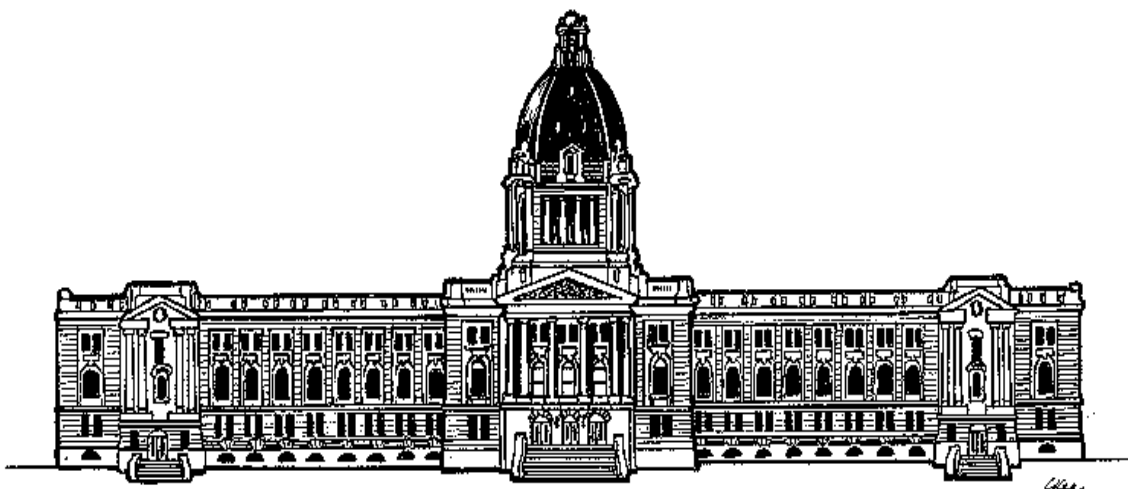




Special Committee on Tobacco Control

Hansard Verbatim Report

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**SPECIAL COMMITTEE ON TOBACCO CONTROL
2000**

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The committee met at 9:06 a.m.

The Chair: — Well good morning, everybody. How are you all? We hope you've all rested and had a bit of an opportunity to think over and read all the submissions that we got.

We have asked some people to come today, two or three organizations — people representing two or three organizations — because we felt that they were a couple of organizations like the Saskatchewan School Trustees Association and Federation of Saskatchewan Indian Nations that we wanted to consult directly on several issues, and that may affect them directly.

So today we want to welcome Craig Melvin and Ardith Stephanson from the Saskatchewan School Trustees Association.

Generally speaking, our process has been that, if you have a presentation to make, we would sit and listen to the presentation first and then the committee members may want to pose some specific questions after. Would that be fine with you, Craig?

We have till about 9:30 so maybe we'll . . . well we may have to extend it a little further than that, depending on our time limit. I think what we'll do is just ask you to proceed at this time.

Mr. Melvin: — Sure. Maybe just a brief presentation, then an opportunity for question and discussion.

Thank you for the opportunity to be here. We gave some consideration to preparing a written brief and decided that we wouldn't. We had sent earlier a resolution that was passed at our convention, related to smoking, to government, and felt that in some respects that kind of said where trustees were on the issue. But we're certainly pleased to have the opportunity to respond to questions and concerns. And we're certainly interested in the work of your committee.

The trustees association — and I think most of you know about our association — is the association of all the school boards in the province. It's a voluntary organization. All the boards are members at the present time and so we see as our central task one of representing their interests in issues like this.

Just by way of a number of general comments, I would hope that you would understand that the trustees association is and has been opposed to smoking and tobacco use. Our conventions actually for the past I think it's about 15 years now, and other meetings of our association, have been, you know, smoke free. And you can imagine 15, 20 years ago, making that transition was an interesting one for our organization. But trustees were quite firm about it and we've managed to maintain that stance, and I think it would be fair to say it's become stronger over the years. So trustees and school boards have consistently opposed tobacco use, and particularly by children and youth.

Within our schools, it's our view that there has been a strong and consistent effort made through the curriculum, and by controlling tobacco use as best we can on school grounds over the past 20 years or so. We saw through the '80s in our schools — and I'm sure you have this evidence before you — a very

substantial reduction in tobacco use, down to about 20 per cent of the student population in the early 1990s.

Since that time, the evidence that we have suggests that this tobacco use has increased. In fact for females — and as I understand it in Saskatchewan this would be going back to about 1996 — a study found it was about 39 per cent of females were smoking. And so it doubled from the early 1990s to the mid-1990s the use of tobacco, and increased for males as well — not to the same numbers — but also increased for males. And of course school boards have been concerned about that.

But it's interesting from our point of view that the school practices, through the '80s and through the '90s, in our judgment haven't changed substantially.

Certainly the curriculum has changed and there's been increased emphasis and so on. But through the 1980s, teachers made a very substantial effort to teach children about the impacts of tobacco use, discouraged its use, and so on. Our curriculum, in our judgment, has improved. There have been new elements added to it with respect to decision making and so on, and we think that has had a positive impact.

Also with respect to the use of tobacco on school grounds, there hasn't, in our judgment, been a substantial change through the '80s and into the '90s. If anything, there have been more controls on smoking on school grounds and certainly not less.

But it's interesting that even with those two efforts, through the educational program and through the actual control of tobacco use, we see it . . . at least through the 1980s it seemed to work, but through the 1990s there seems to be something working against us. We're led to the conclusion that in most respects it's external factors that are impacting and encouraging young people to use tobacco. It's not what we're doing or not doing so much within schools that would seem to have much impact in this regard.

In fact it would be our view that through the early 1990s and to the present, both with young women and interestingly I think with older men, it has become not only acceptable to smoke but even fashionable in some respects. And that is of substantial concern. But those are matters that are beyond the school, and either controlled through advertising or other means, more broadly in society.

At our convention last year, there were two resolutions brought forward with respect to the use of tobacco. The first resolution which was supported by the convention . . . and it's interesting it was supported by 58 per cent, which typically if a resolution is broadly supported you'll see 90 to 95 per cent of trustees supporting it. So it suggests to me that there were some concerns.

But the resolution — and it's been passed to the committee — it was:

Be it resolved that the SSTA (Saskatchewan School Trustees Association) support a ban on use and possession of tobacco products by anyone under 18 years of age.

Now there's a number of factors here — there may be a concern about the age; perhaps some may think it's too high — but also running through this is the capacity within schools to actually eliminate completely the use of tobacco on — and the effort that's required to do that — on school property. So it was interesting that certainly it was supported, but it was a 58 per cent support.

At the same time a resolution failed — it received less than 50 per cent support; it would have been about 45 per cent support — was that:

Be it resolved that the SSTA lobby the government to consider making it unlawful for anyone under the age of 19 years to possess or use any tobacco products.

So the question for trustees with respect to criminalization, if you will, of tobacco possession or use was a concern and obviously didn't receive sufficient support for us to be encouraging that.

But I think even more interesting is the previous one, that although there's support for a ban, there is concern, I would take it among trustees and school boards and certainly school administrators, as to how we would actually carry that ban out in an effective way in our schools.

So those are the two resolutions we wanted to bring to your attention.

Finally, let me just address a couple of questions that were put to us with respect to our comments today. The first question was about making educational opportunities or learning opportunities for children with respect to tobacco use mandatory, as a part of the curriculum. And I think as you probably know now, it is in our curriculum from grades 1 to 5 in the elementary years, and the middle years in 6 to 9. And the focus is a broad focus and it's certainly an anti-tobacco-use focus.

As I said earlier, it also focuses in the grade 6 to 9 on decision making and encouraging youngsters to make good decisions. But when I say it's broad, it focuses on the environmental impacts of second-hand smoke and so on. So there's a fairly broadly based effort within the curriculum to ensure that youngsters are aware and making positive decisions with respect to tobacco and certainly other behaviours.

At the high school level in grades 10 to 12, as you probably know, the health/phys. ed. program is optional, although all children in order to graduate are required to take one course or one credit in grades 10 to 12. And of course, thereto, tobacco use is addressed.

So the curriculum includes an emphasis on . . . an anti-tobacco emphasis if you will. And certainly it is taught. It is mandatory that teachers teach the curriculum. There's no question about that. And so in many respects what the committee was asking about, I believe, is in place in schools.

There is an opportunity, probably, within our curriculum for the Department of Health or another department of government to make additional resources available to support the curriculum. I

mean it's always welcomed and it's always helpful to have those resources.

But in general our conclusion with respect to legislation, making anti-tobacco education mandatory within the schools, is somewhat redundant. It's in place now; the Saskatchewan curriculum is mandatory; there isn't an option as to whether you teach this or not.

The second question was with respect to a ban on smoking on school property. And while we haven't consulted very broadly across Canada, we do know that as far as Alberta, Saskatchewan, and Manitoba is concerned, the responsibility to determine whether smoking will be allowed on school property rests with individual school boards.

It's up to them to make the determination and in the vast majority of cases, in all three provinces and certainly in Saskatchewan, boards of education have taken the initiative either at the board, the school division level, to control tobacco use. And it may be an outright ban on smoking on school property, or it may be let's say a partial ban, that an area is provided on school property, typically outside of the school, for students to smoke and in that way to control it. So boards have responded to this fairly actively and have done this, though, in a variety of ways.

In Ontario it's interesting. There has been a ban on smoking for the past number of years — probably 7, 8 years — on school property. And the results of that have certainly been mixed. And we certainly haven't seen a lot of research on this but there have been surveys. And in general the conclusion has been that the outright ban on school property has had neither a negative nor a positive effect on tobacco use.

It has raised some interesting questions and concerns on the part of administrators with respect to the actual enforcement of the ban. And as much as everyone would want to see no one smoking on school property, the problem is that a substantial proportion of young people do in fact smoke and smoke regularly. So the problem here is: so how do you control that? Where do they go to smoke?

Well, the thing is, they go out on the street and a trip down — a field trip for this many — down College Avenue past Balfour Collegiate shows the results. I mean, the children are out in front of the school. And as you pass by Miller school you note that the kids aren't out in front of the school and it's because a different school board has a different approach to this and a smoking area is provided.

And I know in talking to trustees in Ontario, one of their greatest concerns about the ban on smoking on school property is that the youngsters will leave the school grounds and go to some other area close by the school to smoke. And when you go to that area, not only do you find cigarette butts, but you find condoms and you find needles and you find other unsavoury characters who would seek to exploit the young people.

So there's a problem with an outright ban as much as people might like to see that. There's a problem of enforcement and school administrators right now — certainly in the public school system in Regina — do what they can to enforce the ban

on their school property, but I think very few of them would be willing to say that there's absolutely no smoking. So it's difficult.

Another interesting thing we found in talking to schools . . . In fact, yesterday I talked to the director of education for the Northern Lights School Division, and in their situation they have left it up — because it's such a large school division — they've left it very much up to the communities to decide how they'll respond to the smoking issue within the schools.

And he says within their school division it really does vary. They have some schools where the community has decided an outright ban is appropriate. They've got other schools where they provide a smoking area within the school even, and in others certainly on the school grounds.

