

Hon. Mr. Harrison: — Well thanks so much, Commissioner, for the work that you did on this and in a very timely way did this work, which is very technical, particularly once you get into the details around some of these questions. You clearly thought them through in very significant detail and made some very thoughtful recommendations. I want to thank the steering committee as well. I know that you folks have met I think four times in the last three months or so on this, which is appreciated.

As far as the government goes, we want to see this implemented as quickly as we can, particularly on the items that have been raised in this particular report in that these are matters that we really can address very quickly. As members, they touch on us. It's a group of 58 members that are able to move quickly on this

as it impacts us. Obviously it impacts our constituents and those that we're dealing with, but this is something that we can move forward on quickly.

So in terms of time frames, we would like to see this implemented as quickly as possible, tomorrow even, that we would report this out to the House. The House would adopt the report in its discretion, obviously, and if so adopted, that we would have this in place in the next two days. So that's something that we would like to see.

In terms of the legislative changes, which are also important, we've been, government has been working on those legislative changes. Obviously there's a lot of technical and challenging drafting issues around that, but we're committed to moving forward on those in a very expeditious fashion or having those prepared at least for a government that may be elected after April to be able to deal with them.

And in terms of the concerns raised, I appreciate the concerns raised by you, Dave. In terms of the distance issues and language issues, I come at this I guess from a similar perspective perhaps to the commissioner in that having a legal document is the preference. It solves a lot of problems. That being said, I'm not blind to the issues that we could have with regard to distance and with regard to language potentially, so perhaps, you know, as we have individual cases that maybe come to our attention where these matters are challenging, you know, we can address those matters as they arise. But I think getting the form into general use right now is much preferable to what we have right now, which is essentially ad hoc or in some cases probably nothing.

So I think we address those and are very cognizant right now that these may be issues and that we're going to need to address them. And in terms of kind of the drafting of the form and the personal information, I mean kind of where I would come at it from is, you know, as complete as we can make it. So if you don't have a cellphone, obviously you're not going to be putting in a cellphone number or email address or something like that, but as complete as we can make it with an understanding that obviously we're going to be using this and keeping this information confidential.

In terms of the adjudication issue, I know this was something that, you know, I kind of thought about as well. But the fact that this is a document that's in possession of the House . . . I realize it's not a direct standing order provision but it is a document that the House would be adopting, and the House would have remedies available to it if there were members who perhaps weren't, you know, using the form in an appropriate way or using the form at all. But the House would have those abilities to determine the remedy, the remedy of its own volition. So I guess those would be my thoughts on it but, you know, primarily just wanted to thank you, Commissioner, for the work that you've done on this.

The Chair: — Mr. McCall.

Mr. McCall: — Well sign me up for saying thank you. Again, good work. Just a point of clarification I guess, Commissioner. You'd referenced verbal consent being contemplated in other pieces of privacy legislation. Could you expand on that just for

my own illumination.

Mr. Kruzeniski: — Well it's certainly present in *The Health Information Protection Act*, and I think of yourself or myself when you go up to a counter in a doctor's office or a lab or . . . and just the information that you're kind of just providing. But I think similarly on the telephone, you know, a nurse or a doctor could call you up and say, you know, give me this information, or can I provide it to someone else, and you say yes.

So verbal consents I think kind of work. Well I think in the health sector they have to work. I think maybe they don't work quite as well with the work that MLAs have to do in terms of dealing with ministers' offices and health regions and care homes and in effect the other people looking for something that they can slap on their file so that they feel comfortable exchanging information with you. So I think that's the subtle difference here.

But I do appreciate, you know, when Mr. Forbes says about some people, either not literate or farther away. And I would like to see that we could come up with some alternatives there, but I can see public bodies kind of wanting a piece of paper.

[18:30]

The Chair: — Okay. I do have one further question, and we discussed this, Mr. Kruzeniski, in the steering committee. What happens in the case of a death? Obviously the dead person can't sign the form. What kind of remedies are there in place to allow either the executor or the family to have access to the file and to try and find a remedy or a solution to what they see as an issue?

Mr. Kruzeniski: — Well section 30 of *The Freedom of Information and Protection of Privacy Act* says a deceased's personal information is really not to be disclosed for 25 years, so you can twist that around that your personal information stays your personal information for 25 years after death. Now there is an exception that the head, and in many cases that's the deputy of a ministry or a CEO [chief executive officer] of a health region, can disclose information to next of kin where it isn't an unreasonable invasion of privacy. So really the only people that could sign a consent after death would be the executor or the administrator in a technical, legal sense.

Now I know that MLAs will get approached by, you know, the oldest daughter or the oldest son saying, I'm speaking for the family. It causes a bit of a problem after death if they're not the executor or the administrator. And for people to basically then say, go to the court and get letters probate and spend money, you know, is not that acceptable an answer, but that's kind of what the legislation says right now. You know, as we move forward and think about amendments, we might be able to come up with an amendment that addresses part of that. But that's a fairly strict answer, Mr. Speaker.

The Chair: — Okay, thank you. Mr. Harrison.