So it varies substantially within their school division but interestingly it's under review. And there you have a board of education that is saying look, we think we need to take a harder look at this and so there's sort of an active pursuit of the issue as far as they're concerned.

So in Saskatchewan right now it varies. The responsibility rests with individual boards of education. They respond differently to that depending on the nature of their communities. But in the vast majority of cases . . . We haven't conducted an exhaustive survey, but it's my understanding clearly in the vast majority of cases smoking is certainly controlled within the school and in a good number of cases there is in fact an outright ban.

So with that we'd be pleased to answer questions that you might have.

The Chair: — Well thank you very much for that very concise summary and it's very helpful to us, to the committee members, I'm sure. We'll start with Mark Wartman.

Mr. Wartman: — Thank you, Craig. This is just a little confusing for me. It's around the issue of the curriculum because from what I heard before my sense of it was that though there is room in the curriculum for education around smoking, the curriculum as it's set up does not make it mandatory that smoking is one of the components — decision-making, self-image — but it is not necessary that smoking be a part of the component of that particular curriculum.

And that was of concern to us, at least to myself, that it's not clear anywhere through grade 1 to 5, anywhere clear in the later years, that actually smoking and tobacco use, and the hazards involved, will be addressed. Am I accurate in that understanding because that's what we got through the department, and . . .

Mr. Melvin: — So that there are choices. What the department has told you is that there are choices that schools can make with respect to what it is they might use in order to focus on healthy decision making and so on. And that's true. I would be very surprised that a teacher would quite deliberately choose something other than smoking as an example of something that you need to make a positive decision about in terms of health — in terms of your health style.

So, yes, there is that kind of flexibility, but I would be very, very surprised that tobacco weren't selected, and I'd also be surprised that if there are young people who come through — certainly by the time they're through the end of grade 9 — have not been exposed to this probably on repeated occasions to, you know, the harmful effects of tobacco use. On the other hand, the Department of Education does conduct evaluation studies of the program as to whether it's being taught or not being taught. And it's probably worthwhile looking at that evidence to see.

Mr. Wartman: — Yes, I think there is a sense that I got that it was not consistently taught. My feeling is that after having listened to the evidence from a variety of different sources, that if it's taught age-specifically, consistently, a certain amount each year, and that smoking is the focus, that it may have an impact. But if smoking is not a part of the focus . . . And I mean I don't know how many curriculum hours that would entail, but that the consistency be there every year, then it might have more of an impact.

Mr. Melvin: — That could well be and you probably say the same thing for mathematics, and language arts, and history as well.

And I think one of the things that this committee would need to keep in mind or anybody that is making decisions about curriculum and how it's taught in the schools, is that we have probably, well since the '50s frankly, moved away from the idea that the Minister of Education would be able to stand up in the legislature and say, look this morning on March 28, at 9:30 in the morning, I know that every Saskatchewan teacher is teaching this to children in grade 5, and in grade 6 it's this, and in grade 7 it's that. And so that it's put more in the hands of the teachers within the schools to use their discretion in terms of how and when — often — certain elements of the curriculum are taught.

And I'm not suggesting here that somehow we should just sort of leave this to chance and I don't think anybody wants to do that. There's no question about it. But on the other hand I think any committee making recommendations like this needs to, I think, to understand the full impact in terms of the educational side of it and the impact on teachers and so on about those sorts of recommendations, encouraging it, and providing the resources and the supports, certainly.

I think too it would be interesting to know more perhaps from the Department of Education with respect to their evaluations about whether or not in fact it actually is being taught. I'd be surprised if people are deciding not to use tobacco as an obvious sort of health-related decision that youngsters have to make — but I could be wrong. We don't have the evidence.

Mr. Wartman: — Thank you very much.

Mr. Bjornerud: — I just want to follow up on that, Craig, too because I think I got the same message that Mark, and maybe everyone, had here. They talked about how in schools it varied about what degree they were being . . . it was being brought up, whether in health or wherever it was being brought up. And I think a lot of the students that we talked to out there, and if I got the message right, was that had it been harped to them every year . . . and we have kids saying that at seven years old they

started smoking full time, which was amazing. And I know kids don't like to be harped to but I think some of the students we talked to, that if it had been taught every year on a consistent basis, which I think we heard wasn't the case in many schools — in some it probably was — that, you know, the negative effects might have stuck in their mind a little more. I think the scary part, as I said, that kids seven years old are starting to smoke and continuing right on up. I mean that's amazing.

One of the other things you talked about, and I wonder if it would help if the tobacco laws were the same as the alcohol laws. Would it make it easier for school boards and schools and that? Because it would already be illegal, number one, to buy or to be in possession of. Or would it make it just as hard who polices it? I guess I'm asking what you think that would do.

It would take it out of your hands in one way because now it's against the law of the land to . . . the seller can be fined now, but the purchaser who is a young person cannot be. And I find that kind of odd to start with.

Mr. Melvin: — Well it seems to me that the resolutions at our convention I think, quote, "tried to make the choice between that." They're saying if there's a way to ban and control the use of tobacco, 58 per cent said that would be a good idea. On the other hand, a minority said that we should criminalize it. And I think that would be their concern.

There is a limited problem with alcohol and drugs and so on as far as schools are concerned. And typically it's around dances and sports events and so on that you find the use of alcohol by youngsters under age. And there are certainly actions taken.

The problem though is that, if as many as a third of the students or more are smoking, now we've got a serious problem if all of a sudden it's going to be criminalized. Now what do you do as a school administrator. Even banning it from the school property, I mean, on paper that's fine. The problem is then someone has to enforce the rules. I don't think we've got enough vice-principals out there in high schools to actually do that. And it creates a huge problem.

And it's interesting that where an outright ban on school property, let alone criminalizing it, has occurred, the number of suspensions and so on goes up dramatically. And that's the capacity that they have. So you stay at home to smoke presumably for a couple of days, and then you come back to school.

I mean, I appreciate and I dare say when you hear the questions here, I mean the committee is fully aware. I mean, this is a very complex issue and it can't be addressed in sort of single measures. And I dare say that's probably what your report will say too. That you need . . . you know, there's a broad array of measures that need to be taken.

But just from the point of view of our members now, as far as criminalizing it is concerned, I think they would be concerned about that. And particularly if there's a role that the schools have to play in that. It's tough enough with alcohol and other drugs.

Mr. Bjornerud: — Thank you, Craig. Because that was some

of the suggestions we'd had, and it's people like you that would actually be the ones that are out there trying to police this to a degree. And I think your input is valuable when it comes to suggesting what we maybe suggest.

Ms. Bakken: — Just to follow up on what . . . about the curriculum. I think the message that we received in most places was that there isn't . . . if anything is taught about tobacco, it's very, very rare and very limited. And I guess when you . . . your comment that the teachers decide what's going to be taught in the classroom is very disturbing to me. Does the SSTA have any influence over what is taught?

Mr. Melvin: — Yes, well not the SSTA, but individual boards of education certainly do. It's their responsibility to approve the program of studies. Teachers . . . I don't want to leave the impression that teachers just sort of make . . . just choose whatever to teach in the classroom. I mean they are required to follow the Saskatchewan curriculum.

Within the curriculum there are certain choices that they can make. And those choices are intended to be sensitive to the needs of the community, in some respects sensitive to the capacity of the teacher. Some have greater expertise in some matters than in others, and so on. But the objectives of the curriculum and the concepts that are intended to be taught must be taught. There isn't a choice about that. So I don't want to leave the impression that there's huge flexibility.

I'm concerned though that if this committee is finding out that somehow in our schools that people are just saying well there's no point in teaching about tobacco use, and that they're just sort of leaving it to the side, that distresses me. And it surprises me, quite frankly, if that's the evidence that you're gathering.

Ms. Bakken: — Well I would say that that was a very clear message that I received, and I think that's evident by what's been said here today. The only thing that I recall really is some of them said they had a small segment in grade 9 which had a small component to it, and some of them said they had had no instruction whatsoever throughout their whole school years.

And I don't think we . . . I don't recall anyone that had it in the public school at all, saying that they had any instruction. And that's when we found that most kids that are starting to smoke make the decision to start before they reach grade 7.

Mr. Melvin: — That's true.

Ms. Bakken: — And so there is a real gap here. And, you know, I'm a firm believer in that there are certain things that should be taught, and maybe this is one of the things that we have to make mandatory in Saskatchewan, that it's going to be taught. But just a suggestion.

The Chair: — It is interesting. Interesting things happen because we didn't hear from any teachers. We heard from many groups of students. So the teachers' perception might be different. They might say, hey, we're pushing it to them. But the students certainly are the ones that gave us this impression that you've been hearing about.

Let's see. Brenda, you're done? Okay, then we'll go first of all

to Deb.

Ms. Higgins: — A couple of the comments that we heard, and one that we heard quite commonly, was that the kids in the high schools felt that the education, what they did get, wasn't started early enough. That we should be focusing on the younger . . . I mean even starting in grade 1, 2, 3, up into that . . . those ages; that we should be starting earlier and that it should be more consistent. I got the same impression. So it seemed to depend on the teacher.

And we actually had a very good comment from one student here in Regina who made the comment that the education that they got wasn't focused at the right age level, meaning the mentality of it and the focus of it would go over a lot of the younger kids' heads — the things that were used.

But I just want to agree with your comment that it is . . . I mean there are so many problems associated with this and where do we start. And what we're looking for is a concerted effort coming from a lot of different areas.

So in your opinion, to make it illegal for possession under 19, to ban tobacco possession under that age, to go cold turkey is a huge step and then we get into the enforcement of it and all the rest, do you see a phased-in age working any better? Easier or worse . . .

Mr. Melvin: — Well it's interesting, I mean, if Brenda's right and they're talking . . . and they're beginning to smoke at age seven, and certainly the evidence that I look at, at least by grade 8 which is almost twice that age. We've got a whole lot of confirmed smokers out there and then of course into grade 9. I think people say the transition into the high schools also is a year when young people make a decision about smoking as well.

I agree — earlier is better. There's no question about that, and obviously the curriculum needs to be appropriately focused for young people. And so I don't think that we should wait until grade 4 or grade 5. In fact, our view and the trustees' view is that in fact it is being taught, and if we're wrong about that, then something needs to be done about it because clearly they want it taught, no question. Also, it's a part of the elementary school curriculum and it's appropriate that it be taught there.

I think one of our best examples through the 1980s with this is with seat belt usage. I mean, try to get into a car and drive away without doing up the seat belt when you've got, you know, an eight-year-old child in the car. You can't get away with it. They won't let you do it. And I think we've been very effective in that regard. And surely with, you know, with stepped-up efforts and so on, we can perhaps be more effective here. But it also has to happen at the early years.

The other point though was about some kind of phasing in and that may be appropriate. I think sort of the cold turkey approach. Just it's the whole matter of enforcement raises some really difficult kinds of problems, and it seems to me that if it's phased, if you feel that you have to go in that direction; if it's phased and you start early . . . or at the younger ages to me that makes a great deal more sense.

And if people are actively doing research and evaluating the impacts of that, then you'll know whether or not a next step is appropriate and whether it can actually be enforced as you move up the ladder in terms of age. So, I mean, if you decide to go in that direction, I'd certainly encourage some kind of a phased approach.

I don't know what our high school administrators, you know, would do with that. I mean it would be extremely difficult, and they've got a lot on their plate right now.

Ms. Higgins: — We realize that, and I know one of the statistics I think that kind of hit all of us was that when they talked to public school children, their perception of high school was that 80 per cent of high school students smoked. And that when in actuality it's about 24 to 30 per cent probably, thereabouts.

But it's just that those are the kids that they see standing out in front of the school. Those are . . . you know that's . . . still it's a perception more than reality. So how do you kind of counteract that. And I mean there's just so many things involved in the whole process.

Mr. Melvin: — I agree, but there are ways. One of the ways of counteracting it is that if there's a smoking . . . And it'd be interesting to know something about young people's perceptions sort of school by school, because those schools that actually . . . that may have a smoking area and it's away from the front doors of the schools, around the back or some place else, and often a place that you can see from the staff room in the school — which isn't such a bad idea — the perceptions of young people may be different.

Ms. Higgins: — Do you find . . . I'm not sure what your experience or how much in contact you would be with them, but the SADD (Students Against Drinking and Driving) committees that have developed in the schools, do you feel that that kind of approach of peer groups has had much of an effect? Because there's the SWAT (Students Working Against Tobacco) groups that are starting out with the tobacco use. Like, does it . . .

Mr. Melvin: — Well I certainly would hope that SADD has had an impact. And I think and I believe it has had an impact.

There are some programs. For example, I know on a project that was undertaken in the Regina public school division, youngsters at Balfour put together a fairly comprehensive kind of student-led program within their school. And part of it, interestingly, was to reinforce the message that there's a whole lot of kids around here that don't smoke. And we think that's a good thing.

And I think generally people feel that it has a positive impact. Unfortunately when you look at the evaluation results, things didn't change too much. But perhaps the effect and the study isn't long enough. I mean just by becoming involved in a program like that as a young person in a school or being impacted, the impact, the result of that may not show up until your 25 years or age or 30 years of age. And thinking that just because it sort of . . . it moves you further in a direction perhaps that helps you to decide that you will never smoke.

So I mean that kind of program I think . . . and I think most school administrators would argue that it's positive. Even if in the initial results you don't see much change, it's worthwhile for young people to be engaged in those kinds of activities. Even as an educational objective, it's worthwhile.

Ms. Higgins: — Thank you.

Mr. Addley: — Thank you. I concur with the other members of the committee that we have heard that if the school is teaching it, it's usually taught quite well. But in many other cases there doesn't seem to be much there.

The question I have is, getting back to enforcing a ban on school property, I think you said that one resolution was carried by 58 per cent but that you highlighted a concern for enforcement and resources. What kind of resources would you need, or would the school boards need, or schools need to actually enforce that ban, either internally, and what other way of accomplishing it external to the schools, i.e., local police services, that type of thing? What specific resources would you need?

Because we have heard almost unanimously, and including your resolution, that banning smoking on school grounds and in schools is universally acceptable, pretty much.

Mr. Melvin: — The primary difficulty with this, with the ban, and at least in school, as you've noted, is enforcement. And it takes people. And right now vice-principals and principals in the school are busy doing other kinds of things. And so if we're going to ask them to devote a substantial amount of their time and effort to enforcing a ban, and particularly sort of a broad sort of . . .

If an individual school makes a decision in Eastend, Saskatchewan, to ban smoking on the school grounds, the administration would make an effort to see that children don't smoke on the school grounds. They'd probably get some community support and so on for that. But because it's not sort of a broad, public kind of effort that is being made here, it strikes me that they don't have to sort of go all out. That if you see a youngster smoking on the school grounds, you don't have to drop everything and run out to make sure that, you know, that they stop.

If there's large public pressure around that and enforcement expectations on the part of the government and others, then it seems to me that you begin to divert the resources very substantially to making sure that that doesn't happen. We also know that you get a substantial increase in the number of suspensions and so on because you need to punish the kids for breaking the rules. So you end up with enforcement.

So it's people. And that's one side. I mean you actually need more people in order to do this.

Mr. Addley: — Would it need to be vice-principals or could it be like lunchroom supervisors or people that are brought in during specific times.

Mr. Melvin: — It has to be people in positions of authority, substantial authority here. Frankly it would be interesting for

the committee perhaps to talk to some principals of high schools. And I think it would be valuable to understand better just the culture of the high school and how you deal with young people who are . . . you know, we're talking about people who are committed smokers. They're addicted to tobacco.

So it's not like bringing the wrong textbook to class here. And so you're dealing with a really . . . I guess I want to be careful we don't sort of minimize, you know, what you're dealing with here. I mean these people really want to smoke, and they're going to find a way.

Which brings me to the second problem here, and sure, by hiring more people and enforcing this rule on school grounds, we could probably stop it on school grounds. But as soon as you get to the public sidewalk, which pushes them, on some schools pushes them out in front of the sidewalk — now you're entering into safety concerns. There's no control we have out there. And so now you've got a safety problem and you've got a good-neighbour problem.

You talk to the residents across the street from Balfour and schools like that; the neighbours of schools are not happy at all when the youngsters are parked in their front yard smoking and so on. So now what you've done is you've pushed the problem off the school grounds and we're no longer able to control it. So now you have a safety problem and you've got all those other influences.

And it's interesting, in formal discussions with administrators here in Regina, I mean they get concerned about the active recruitment for prostitution and those kinds of things. I find that very difficult to believe, but people are concerned about those kinds of things. In a study done earlier, it came up . . . the researchers noted that people raised this as a concern.

And so I mean these are grave concerns that people have that when the youngsters are congregated in an area away from the school and without supervision.

Mr. Addley: — So what I'm hearing you saying is basically you need administrators to be the persons in the school to enforce it, and then once it's pushed off the school grounds, you need an external force to enforce. Basically if we come up with the same laws as alcohol, as someone had mentioned, that if the same group of people were presently drinking in school, we made a ban and they're now drinking on private property, that wouldn't go on very long because it's not normal, it's not normalized. It's not acceptable in the public.

So what you're saying is we need somebody in the school but it has to be an administrator, and you need somebody external to the school to ensure that it doesn't happen on private properties. Is that a fair assessment of what you're saying?

Mr. Melvin: — Yes.

Mr. Addley: — Thank you. But just one last thing — and I appreciate you being here because I think we're all aware in this committee that it's easy to come up on paper to make a decision, but it does have an impact on you and that's why we're asking these specific questions. Thank you.

Mr. Melvin: — If I may, Mr. Chairman, our preference . . . And I'm greatly disappointed by what you've found out as a committee that people actually aren't teaching this as forcefully as it might be. Our very strong preference is — and maybe it's just by the nature of us being an educational institution and having some faith in that process — our preference would be to see, you know, a much improved educational program, and hopefully through that process we'd be able to, you know, discourage youngsters from smoking.

My grave concern about that is that the forces external to the school . . . when I see more and more of my friends, my age, taking up cigar smoking because it is now fashionable to smoke cigars, I get very concerned.

The other thing too — and I don't know if you have talked about this — I believe that there are other things that we can be doing for young people in our schools to discourage use of tobacco. I dare say that there are very few youngsters that are involved, certainly at the competitive level, in our high school or elementary level, in sports, in athletic programs, or in other sorts of programs — I don't think it's just athletics. I think if you looked at the proportion of young people involved in the arts in our schools, we'd find that there are probably fewer of those people in fact who are smoking. I suspect that blowing a tuba — although I could never do it — is a pretty difficult task if you're a heavy smoker.

And I think that if we're deadly serious about this, I think providing some other options for young people . . . Yes, we need to discourage the use and we need to encourage — through the curriculum — healthy lifestyle choices, but at the same time I think there are probably some things that we should be doing too to support those extracurricular activities or what have you within our school that I think go a long way to helping youngsters and supporting positive lifestyle decisions. If we can get more youngsters involved in athletic programs, I think we'd be a long way down the road on this one.

Ms. Eagles: — Thank you, Craig. I appreciate what you're saying regarding safety concerns. My constituency is Estevan, and the kids weren't allowed to smoke on school property so they would cross a busy industrial road, and it got to be a grave safety factor. So in fact the school kind of built them a cage and put a tire in there for them to sit on, and now they're complaining because it isn't heated, and all this and that kind of stuff, but you can't win in some of the situations.

One thing that really concerns me that if you ban smoking in schools, do you think a lot of the kids will take up smokeless tobacco? It's a lot harder to detect; it's a lot more dangerous to their health. We've been told that one pinch of tobacco . . . of chewing snuff, or whatever they call it, is equivalent to four cigarettes. So do you think that, you know, if they really need that buzz, that they might just start with smokeless tobacco?

Mr. Melvin: — I have no idea.

Ms. Eagles: — Like a lot . . .

Mr. Melvin: — I can't imagine what makes a person do that, so . . . There are people far more expert than me when it comes to something like that. I couldn't answer your question.

Ms. Eagles: — We were told that a lot of the kids are chewing tobacco already. And I guess the boys will spit, but when the girls chew it, they swallow because it's not cute to spit. Like I guess it's cute to chew but not to spit. And then, you know, of course they develop the cancers in their throat and their esophagus and stuff like that.

So that would be a concern of mine, you know. And like I say, it would be a lot harder to detect if a kid was chewing snuff or a plug or whatever. Thank you.

Mr. Bjornerud: — I think it was surprising to us when we got them to show hands after we got this information about chewing tobacco is more dangerous than smoking, the number of kids that actually smoke . . . or chew. Like I wouldn't have dreamt in schools that it would be that high, and then there's also girls that were doing it. So that was amazing.

One comment we got I thought might be part of what you're teaching in the schools, that a number of times we were told that old fogeys telling us not to smoke doesn't do a bit of good. But if a grade 11 or 12 or somebody comes in as a young person and talks to a younger group, we pay attention. And you know, when you think back of being young, you kind of rebel against . . . say, your teacher's 50, 40 years old, you don't maybe listen as good as if you . . . the young kids especially were listening to someone higher. So this just might be something too to keep in mind.

Mr. Wartman: — What I recollect of the correlation between athletics and tobacco use from our hearings not to mention past history, but I'm afraid from what I recall hearing that we had a significant number of athletes who are smoking and a significant number who are chewing. And I think the belief — and I'm reading somewhat between the lines here — but the belief was that for an athlete it's much better to chew because it's not as hard on your lungs then; you know, you don't lose your capacity.

So I think there . . . yes, having alternative activities can help. The problem is that very often it doesn't replace the tobacco use, that the kids are engaged in the sports and still having tobacco use. And I don't know if there's any study that's been done that gives us any kind of evidence around it, but the anecdotal stuff we picked up that I saw would say that there's not a strong correlation between extracurricular activity and non-tobacco use. That I'd like to see more evidence on but we haven't . . . didn't see that.

I think basically that's . . . I just wanted to make that comment because it has been raised. And I think the kids to hear — I can't remember the tier group — but a high-level hockey player talk about his smoking, and yes, it is affecting his ability to play but he's addicted, can't quit. Kind of shakes you up.