Hon. Mr. Harrison: — I just had one technical question. With regard to kind of the first check box or the first consent on the form where you're consenting to disclose information to another Member of the Legislative Assembly, minister, their staff, or caucus staff, etc., in the next text block it refers to the

public disclosure of information to any other Member of the Legislative Assembly, their staff, or caucus staff. The minister part of that has been left out. Was there a drafting decision or a technical reason for that?

Mr. Kruzeniski: — You might be right, Mr. Harrison. Yes, I think the list of people should be the same.

Hon. Mr. Harrison: — Okay. Well then we'll have to add in as an amendment then to after the Member of the Legislative Assembly, the minister part of it.

The Chair: — It may be covered though in that the minister in all likelihood would be a Member of the Legislative Assembly. Not necessarily in every case.

Hon. Mr. Harrison: — I think just for technical certainty and drafting clarity.

The Chair: — So would you be proposing . . . We don't have this motion yet on the table, so then you would need to propose an amendment after it's proposed.

Hon. Mr. Harrison: — Yes. I mean if it was just a drafting oversight then yes, I would propose it.

The Chair: — Any other questions? David.

Mr. Forbes: — On the last, where it says members of the Assembly must provide a copy of that consent to others, you know, because sometimes people don't ask when we do this. In fact they don't want to see ours. They want to know that we have one. But would it be better to say members of this Assembly must be able to provide? So if somebody wants one they can have it. If they don't want it, they don't have to have it. Because this says you have to give it. And whether you want it or not, you're going to get it, you know.

The Chair: — Must provide on request.

Mr. Forbes: — Yes, it's the same but that's what I mean.

The Chair: — Yes.

Mr. Forbes: — Upon request . . . [inaudible interjection] . . . Yes. People don't say, show me. They say, do you have one? And that's often the conversation we have.

The Chair: — And that could very well be from the institution someplace.

Mr. Forbes: — Yes.

The Chair: — You know, you can't get grandma into the nursing home. She's given you all the information. You want to talk to the nursing home.

Mr. Forbes: — Well the two that in our office we deal with most are WCB and Social Services. And they have their own forms. And they're interested in us having their forms filled out and so on request would be fine.

The Chair: — Okay. That's a good one, David. Anything else?

Warren?

Mr. McCall: — If I could, a couple of for instances for you, Commissioner. Say I'm a constituent out in Elphinstone. I have an immigration piece of casework. I'm a thoughtful citizen. I know who the Immigration minister is, so I phone Minister Harrison's office. At that point, does the able ministerial assistant to Minister Harrison say, you know, before we proceed dealing with your case, I need you to come down here and sign a form, instead of proceeding to address the casework? What happens in that circumstance?

The Chair: — Go ahead, Mr. Kruzeniski, if you have an answer.

Mr. Kruzeniski: — I think my answer is that the assistant does say, come down and sign the form or I can fax it to you or I can email it to you. And I know if I heard that answer on the phone, I wouldn't be excited about it. But when you start to work down the chain again, the minister's office has to get information from other places.

Now you know, this is a little bit of a difficulty with my analysis. I think we tend to think that the minister is in charge of a ministry, and therefore anything the minister asks for, he gets. But when you look at FOIP and all of a sudden ministers' offices aren't covered, they really end up being a separate entity for these purposes. So it would be nice to say, oh no, the minister can get anything he wants from his ministry, but if you do an analysis of it, really they should be getting the consent.

Mr. McCall: — Okay. Thanks for that clarification, I guess. A second for instance would be, we do a fair amount of casework via email in our office. That way we get the particulars in the black and white. And we don't have, you know, as with my colleague Mr. Forbes, where we require a form, we get the form sorted out. But say I think of a piece of casework that was conducted today where it was pursuant to an SGI [Saskatchewan Government Insurance] case. The constituent's name and the SGI casework file number were included in the email. The particulars of the concern were included in the email and off it went to the Minister Responsible for SGI. Again, what would the . . . That practice would be inappropriate under the new regime. Is that correct?

Mr. Kruzeniski: — You pose difficult situations, Mr. McCall, and I really hate to be the guy throwing in obstacles in efficient problem solving, but I think my answer has to be the same with this exception: if you collected the information and just forwarded it to the minister and said, solve the problem, you don't have to get back to me, don't share anything with me, I'm just giving you information; you know, and maybe the minister forwards it to the CEO and says, solve the problem, don't get back to me, I've just given you some information. That might be a little way to avoid the whole consent thing. But the minute you want to know whether the problem's solved, when you have to have a discussion, get some more information, the minister at SGI give you some information and come to some reasonable settlement, you're into using and disclosing, collecting and exchanging information. And I don't know how you do it without a consent on paper — faxed, emailed, but it's still a consent.

The Chair: — Any others . . . David, go ahead.

Mr. Forbes: — I just want to say I think that was a good answer and good question because we do have a lot of people we just refer out the door to the Ombudsman or the Children's Advocate. And we don't collect or keep the information. Maybe their name and phone number and a brief description, but that's basically it. And we don't ever see them again maybe.

The Chair: — In that particular case, would it be classified as collecting if you've been given the information and you simply direct that person to another location?