Mr. Melvin: — Well I would encourage looking at the numbers, and if anybody has done the research — and surely somebody has — you know I would encourage you to do that because certainly . . . And I can understand your comments, but in my experience it's — and I appreciate that there are certainly some that smoke — but in general I would think that there would be fewer youngsters involved in athletic activities who actually smoke in comparison to other groups.

But part of my reason for that . . . And your comments . . . and I think Mr. Bjornerud has reinforced this — the value of having youngsters involved in the campaign themselves. And I think that's tremendously important. And I come back to the point that this is, I mean, it's a tremendously complex issue.

I also think that we're significantly limited within the schools in terms of the impact that we have, the other forces, when you hear about young women smoking because it keeps them thin. Well if you walked around the block a couple of times, quite frankly, it would probably have the same impact as having a cigarette. And somehow we need to be able to get that message across. And same thing with older males taking up cigar smoking and that kind of thing.

I mean there's those influences out there that it's so difficult for us to battle against.

The Chair: — A couple of questions to add. If we're going to go ahead with a comprehensive program, we will have to be looking at things like role models, and we'd have to be looking at things like cessation programs.

Do you have any experience with getting staff acting as role models in this in terms of . . . I believe — I guess from my own experiences — that the number of staff members that now smoke has been reduced considerably. And if they do smoke, they take strong efforts to smoke outside the school system, outside the school grounds. I wonder if you have any comments on that.

And secondly, with respect to cessation programs for staff members and maybe for students too, do you have any experience on that from your work? And has there been any thought to asking the question, are you a smoker, for recruiting staff?

Mr. Melvin: — Do we ask that question? Well first off, in terms of the image that smoking staff portray in a school, it is not good; there's no question about that. And I think you are correct that there are fewer number of teachers now, and school administrators, who smoke. And so, I mean, those numbers have certainly gone down over the years.

And certainly it's a rare . . . in fact I can't remember being in a school in the past, golly, 10 years, where there has been a place in the school for the staff to smoke. I mean that's very, very rare indeed. And so I agree that the image that they portray is important.

I don't recall, in fact, in education, that there has been a cessation program provided by a board of education. Now there may have been, but I'm not aware of one within the province. But I have no reason to suspect that the impact of such a program would be any different in education than it would be in any other occupational area. And presumably they have a positive impact or people wouldn't be providing them, and particularly as it relates to implementing new policies and so on.

So, I mean, if there were . . . it seems to me that it's, you know, it's certainly beneficial. But on the other hand I'm not aware that there are that many people smoking in schools, in any

classification, any longer.

The other thing that you asked about was about asking the question in terms of an interview for a job and so on. And personally I don't have any difficulty with that at all. And I think if it were made clear with university students in Saskatchewan that if you want to get a job as a teacher here, you'd better not be a smoker, then I wouldn't be particularly upset with that. Teachers are role models and we have to stand on that. And I think that's really, really very important, you know. So asking the question wouldn't distress me a great deal.

The Chair: — Thank you. Just for the information of the committee, our researcher, Tanya, points out to me that one of the laws of Massachusetts says here:

That no person who smokes any tobacco products shall be eligible for appointment as a police officer or a firefighter in a city or town.

This was 1987.

Mr. Melvin: — Police officer or a firefighter?

The Chair: — Right.

Mr. Melvin: — But you could be a teacher.

The Chair: — Well maybe so.

Mr. Melvin: — That's unfortunate.

The Chair: — Any other questions from committee members.

Ms. Eagles: — I just like to . . . What about human rights? I mean, you know, if you go in some place and they ask you if you're a smoker — I mean you don't even have to give your age. And then if they turn around and ask if you're, you know, a smoker, I mean, what next?

The Chair: — No, the Human Rights Code does not cover that issue. I think that's the point here. Age is covered under human rights.

Ms. Eagles: — Okay. Age is covered under human rights?

The Chair: — Yes.

Ms. Eagles: — That you have to release your age or that you don't have to?

The Chair: — No, you can't be asked that question.

Ms. Eagles: — Okay, but smoking, but you can be . . . I mean, but what's going to come next? I mean, if you have that . . .

Ms. Hill: — I asked Ken Ring, the Legislative Law Clerk, that question about smoking and if you can discriminate. And the law . . . you can. It can be challenged but you can discriminate based on what the Human Rights Code is.

Ms. Eagles: — . . . they asked me next, I mean, it's getting that I don't have any rights.

The Chair: — Well, Craig, thank you very much for coming. What you've done has just reassured us that our task is very complex and that any recommendations that come out of this have to keep in mind the practicality of application as well as just setting down some . . . or wishing for some rules to be put into place. And thank you once again for making yourself available.

Mr. Melvin: — Thank you. Thank you for the opportunity.

The Chair: — Well the committee would like to welcome Rick Hischebett from the Department of Justice. We've requested the department to answer, to help us, to help the committee with respect to several questions in terms of clarifying the law to the committee with respect to jurisdictional authorities, what some of the current legislation is that exists respecting tobacco sale and use, and the current status of tobacco litigation in Canada. So welcome to you, Rick, and I see that you've prepared a bit of a brief here for us.

Mr. Hischebett: — Yes, actually I wasn't sure where you would like our department to focus so what I did was I tried to distil the letters that Tanya had sent to us. And I broke them down into three basic areas, as you'll see. And what I also have done is sent around a little bit of a brief, which is what I'll be using to make a presentation here this morning, to focus on three areas effectively: the respective jurisdictions of the province, federal government, municipalities and district health boards; current federal and provincial legislation — and in doing this, I'm probably going to focus more on provincial legislation and the committee may already have a bit of this background or a significant amount of this background, so if you feel that wouldn't be useful you can always tell me at that time — and then thirdly, just to talk about what the current status of tobacco litigation is in Canada. Who's pursuing it, at what stage it is, and what recent developments have occurred.

So if there's anything else that you would like me to address, I guess you could ask me now or we could wait until the end of the presentation.

The Chair: — Perhaps you should just proceed with this and then the committee members may have some questions after.

Mr. Hischebett: — Well we start out with jurisdictional authorities and really how this boils down to is I'll start with the federal and provincial governments. The federal and provincial government's jurisdictional authorities to legislate in a particular field come from the Constitution Act. And you may remember even back in some of your old teachings of the British North America Act and something called section 91 and 92 powers, and what that is just divides the powers of legislative field amongst the federal government and the provincial governments. The federal government has given authorities in certain fields and the provincial governments in others.

Examples are the federal government has jurisdiction in criminal law; something called peace, order, and good government — which is like a catch-all that you can use in certain instances; aeronautics — a number of areas the federal has specific legislative jurisdiction in. The provincial government, on the other hand, has jurisdiction in other areas.

Property and civil rights is one of the main runs as is health care, hospitals, and local undertakings.

And so basically — as a result of these divisions of powers — provinces and the federal government are allowed to legislate in their respective areas and the only preclusion, so to speak, on your ability to legislate in those areas is the Charter of Rights.

So as long as you have legislative jurisdiction to legislate in a particular field, and the substance of the legislation stays within that legislative authority and it doesn't violate the Charter of Rights, you can legislate in that area.

What happens and what you see happen, and it happens in tobacco, is that the federal government may have a specific legislative power and the provincial government may have one, and with respect to a certain issue, they overlap. And a good example of that is drinking and driving, where you'll see the federal government has criminal law offences under its safety power, under the criminal law, because that's a matter of safety and have created Criminal Code offences to preclude driving while impaired.

The provincial government on the other hand, and as part of its regulation of highways and issuing of driver's licence and the use of highways, also regulates in the same field. And so you have a law passed under The Highway Traffic Act dealing with the regulation of provincial driver's licences and alcohol-related offences associated with that. So you have two valid laws which exist — one a federal law, one a provincial law — and they can deal with the same subject matter.

We see that in tobacco as well. And you see it in other jurisdictions as well as ours. The federal government has passed the tobacco Act which in relation to sale provides a minimum age in which you can sell tobacco — 18. We have an Act called The Minors Tobacco Act, a rather old piece of legislation but has a prohibition, another age prohibition, sale for 16. Again both of those, in my view, are valid laws enacted to deal with the same subject matter.

When you have two of those laws that overlap, the question often arises well, which one do I have to comply with; which one applies? And the answer is both.

Generally speaking, unless the laws actually conflict with each other — and there's a very, very strong test to determine if they conflict — you have to comply with both legislations. So if we take our example with The Minors Tobacco Act and the tobacco Act where one says 16, you can't sell to anyone under 16, and the other one says you can sell to anyone under 18, you have to comply with them both. And the way you comply with them both is just not selling to anyone under 18. So effectively the one with the higher prohibition becomes the law.

Now the only time you run into what's called an actual conflict is where one law says you must do something and the other one says you must not. So if, for example, there was the federal tobacco Act which precluded sales to someone under 18 but yet we had a provincial law — which we don't, but if we did have a provincial law — that said you must sell tobacco to someone over 16 years of age if they request it, then you've got a problem because one law requires you not to sell to the

17-year-old person who comes to your door, while the other one says you must sell it to the 17-year-old.

And when that happens there's something called a doctrine of paramountcy, which means the federal government legislation will prevail. But it's a very limited circumstance. Courts have been very limited . . . it's been as direct as that. You must actually have to violate one law while complying with the other in order for laws to conflict.

Now municipalities and health boards are simply creatures of statute. They exist because the legislature has created them. They have no inherent power to legislate. They have only the powers that the statutes provide to them to legislate. And when they exercise those powers they must comply with the very restrictions that the statute lists.

The municipalities have powers under current provincial legislation to enact bylaws. For example, under The Urban Municipality Act, 1984 or The Rural Municipality Act, 1989, there is specific power for urban municipalities and rural municipalities to regulate smoking in public places. And this was the very authority that the city of Saskatoon used in its bylaw, which you may have heard about before as part of your hearings, in trying to regulate smoking in restaurants and bars in Saskatoon.

Now ultimately that bylaw got struck down by the court and the reason the bylaw got struck down by the court wasn't that the city didn't have the power to regulate smoking in public places, because it did, but the city attempted to differentiate amongst public places by size. So restaurant A, if it was under 40, could have a different rule than restaurant B if it had a capacity of over 40; or restaurant A if it had a liquor permit would have a different rule than restaurant B.

And what the court said is while you had the authority, the statute provided you with the authority to regulate smoking in public places, but it didn't provide you with the authority to distinguish the rules in those public places. So, if you were going to enact a bylaw with respect to restaurants, you had to treat those restaurants equally because the statute didn't give you the authority to go beyond that.

So when you're dealing with what's called delegated legislation, and that is you exist in a statute and the statute tells you what you can do, you must comply exactly with the statute; you can't go beyond the bounds of the statute, and if you do, then that law will be found to be invalid. And that's what affected the city of the Saskatoon here. It wasn't that they didn't have the power to regulate smoking; it's just that they didn't have the power to regulate it in the fashion they attempted to.

Now there's another Act that municipalities also have the power to pass bylaws pursuant to and that's The Public Health Act, 1994. And in The Public Health Act, 1994, there's specific powers for municipalities to pass bylaws. Although there is no specific reference to smoking, there's a reference to indoor air pollution and there's a reference to health hazards, both of which refer to gaseous substances existing in air that can create a health hazard, and I'm paraphrasing here. So while they're not as specific, there is some authority in The Public Health Act, 1994 to pass bylaws.

Now what there is also in The Public Health Act, 1994 is the ability to create categories of bylaws so . . . or to apply to categories of place. So that deficiency that existed in the municipality Act for the city of Saskatoon, doesn't exist in The Public Health Act, 1994, because you can actually create bylaws that distinguish in categories under The Public Health Act, 1994.

The difficulty under The Public Health Act, 1994 is it doesn't refer to smoking. And that's an issue because when you go to prosecute for the violation of the bylaw, it becomes very difficult because you don't actually reference the actual Act here. You have to show that you fit . . . that this fits within indoor air pollution, show that the smoke creates a gaseous substance that's going to create a smoke hazard . . . that's going to create, excuse me, a health hazard. And it becomes a far more onerous prosecution because the Act isn't as specific as The Urban Municipality Act, 1984. So while there's perhaps a little more ambit under The Public Health Act, 1994, there's also a few more problems.

The other issue that municipalities need to be aware of under The Public Health Act, 1994 is that they can't just pass a bylaw as they can under The Urban Municipality Act, 1984. That bylaw must, in order to be valid, be approved by the district health board who has authority to regulate under The Public Health Act, 1994 in that municipality, and secondly be approved by the Minister of Health. If the bylaw isn't approved by both of them, then the bylaw is not effect.

District health boards are the last piece of, I guess, government that I was planning on talking about. And district health boards are very similar to municipalities; they exist by statute; they only have the statutory authority that the statute provides them. District health boards have the same ability under The Public Health Act, 1994 to pass bylaws as municipalities do. So they can use the same authorities under The Public Health Act, 1994 to regulate smoking.

The difference between a bylaw passed by a district health board and one by a municipality is effectively jurisdictional area. The municipality is . . . can only pass a bylaw with respect to the municipality. The district health board, when it passes a bylaw, passes it which has application to the entire jurisdiction that it enforces under The Public Health Act, 1994.

And so for example in the case of the Regina District Health Board, it's not just the Regina Health District, but the Regina District Health Board enforces The Public Health Act, 1994 in the Pipestone Health District and Touchwood Qu'Appelle Health District. So a bylaw passed by Regina would have a far wider ambit than it would if it was passed by . . . excuse me . . . by the Regina District Health Board than it would if it was passed by the city of Regina.

And once again the district health board doesn't have a capacity in and of itself to pass this bylaw. If it passed a bylaw, it would require the minister's approval in order for it to be valid, and it would have the same issues associated with prosecution as the municipal bylaw would.

I thought I would just touch very briefly on some of the provincial pieces of legislation that currently exist and how they

may be used, or are used in regulating tobacco use. The Minors Tobacco Act, I don't want to spend very much time on. It's the Act that exists currently that regulates sale to minors; makes it an offence for anyone to sell a tobacco product to a person under the age of 16 years. The fines are quite small, and in fact it's really come out of disservice, I suppose. The federal tobacco Act creates a higher prohibition and so, by and large, in my experience in 10 years with the Department of Justice, I've never seen a prosecution under The Minors Tobacco Act so . . .

The second one I just wanted to talk about as well is The Public Health Act, 1994. Again, the same authority that exists for municipalities and for district health boards to pass bylaws under The Public Health Act, 1994 also exists for the province to pass regulations under The Public Health Act, 1994.

The regulations that the province passes; however, would likely have to apply to the entire province. So when we talked about the little areas — the municipality having the smallest one and the district health board having the bigger one; a regulation passed by the province under The Public Health Act, 1994, would apply to the entire provincial area, unless you could show some public health reason to distinguish that it should be different in one area versus another, which I think might be difficult in tobacco.

Equally, a regulation passed under The Public Health Act, 1994 to try to deal with smoking would have the same prosecution problems that the municipal bylaw would and the district health board bylaw would.

The Occupational Health and Safety Act, 1993 is another Act that has some powers to regulate smoking. That Act provides, as the name says, for the health and safety of workers while at work and places specific duties on employers and independent contractors and workers to comply with the requirements of the Act.

And one of the abilities that exists under The Occupational Health and Safety Act, 1993 is to pass regulations regulating smoking in the workplace. Currently there are regulations that govern certain workplaces in terms of creating a requirement for either a designated smoking area or ventilation equipment that removes smoke in certain workplaces.

That governs, of course, the actions of employers and workers, so when you're into a restaurant facility or the like, the Act doesn't go that far. And it actually calls . . . restaurants and long-term care facilities and the like are determined to be either public places and institutions. And the duties on employers under the regulations currently in place under The Occupational Health and Safety Act, 1993 are to restrict workers' exposure as best as possible, so to speak, to second-hand smoke that may emanate as a result of being in that workplace and to inform workers of the risk of second-hand smoke.

But there is capacity in The Occupational Health and Safety Act, 1993 to deal with smoking in the workplace. And there is capacity in that Act as well to deal with creating categories of regulations that would apply to different workplaces differently.

The final Act I wanted to talk about is The Tobacco Tax Act, 1998. It effectively imposes a tax on cigarettes of 8.4 cents per

cigarette or 5.5 cents per gram of tobacco. It's what is called a cascading tax. It applies upon importation of the tobacco product to Saskatchewan. So whomever brings it in, your distributor, warehouser, would pay the tax first and then collect it back as it gets sold to the retailer, who then collects it as it gets sold to the vendor . . . or, excuse me, to the purchaser.

And the purpose for that I understand is to try to prevent bootlegging of tobacco as best as possible, because if you just apply it at one particular stage — so if you apply it at the retail sale only — then you miss perhaps the illegal importation of it, and then the sale of it to the wholesaler or to the retailer. So you apply it at each stage to try to ensure that the tobacco tax is collected on the product.

And that Act of course contains enforcement mechanisms to ensure that the taxes are collected and remitted.

Finally, I thought I would get into current status of tobacco litigation. It's a hot topic I guess right now. Currently in Canada there are only two governments that are pursuing tobacco litigation, and when I say by pursuing, I mean have actually instigated tobacco litigation — the province of British Columbia and the province of Ontario. And they've done it in dramatically different fashions.

The province of British Columbia was probably the starter in this area. They started in 1997, passed a piece of legislation called the Tobacco Damages Recovery Act, put it in place to assist it in any litigation that it may run. What happened then after they put the legislation in place, is that they worked feverishly on their lawsuit an additional year plus, and then determined that what they had passed probably wasn't sufficient or appropriate or didn't address all of the areas they needed to address for their litigation. So they went back into the legislature and actually amended the Act in 1998.

Once the Act was amended and proclaimed in force, they issued their statement of claim, which was about November of '98 I believe. And as soon as that claim was issued the tobacco manufacturers indicated they were going to challenge the legislation upon which it was based.

That challenge happened in about February of this year . . . or I shouldn't say that, it happened before that. The decision was issued in February of this year. And the tobacco companies challenged the legislation on every front possible — challenged it from a matter of judicial independence; they challenged the constitutionality of it.

They, you know, in terms of they threw the . . . they threw everything they possibly could at this. And in fact they succeeded.

They succeeded on the basis that the legislation itself was extraterritorial, tried to govern affairs beyond the province of British Columbia, which violates the rule of extraterritoriality. The issue here being much like the municipality, you can legislate in a particular field, but you've got to stay within it. You can't go beyond.

And the BC (British Columbia) legislation did a number of things. It first created a direct cause of action for the British

Columbia government against tobacco manufacturers, one that didn't exist in a statute otherwise.

It then said that when they're pursuing that cause of action, you didn't need to bring into court or bring into evidence, any particular individuals who suffered from tobacco illness. Because usually what would happen would be I would sue to recover amounts that I claimed that I was injured by, and I would have to show that indeed it was the tobacco that caused my illness and not some underlying condition that I would have otherwise had that may have resulted from my working at IPSCO or anything like that that may also be associated with my illness.

Well this legislation took that away and said, you don't have to bring in any individual files and any individual people's case histories, nor can you look at those things. It also then took away a limitation period argument which said that you can only go back so far to recover tobacco-related illness damages. And if you knew about this cause of action before, you had to bring it within in a certain period of time, otherwise it's statutorily barred. And it removed that argument that tobacco companies may have.

It also then attempted not only to apply to tobacco manufacturers who were operating in BC, but their parent companies — parent companies in the US and parent companies in Britain — and basically ensure that any judgment that was obtained or any rules that applied here also applied to those companies. And it was on that front that the courts said the legislation was invalid; that all you could do was to legislate with respect to companies that were operating in your area. You couldn't legislate and create rules that governed companies that operated beyond your jurisdiction.

Mr. Addley: — So ... (inaudible) ... it upheld all of the other points.

Mr. Hischebett: — It did.

Mr. Addley: — But that point is what sunk it. So from what I understood, they took that part out and reintroduced it.

Mr. Hischebett: — They haven't done that yet is my understanding. That is their plan to do.

Mr. Addley: — They've announced that they'll do that.

Mr. Hischebett: — Right. Now whether the legislation will be the same again is another issue. And whether they'll look at some other elements that they might have determined over the last 16 months that they might want to shore up is another matter. But yes, the understanding is that the Act was struck down. British Columbia will remove that element or try to deal with it in a different fashion in some way and then reintroduce it into the House.

Mr. Addley: — It's just so that I'm clear in my mind. The courts actually said all of those other provisions were valid and legitimate and only one isn't.

Mr. Hischebett: — That's correct.

Mr. Addley: — Okay. Because in the media it's portrayed as it's thrown out; BC's lost, which, you know, it lost 1 out of 18 or something.

Mr. Hischebett: — Yes. And, you know, the stories aren't necessarily inaccurate because in fact the law was struck down. But the other elements that were important to British Columbia anyway, to bringing its action, were upheld.

Mr. Addley: — Appreciate that.

Mr. Hischebett: — And so that's where we are right now, just to finish, is that British Columbia has announced that it will continue in its lawsuit and will introduce new legislation to replace the tobacco damages cost recovery Act.

Ontario's the second Canadian province which has gone down this path and it has gone a totally different way. Instead of suing in Canada, it's hired attorneys in the United States and has commenced an action in the United States much in the way that the state governments in the US (United States) commenced action against tobacco manufacturers under a statute called the Racketeer Influenced and Corrupt Organizations Act, called the RICO Act. And this was the statute that the US state governments based their lawsuit on.

I don't know much about the rationale, why Ontario chose that particular path versus suing in its own jurisdiction. However, some of the things that have been set up in the media would indicate that Ontario felt it might be easier for it to use a known ground, that is the US court route that succeeded in a settlement in the United States — not an actual court award but a settlement — and they thought it might be easier to use that ground.

Secondly, they might have had some difficulty — and I don't know this — their action is based on a total contingency with the lawyers involved. And it may ... Tobacco litigation is extremely expensive. And it would be very difficult for some firms to carry a contingency arrangement for tobacco litigation.

Ontario announced that, oh about a year and a half ago ...