Mr. Kruzeniski: — Well, Mr. Speaker, you would be collecting and you would be disclosing so you would want to have your backside covered by getting the appropriate verbal consents, I guess, to go that far. So I mean I can see that maybe having to work in some instances. But again, as soon as we get to exchanging and back and forth, I think you're to a little more robust type of consent.

The Chair: — Okay. Any other questions? Mr. McCall.

Mr. McCall: — Just one last, Commissioner Kruzeniski. What are your thoughts on an individual that you have fairly frequent interaction with on perhaps a number of different cases? Is this like one consent form fits all? I realize there is a space where it says "for the purpose of" on the form. But you know, it could be the purpose of casework. What are your thoughts on . . . Do you want one each and every time there is a discrete item of casework or what are your thoughts on that?

Mr. Kruzeniski: — The reason in drafting the form, we put the purpose in there because use is usually connected to purpose. You know, I consent to giving my personal information to use it for something in particular, not to sell it to, you know, a data gathering agency or whatever. So you usually contemplate you're consenting to a purpose. In drafting the form certainly I think we were thinking of, you know, I'm sitting in front of you; I have a problem, Mr. McCall, please solve it.

For the person that has many problems, it would either be individual consents or looking at saying something more broadly for the purpose of solving all my claims with Social Services. That would broaden it. Now all my claims with government is pretty broad and then I think at that point the only thing you have is the people you hand it to, you know, would they still accept it? And I guess if it's broad enough and well written, they should.

Mr. McCall: — Thank you.

[18:45]

The Chair: — Mr. Ring has a comment on that.

Mr. Ring: — I'll call them a full-service client. We have those in the legal profession where they come in with everything from soup to nuts. Any necessary modification of the consent form I think would include consent to you or your staff collecting and using my personal information or personal health information, full stop. And they're sort of giving you then carte blanche to use the information as you see fit without having to try to

specify what the purpose is. And then you take out the words, “in relation to the above purpose.” And then I think they would be allowing you to use the information for whatever purposes you need in order to accomplish what it is that they’ve asked you to do. I don’t think that would include giving it out just for fun or giving it out to sell it. But you’re giving . . .

The Chair: — But would you be changing the intent?

Mr. Ring: — Yes, you’re giving a carte blanche to use the information if that’s what the person decides, if that’s the consent they want to give.

The Chair: — Any other questions? If not, we have prepared some amendments to be proposed based on the discussion before we get to the main motion. Mr. Forbes?

Mr. Forbes: — Yes. I’d like to move:

That the first report of the steering committee be amended by adding the words “upon request” after the words “members of this Assembly must provide” in the fifth bullet notation in recommendation 1.

The Chair: — Mr. Forbes has proposed an amendment:

That the first report of the steering committee be amended by adding the words “upon request” after the words “members of this Assembly must provide” in the fifth bullet notation of recommendation 1.

Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — Carried. Okay. Mr. Harrison.

Hon. Mr. Harrison: — Yes. Thank you, Mr. Speaker. I would move an amendment that would read as follows:

That the first report of the steering committee be amended by adding the words “or minister of the Crown” after the words “member of the Legislative Assembly” in the second checkbox of the form proposed in recommendation no. 2.

The Chair: — It has been moved by Mr. Harrison:

That the first report of the steering committee be amended by adding the words “or minister of the Crown” after the words “member of the Legislative Assembly” in the second checkbox of the form proposed in recommendation 2.

Is it the pleasure of the committee to adopt the motion?

Some Hon. Members: — Agreed.

The Chair: — Carried. Okay. If someone would move the following motion:

That the first report of the steering committee be adopted as amended by the Standing Committee on House Services

and the recommendations within be presented to the Assembly.

Would someone move that? Mr. Cheveldayoff.

Hon. Mr. Cheveldayoff: — I so move.

The Chair: — Seconder. No seconders. Okay. Thank you. Can we now have a short recess while we make the changes to the report before you actually vote on it. It will only take a few minutes.

The committee stands recessed for 10 minutes. We’ll call the members back as soon as the form is completed.

[The committee recessed for a period of time.]

The Chair: — Okay, we’re back in session for the House Services Committee. Mr. Cheveldayoff had moved:

That the first report for the steering committee be adopted as amended by the Standing Committee on House Services and the recommendations within be presented to the Assembly.

Any discussion? If not, is the committee in favour?

Some Hon. Members: — Agreed.

The Chair: — Carried. Okay. You have before you the report from the House Services Committee to go to the Assembly. You will note in there the amendments that were proposed and agreed to. If someone would move the following:

That the 14th report of the Standing Committee on House Services be adopted and presented to the Assembly.

Mr. Tochor. A seconder? Mr. Forbes. All in favour?

Some Hon. Members: — Agreed.

The Chair: — Carried. We’ll get those signed. Then we have one motion left. Okay, would someone move that the committee adjourn? Mr. Merriman wants to get his name on the record. All in favour?

Some Hon. Members: — Agreed.

The Chair: — Carried. This committee stands adjourned until the call of the Chair.

[The committee adjourned at 19:08.]