The Chair: — Excuse me. Could you please just define your term, contingency?

Mr. Hischebett: — I'm sorry. Contingency arrangement is something where I would go to counsel and say, will you take my action? And counsel would say, yes, the normal way is that I charge X amount of dollars per hour, per service. Contingency arrangement is one where the counsel does not get paid for anything other than disbursements and costs incurred in — out-of-pocket costs so to speak — in pursuing the lawsuit, but only recovers professional fees if they recover an award at the end of the day.

Now when that happens, there's built into that contingency or arrangement a significant cushion for the event that they're unsuccessful. So that the dollar value at the end of the day, if it's ... you know, it may be a 25, a 30 per cent contingency. If they obtain a large award, they get a large payback; but if they don't get an award, then they don't get a payback.

Ontario also went the BC route in terms of passed specific legislation in its jurisdiction to allow it to bring an action against tobacco manufacturers. The Ontario legislation is far more limited than the British Columbia one and necessarily so because they're not suing in Ontario, they're suing in the United States. And there's some question about how much Ontario law can actually apply to an action brought in the United States. But they did bring legislation in which created a direct cause of action between the Ontario government and tobacco manufacturers to recover the costs of tobacco-related health care treatments.

Once that legislation was passed, Ontario then had their counsel issue the action in the U.S. Now there's all kinds of issues, as I mentioned, about the Ontario litigation including whether Ontario actually can bring an action in the US There's issues of standing, that is: if you're a government, can you go into some other government's jurisdiction and issue a law suit?

And there is a recent decision in the United States that might set a blow to Ontario's action here. A decision that came out of one of the US state courts that said, no you can't. If you're going to bring that type of an action in relation to something, then in your own jurisdiction . . . you need to bring that in your own jurisdiction. You can't come to the United States and bring that particular action. Now that hasn't happened in respect of tobacco litigation, but it clearly will be a precedent that Ontario will have to deal with.

Finally I just wanted to touch base, and I'm sorry, I'm probably running a little long. If you're considering, at all, tobacco-related issues here, I have to caution that tobacco litigation is very complex, tobacco litigation is very costly, tobacco litigation is very lengthy. And you only have to look at the British Columbia experience to realize that.

The first thing you have to, I think, think about is that you're going to need some form of legislation to create a direct cause of action for a government to recover health care costs.

It's happened in various states; it's happened in both jurisdictions that have attempted this process or in the process of doing it; and it would be very difficult to do it on the basis of what's called a subrogated claim. That is, I'm suing to recover the costs of care that I provided to individuals in Saskatchewan. That's what's called an indirect claim — I'm claiming through you — and I need to make a direct claim that I have a direct cause of action against you for the damages that I have suffered. And that would be very difficult to do without specific legislation.

And I'll just finish this, if it's all right.

The second point is that the costs of tobacco litigation can't be underestimated. If you look at BC, they started in 1987. They've got three years of not only internal costs, but hired a firm on a fee-for-service basis. And in three years of fee-for-service billings of Thomas Berger, who was a Supreme Court justice at one time, and his boutique law firm, associated with tobacco litigation, and three years later they're back at square one. And they're back at square one because tobacco companies will oppose any action as staunchly as they can.

And so this road is not a paved highway; it's a rocky road to go down. And it will be a lengthy process and it will be an expensive process. So resources would be . . . I mean it's just not possible to do this within current resources. You would have to have very specific and substantial designated resources in order to even consider pursuing this path.

British Columbia has been very tight-lipped about how much money they've actually set aside for this, feeling that that may actually affect their tobacco litigation strategy, that having tobacco companies know how much money they've got set aside will assist them in bringing whatever bar is possible to run out their budget. So people are very guarded on this, but I have to caution that it would be a very expensive process.

Mr. Wartman: — Thank you. Actually a number of questions that have been raised over the course of our hearings. First, one that came up in the Canadian Cancer Society's document that Manitoba was looking at charging an access fee to the province, would be charged to tobacco manufacturers. Can we, as a province, set such a fee? Do we have good grounds to do that? What would be involved in setting a fee?

Now they were looking at their access fee being something like \$7 per capita, somewhere between 7 and \$10 million per year so tobacco manufacturers would have access.

Mr. Hischebett: — And this is more or less a tax, would it be? Is that . . .

Mr. Wartman: — Yes, basically. I mean it's applied to the manufacturers, and if they didn't comply they wouldn't have access to the province to sell their product.

Mr. Hischebett: — I mean, in some form or other, I think that's effectively a tax upon the sale of a . . . or on the importation of a product, much similar to what we already have. I caution some of my comments here for the committee and I apologize, because I'm the lawyer for the Department of Health. And so some of your questions take you into areas that are a little beyond my germane. But I can't see that that would necessarily be something that the province could not legislate. I believe that that would be within the department's or the province's legislative capabilities.

Mr. Wartman: — It would be?

Mr. Hischebett: — Yes.

Mr. Wartman: — Okay. Second question is, can we legislate as a province a no-smoking policy in any public place where children have access. Do you see any problems with that type of legislation?

Mr. Hischebett: — I think that could exist basically today.

Mr. Wartman: — The areas, kind of the grey areas, would be licensed dining rooms. Children have access there so . . .

Mr. Hischebett: — I don't believe . . . The issue of course that I presume that you're referencing or relates to is the city of Saskatoon's bylaw which of course got struck down because it tried to treat things differently.

The issue will be if the legislation speaks to it specifically, then I think it's clearly within your competence to pass that legislation. What tends to happen is that legislation gets passed which allows for something called a delegated form of legislation, which is your regulations or your bylaws.

And at the time you pass the legislation, if you don't have an actual plan as to what that delegated legislation will be, oftentimes you develop a delegated legislation after the fact. And when you look back at your legislation you say, oh I didn't quite, didn't quite get everything I needed in order to pass this particular piece of delegated legislation.

So the issue is just specifically, will the legislation deal with it? And if the legislation deals with it directly, then yes, I can't see that that's something that the province can't legislate.

Mr. Wartman: — Okay. Third, without criminalizing, can we put a sanction on possession for underage possession of tobacco? Could it be ticketed say 50 or \$100 without criminalizing it?

Mr. Hischebett: — That depends on what you mean by without criminalizing. We can't create a criminal law power; we don't have a criminal law power. We have an offence power which allows us to regulate certain activities and create offences.

Mr. Wartman: — I mean, if it was the city, you'd have a bylaw and you could ticket on the basis of the bylaw. And all I'm asking really is, as a province, is there a type of legislation that we could use, knowing that you can't criminalize, but that would allow a sanction for possession?

Mr. Hischebett: — The issue will be . . . The short answer is yes. The short answer is yes. The issue will be, as the earlier presenter pointed out, will be one of enforcement and one of resources. And especially when you're talking about a ticketing scheme, which I think is what you're talking about, of issuing a summary offence ticket, the issue becomes . . . The issue is fine when somebody voluntarily pays the fine, but you don't automatically just by issuing a ticket say, you owe me \$50. You have to . . . the person has the right to challenge that particular ticket.

And when they challenge that particular ticket, that then throws in the court resources, right, and throws in the prosecutor, and then throws in . . . The teacher will have to show that, yes, on such and such a day I saw Johnny with tobacco products. And the front end of this — and as the earlier presenter pointed out — the front end of it is fine; it looks great on paper. It's the enforcement element that happens afterwards that creates the issues.

Mr. Wartman: — One of the reasons why I think that this is something that we have been considering, one of the . . . some of the young people referred to the almost self-policing nature of it, that they are by nature not lawbreakers. And if there was . . . if possession was also against the law that the tendency would be that it is somewhat self-policing, that there would be a few of them who wouldn't do it — and who knows the numbers — just simply because it's against the law at that point.

I think that was also one of the points that Eric Deihl made up

in Prince Albert, that there is a certain moral suasion involved as well in just simply having that legislation in place. All that said, that doesn't take away the fact that if you've got a law you also have to follow it up with enforcement. Otherwise it really is meaningless. But it is possible to legislate that.

Mr. Hischebett: — Yes.

Mr. Wartman: — Okay, and the other one is, can we legislate a ban on tobacco modelling products — candies, candy cigarettes; they've got like the Skoal packages where they have jerky and powder. It's just that the kids pick up the behaviour with the candy type products.

Mr. Hischebett: — I would hazard . . . I will say that . . . I don't want to give you a definitive answer in that because I don't know enough about that to say yes or no.

I would tell you that it would appear to me that you can make reasonable arguments that this is just allowing access or refusing access of products into the province, which I believe you likely could do. But if you wanted to go down that path with a particular recommendation, it would be something we would have to look at more closely. And I'm sorry that I can't provide you with a definitive answer this morning.

Mr. Wartman: — Okay, thank you. We'll have to follow up a little bit on that then. And finally, and I think this probably fits with the last one, but can we legislate against flavoured tobacco products?

Mr. Hischebett: — And it does go into the same area. You'll see in British Columbia they've attempted to do more than just deal with tobacco litigation. They've also attempted to deal with some tobacco controls including reporting requirements of substances that are in tobacco. At one point, and I'm not sure if it's still the case, tried to deal with tobacco packaging.

Interestingly enough, as soon as that law was passed, the tobacco manufacturers also said we're challenging that and indeed have. And my understanding is — if it's not going on currently, it's very soon — the challenge to that particular legislation and the requirements under it are being brought by the tobacco manufacturers. So that strikes me as . . .

And I think they're basing it on, to some degree, that it's beyond the provinces' powers because tobacco is a product that is sold across the country. And in creating specific rules for packaging and the like, you're effecting interprovincial trade which is something that the federal government has specific jurisdiction over.

So I can't . . . Again there may well be arguments that suggest that (a) you can and arguments that (a) you can't. And it's pretty hard for me this morning to give you a definitive answer one way or another.

Mr. Wartman: — We need to pursue that one as well because the, I mean, the manufacturers stated that they are definitely not trying to get young people involved in smoking, and yet these are the access routes — flavoured and the modelling products and so forth — that are in fact are advertising, the image, the behaviour, and the candy products, are just another avenue of

drawing kids in.

Mr. Hischebett: — The one thing to point out is even if you have jurisdictional authority and you can — I mean it's got to be a relatively clear case that it's beyond our jurisdiction, and our constitutional law division's far more able than I am to provide that opinion — the issue will be whether it will be challenged or not. And just because you pass a particular piece of legislation doesn't mean that, even if we believe fully it's within our legislative authority, that somebody else, being a tobacco manufacturer, wouldn't challenge that.

Mr. Wartman: — Okay, thank you very much, Rick.

Mr. Addley: — Mark already asked many of my questions. He's quite a clever fellow.

In the order that he followed, you made mention of the assessment. That was one thing I was going to ask, which you answered. The other one was joining other jurisdictions, either BC or Ontario, co-operating with them — would that, is there any legislative problems inherent in that?

Mr. Hischebett: — In ... Can you just explain a little bit further what you mean?

Mr. Addley: — Like, for example, in the States it became quite successful when a number of states banned together and co-operated. Is there anything that's limiting provinces to do the same thing? Like can we tack on and co-operate and share some of the expenses with Ontario or with BC?

Mr. Hischebett: — The answer is yes, you can. The question would be how you go about doing it.

Mr. Addley: — And I guess the second part of that is, is there an advantage in some of the things that you've highlighted that, you know, the cost and the expense and the length of time — it won't diminish the length of time but ... Or would it complicate it more and make it more expensive for both jurisdictions?

Mr. Hischebett: — It would be wonderful if, for example, we could all co-operate in one lawsuit somewhere. The difficulty with that will be that we all can't be plaintiffs in the same lawsuit or it would be very difficult for us to be plaintiffs because we would have to be suing in British Columbia. And then if we pass Saskatchewan laws like British Columbia has passed, the application of our laws in British Columbia will be the problem. We want our laws to apply because that's the reason that we enacted them. And so the courts in British Columbia, their ability to apply Saskatchewan laws to a lawsuit brought in British Columbia is very questionable.

So what you would end up with are each ... or a number of the jurisdictions, if they're bringing Canadian lawsuits, actually commencing claims in their own jurisdiction and then working collaboratively with each other to try to pursue this litigation. Now there are obviously cost benefits to trying to collaborate so that not everybody is inventing the wheel; however, it will be individual litigation being conducted in each of those jurisdictions.

Mr. Addley: — So it's still a rocky road but not quite as rocky.

Mr. Hischebett: — Yes, and actually there is anecdotal comment, and I don't know how valid it is or not, but there was anecdotal comment in the US that it was the magnitude in terms of number of lawsuits that created the problem for tobacco manufacturers.

Mr. Addley: — Okay, thank you. Is it possible or are we able to ban countertop advertising as well as the candy tobacco — which has already been answered? Well I guess ... No you were talking flavoured; well you talked about the other two as well.

So basically banning countertop advertising, banning the — and not permitting — Operation ID (identification) programs or any kind of programs by the tobacco companies that promote themselves as being responsible corporate citizens when there's no teeth to the programs — it's basically a way to advertise their products or their company or their image.

Mr. Hischebett: — I don't think there's a problem with point-of-sale advertising. Point-of-sale advertising is something that's controlled within the jurisdictional area of the province. I think it's more or less a property-and-civil-rights-type issue and I think the province could regulate. And in the past, it's profit legislation that would deal with point-of-sale advertising. So I don't think that there should be a problem with legislating in that area.

Mr. Addley: — So then that applies to the Operation ID or any kind ...

Mr. Hischebett: — I'm sorry I don't know what Operation ID is.

Mr. Addley: — It's basically they say they will ask for ID for anyone under the age of 18 and we're a responsible company; and they've brought in radio stations and different convenience stores, grocery stores saying that we're participating with the tobacco industry's Operation ID program, which is ... But then when you ask about the program, there's really no consequences if they do sell and there's nobody gets hurt if they don't follow it. It's just sort of a fluff piece that's an image campaign. Can we not permit that to occur? Or is that federally or ...

Mr. Hischebett: — Well that's more difficult because I'm not really sure what you're prohibiting there. You're effectively ... I think you might run into more — and this is another area outside my jurisdiction — the Charter, the Charter issue there. They're expressing ...

Mr. Addley: — They're not permitted to advertise in Canada but that's based on Canadian law not provincial law. Right?

Mr. Hischebett: — Yes, that's advertising across. And they are permitted to advertise; it's just not certain types of advertising. Right?

Mr. Addley: — Okay.

Mr. Hischebett: — Like I mean, they're moving down the path

to getting rid of it entirely. But I don't think that's . . .

Mr. Addley: — But we, the province can't do that; that would be the federal government wouldn't it?

Mr. Hischebett: — It would be . . . Well, in your case I'm not sure that that's advertising as much as where you're getting at. Expression, you know, if the tobacco companies say we're good corporate citizens and all the rest of it. It's a murky area — let me suggest that.

Mr. Addley: — I appreciate that. That's kind of what I thought the answer was. Okay. Two more questions, very short I hope.

Is there a downside or an upside? Many of the suggestions that we've heard is that retailers would be required to purchase a licence to sell tobacco, and that would be issued by the province with the intent not so much to generate revenue, but to have a stick so that if they do have . . . habitually sell to underage children that we can remove that licence and they would not be permitted to sell tobacco.

Is there a downside to that that's unforeseen?

It seems like an obvious answer, but it . . . one of the opposition to that was that it then provides, puts some liability on the province because we're legalize . . . or we're licensing a hazardous product for personal use. Murky?

Mr. Hischebett: — Well I don't know that it gets you there.

Mr. Addley: — Okay. I don't think that, but . . .

Mr. Hischebett: — I don't think it gets you there. Where it gets you is if you create a law, you're required to enforce the law.

Mr. Addley: — Okay.

Mr. Hischebett: — And so (a) it gets you into a resource element, and (b) there is what's called regulatory liability for failing to adequately enforce the law.

Mr. Addley: — I see.

Mr. Hischebett: — So if you create this regulatory regime that requires a licence and you don't give it specific . . . or sufficient enough resources to go out and inspect, then you're potentially liable for damages associated with not fulfilling your duty to regulate.

Now that takes you down a stretch a little bit that then, you know, some 14- or 15-year old would say, well, had you regulated I wouldn't have gotten tobacco, so therefore . . .

Mr. Addley: — Got you.

Mr. Hischebett: — . . . I wouldn't have started smoking, and therefore you're responsible. And they're all, they're all threads that you can, you can tie together, and you can see somebody potentially making that claim.

Mr. Addley: — Okay. We appreciate that.

Mr. Hischebett: — But I think if you went down that path, you would have to recognize that there would be a resource element associated with that that would be substantial. Because the difference between a licensing scheme and an offence-based scheme is simply a matter of where you're doing your enforcement.

Because if it's an offence-based scheme that says you can't sell tobacco to somebody under 18 and then . . . and if you do you're guilty of an offence and there's a fine or blah, blah, blah, your resources go into the court system to actually prosecute and prosecutors and all the rest.

If you do a licensing system, your resources go into whomever is operating the licensing system because they have to be the people who are enforcing. And then your sanction is actually to take away the licence to allow them to do it. So it's just a matter of resources, it seems to me, and where you place them.

Mr. Addley: — Because we are getting some convenience stores . . . and some are being very responsible in allocating resources of their own to not sell to minors which is undercutting the profit.

And then you have other convenience stores — which I won't name — that don't seem to have anything and they're wanting . . . are looking the other way to a certain extent. So, the enforcement doesn't seem to be catching up with what's going on.

The last question — and I'm not sure if it's something that can be answered here. A member of the chamber of commerce in Saskatoon suggested the carrot-and-stick approach, but promoting the carrot approach; most of it's been on the stick. And the carrot would be promoting businesses and groups that don't permit smoking.

So if you are a restaurant and you are non-smoking, you would get the whatever seal of approval and it would be sort of free advertising. Does that make it a little more murky or does that even have any impact on any? It's just resources.

Mr. Hischebett: — I'm not sure what the seal of approval . . . who issues the seal of approval or what it's doing.

Mr. Addley: — Well, this is what he was suggesting is that if you've got 70 per cent of the population doesn't smoke and doesn't want to be part of it, instead of just making it more difficult for those that do permit, that you actually give free advertising and promote those that are not permitting smoking in their workplace.

Mr. Hischebett: — Nothing comes to mind . . .

Mr. Addley: — Okay. Well then I guess the point that was made earlier about seat belts . . . it seems like we need legislation and enforcement and an attitude change and they go along in lockstep.

Mr. Hischebett: — And I think that's probably accurate.

Mr. Addley: — When we passed the laws . . . I remember I was in school when seat belt laws came out and it wasn't enforced

for quite a few years. But pretty soon if you were the driver, that was enforced, and then the passenger and eventually the back seats.

The Chair: — Could you just make one comment with respect to a jurisdiction of any provincial law on tobacco control, how it might affect the relationship or (b) how it might impact on federal buildings or railways and on Indian reserves?

Mr. Hischebett: — This is actually something that I don't have all of the expertise in, but I'll give you what I can. Yes, the federal government has the ability to control its own buildings and areas, and I think that it happens more out of federal practice. I don't think . . . we don't have an ability, if it's a federal Crown facility or a federal penitentiary, to have our laws applied to them.

The reserve issue is a very difficult one and you can argue both sides of the fence to some degree. You can argue that this would be a law of general application, like a licensing scheme which you can argue can apply on a reserve because it's not legislation based solely with respect to First Nations people; and the issue is whether it's within your legislative competence or not.

If it's directed at reserves and First Nations persons, then you could say, well, that's outside of your competence. If it's directed at the entire issue of smoking and it just would apply anywhere in the province, then the argument is you have a law of general application. And that can apply there because it's not — the law — is not in substance looking to legislate in an area dealing with First Nations and reserves which is solely the federal government's area.

But we see today a number of challenges both, I guess, public, media, and even legal challenges over the applications of those.

So the answer is yes, I think you probably can do that, but recognize full well that there will be lots of people suggesting you can't.

The Chair: — Thank you. Anybody else got comments or questions?

Ms. Higgins: — When you talked about the point-of-sale displays, does that also refer to, you know, your back counters. You'll go into some stores, they're will be a whole wall of cigarettes. Or do you . . . Does that include point of sale or are you just talking about displays and countertop things?

Mr. Hischebett: — I think that can include that as well.

Ms. Higgins: — Okay, thank you.

The Chair: — Well then thank you very much Rick for coming, and thank you for clarifying that you are actually with the Department of Health not with the Department of Justice, as I originally indicated.

Mr. Hischebett: — Well actually I'm with the Department of Justice, but I'm the solicitor assigned to do the Department of Health. So we have solicitors assigned to do different client responsibilities.

The Chair: — All right, that's fine — that's even clearer.

Mr. Wartman: — Myron, if I might ask one other question, if you're going to be following up on this, and that was with regard to . . . we asked about licensing — I think Graham did — but what about restriction of sale of tobacco products to currently licensed outlets — licensed liquor outlets, licensed liquor retailers?

Mr. Hischebett: — I believe you likely have the legislative ability to do that. If I were to draw an analogy, the analogy is liquor. We already regulate that; this would be another product. The only issue would be what's your rationale for doing it, and the liquor rationale I think is a matter of safety and, arguably, the tobacco rationale is the same. So we appear to have already, you know, an example of exactly that. So could you do it? I believe you likely could.

Mr. Wartman: — Based on safety, I don't think it would be a problem. We had an analogy that when put into Saskatchewan a picture of 1,600 tobacco-related deaths per year works out to one 400-passenger jumbo jet crashing and killing everybody on board every 3 months year after year. And I think as a safety issue it . . . the impact of that is pretty heavy.

Mr. Hischebett: — Yes, it's got to be a youth safety issue it seems to me, because it's . . . I mean that was the purpose for the . . .

Ms. Eagles: — I have and do have a problem with the Liquor Board situation. I feel that by limiting sales to liquor boards you're assuming that people if they drink — or pardon me — if they smoke, they drink.

We have had people come forward that have said, lookit, I don't — I used to have a problem with alcohol — I don't any more but I do smoke more since I quit drinking. Don't you think that would be a big temptation for them to have to go into a liquor board store to buy a pack of cigarettes and see all this liquor there?

Mr. Hischebett: — Well I guess that's more of a social policy as to whether you would choose to go down that path than a legal question of whether you can there. But I mean obviously that is a matter you would need to consider if you wanted to . . . if you were considering only having those types of licensed establishments being able to sell cigarettes.

Ms. Eagles: — Okay, thank you.

The Chair: — Will you answer the question with respect to the Workers' Compensation Board's power to set rates?

Mr. Hischebett: — Set rates?

The Chair: — Yes. Can they set rates based on an assumption that if it's a smoking establishment that there's a certain percentage of people are going to be off work as a result of illness as opposed to . . . I know they can set rates. They set rates based on their record — is if you have a record of illness or accident, that's what set the rates. But this would be setting it on an assumption ahead of time.

Mr. Hischebett: — Is it setting on the basis as to whether you have a smoking or a non-smoking environment?

The Chair: — Right, that's what I'm saying.

Mr. Hischebett: — Would that be what it would be?

The Chair: — Yes.

Mr. Hischebett: — I will tell you I don't the answer to that. I will tell you that if you would like me to look at that and provide you with something in writing back, I will do that for you. But I can't answer that this morning.

The Chair: — Thank you very much. I'd appreciate that. Any final questions?

Mr. Wartman: — Yes, in a . . . (inaudible) . . . same light you raised that question. Apparently the actuaries dealing with insurance have already determined that if there are health problems related and insurance costs are up for employers and businesses who have smoking involved, group plans and so forth cost more. So it might be an avenue to look at as well.

The Chair: — I think that brings to the end our comments and questions for this section. Thank you once again, Rick. Would the committee like to entertain a five-minute recess? Or are you ready to keep . . .

Mr. Bjornerud: — I've got to be out of here by noon or a little before noon even, Myron. We have meetings right after lunch so if you could find a way . . . just take our breaks as we need them.

The Chair: — All right, fine. I'll certainly comply. I think we . . . you can see by our progress here that we are little behind, but we can always delay the last two items till another date I think.

So the committee would now welcome Felix Thomas.

Thanks for coming first of all and agreeing to come and represent the FSIN (Federation of Saskatchewan Indian Nations) to this committee.

During our travels around the province, we have had representation from people in northern areas, in particular, who have not officially represented their, well FSIN but have represented their bands. And they've given us some ideas about things to look for. But we thought that we should make official liaison with the FSIN on this because I think there are problems and issues that are common, that your governments are looking at and that we're looking at. And we wanted to just to have some time for a little discussion on some of these issues. So thanks for coming. I'll turn it over to you to see if you have ideas here.

Mr. Thomas: — Okay, just a brief background. My name is Felix Thomas. I'm the executive director of the health and social development commission so I bring that flavour to the discussion.

I'm not with the justice part, so on the jurisdiction part, whether

or not you can enforce on reserve or not, I can't answer that. But I can answer that any provincial legislation on reserve, as you know, will probably be challenged by the FSIN and by First Nations groups.

Saying that, in terms of our position on smoking, we know that it does lead to health problems and illnesses. We know that. We also historically have used tobacco products in a different manner and fashion than is used now.

As you know, tobacco is a native American plant, and we as First Nations people, we've always used this tobacco plant but for different purposes — more of a cultural and spiritual purposes. So I think that's where, when you try and legislate tobacco use, that's something that you'll have to be cognizant about as to the uses of tobacco.

I guess a good example would be like in some of the institutions where people want to use tobacco for spiritual and cultural purposes. I think that there has to be exceptions made to any laws to accommodate those. A good example, I would say, is using sacramental wine to, into an institution. Like, you regulate wine but you don't regulate that part. So I think that's where a good analogy could be made there.

And I think that's where some of the provincial institutions, particularly the provincial jails, that might be a . . . there could be a case made on that. We don't advocate widespread smoking but I think in terms of, again, the cultural and the spiritual use of that, it's something that we would push for because what we're saying is that it does lead to — I'm not going to say better behaviour — but it does lead to helping the person that's in that situation out somehow or leads to that.

So I think that would be our suggestion is to make sure it's flexible enough to accommodate the special circumstances to tobacco use.

As we know, all of us, for those of us who have children, we have to . . . All of our kids are going to smoke. They're all going to experiment with it whether . . . and usually it's when they're in grade 6, grade 7, grade 8; in that vantage, we can't . . . it's something that we know it'll happen. And it's something that we don't want to happen but eventually it does happen with all our kids. And whether we ask our kids now if they smoke, after being truthful most of them, if not all . . . probably 99 per cent of them will have tried it because a lot of their friends are smoking.

And fortunately for the most part they end up quitting, for a host of reasons — whether it's financial or health related or through positive peer pressure — most children don't continue to be smokers or otherwise we wouldn't have the majority as being a non-smoker.

First Nations — we've done regional health surveys with our member First Nations. And the difference here is, a lot of them continue to smoke. And I think what we're finding it's more a socio-economic cause rather than a cultural or a genetic cause. But I think . . . and if we looked at some of the conditions surrounding the smoker and I think we'll find that conditions of stresses will lead to increased smoking.

And I'm not sure if we did a survey like in the farm areas now, whether or not that has led to increased smoking. That would be an interesting survey to do in whether or not . . . because I think during times of stresses or during times of hardship you do have increased smoking. And if you look at some of the situations or some of the places where smoking is prevalent, you will find that a lot of the people in those environments are, for lack of a better word, they're poorer people than most. If you look in the bars or the bingo halls or in some of the places where there's a lot of smoking, you'll see that it's more the disadvantaged people that are in those areas and it all ties together. So I think that's something that you have to be aware of.

It was interesting to note that some of the lawyer . . . Some of the advertising that does go on and how do you regulate it. And one of the things that came to my mind in terms of kids and being exposed to advertising is how do you regulate advertising through the Internet? And I think that's going to be a bigger problem because as you know most of the Internet users are younger and that's where right now you don't have rules and regulations governing the Internet.

So I think that's something that when you look at those . . . I think what we're trying to do is reduce, actually, reduce the consumption and what's the . . . (inaudible) . . . to reduce tobacco use. And I think that's where . . . from our point that's something that we're attempting to do and rather than regulate it, but cut down the need for it.

And that's where it has to be done. It has to involve everyone in the community and not only the chiefs and council, but also the youth and the children and the elders and the parents, and that has to be a . . . and I think . . . I'm not sure if this committee has heard representation from the youth groups of the province, but I think they need to be onside and they need to be part of the team to reduce tobacco use.

I think other than that, I'm not sure . . . we don't have a hard position one way or the other; all we do know is that there are uses for tobacco and tobacco products but they have to be appropriate uses. I'm not in a position to say, well I'll give you . . . this is a list of appropriate uses. But I think common sense will prevail when we do these regulations and what does it mean, but as long as we have, I think, provisions for flexibility in making the laws appropriate to accommodate some of those special needs and uses. With that, I . . .

The Chair: — There will be questions and comments from members. I've got two already — Graham Addley and Doreen Eagles.

Mr. Addley: — Thank you very much for coming. We have heard from people to take into consideration the traditional and cultural use, the spiritual use of tobacco, and you've touched on one of them being the Eucharist or the mass wine. Another one that was also brought up was also the use of incense; that for ceremonial uses, that's not a banned thing. You don't have second-hand incense, that kind of thing.

What would be the best way — and I know you might want to have a list — but what would be the best way to do that? Or do you have any suggestions, or just make sure that that is at least highlighted or mentioned, so that it could be developed as . . .

Mr. Thomas: — Yes, I think it could be developed as to . . .

Mr. Addley: — Because there seems to be a clear distinction between the cultural use and then the addictive use of tobacco. And I think we want to make sure that . . . and I want to make sure that you . . . You obviously see a very clear distinction between the two uses.

Mr. Thomas: — Yes, well there is. And I think . . . I don't smoke so I don't know what . . . and I'm not a cultural person or whatever, so I'm not sure what all the different uses are. But I think if we were going to, say, regulate in the institution, whether it's like say a provincial correctional centre, I think we can . . . A suggestion would be to have the FSIN as well as members of the prison population and elders guiding some discussion as to what are the appropriate uses of tobacco in the institution . . . or that institution alone.

Same with the, I think, some of the hospitals where we burn sweet grass or where it's a . . . could assist in that way.

Mr. Addley: — So the FSIN and First Nations people — you'd be interested in exploring, at least, participating and developing those kinds of common sense solutions?

Mr. Thomas: — Yes.

Mr. Addley: — Okay. We'd appreciate that. A couple of other questions, and I'm not sure if they're in the area that you'd be able to answer. Enforcement — would there be an interest for any rules to be enforced on reserve by the band or would it be a shared responsibility or how would you see that?

Mr. Thomas: — I think that would be up to some individual bands.

The Chair: — Perhaps you could comment on the process. What kind of a process should we go through? If we're talking about setting up, implementing some type of regulation province-wide, that you probably might have the same aspirations to do.

Mr. Thomas: — It depends on, when you say enforcement, enforcement like on reserves or?

The Chair: — I mean . . . No, I'm talking about process in terms of what should the government do? Who should the government be . . . Contacting FSIN about it? Should there be some type of liaison built in as we go through this process?

Mr. Thomas: — Yes, I think that's . . . that would be an appropriate way to do it. And we could facilitate further discussions because we're not . . . Because our process is if an issue comes to us, we have a Legislative Assembly where all the bands and all the First Nations come together four times a year and we discuss like bylaws or different Acts or different . . . what direction we need to go on some of these things.

Now as an organization we won't say, well do it this way and we'll enforce it on the First Nations. That's a . . .

Mr. Addley: — Okay. A couple of other questions. I'll be quick. Would you support the increase of the age to 19,

basically for the sale to people under the age of 19? And then if there's any sanctions against those individuals? Right now the sanctions are only against the seller, not the purchaser and not possession. Do you see that as a potential way of dealing with it?

Mr. Thomas: — You could always do that. But then how do you . . . If you find a teenager whose parents don't have any money, what are you going to do to . . .

Mr. Addley: — Sure. Okay. That's a good point.

Mr. Thomas: — Well what's . . . How do you get blood out of a stone?

Mr. Addley: — Yes, understood. So I guess that gets back to pricing. Would increasing the price of tobacco for . . . (inaudible) . . . would that be effective at all?

Mr. Thomas: — It might be if you used the additional revenue to do a camp or put it back into a campaign for a drug strategy or as a . . .

Mr. Addley: — Cessation and . . .

Mr. Thomas: — Cessation and, yes . . .

Mr. Addley: — . . . education.

Mr. Thomas: — . . . building more programs and preventative stuff, I think.

Mr. Addley: — Okay. Now is there any impact on purchase of tobacco on reserve? Is there taxes that aren't paid versus off reserve at the moment?

Mr. Thomas: — Right now there isn't.

Mr. Addley: — There's no difference.

Mr. Thomas: — That might change.

Mr. Addley: — Understood. And I'm not sure this is applicable or whether it's something you can answer. There's been allegations made of the tobacco companies that when the smuggling was a problem a number of years ago and prices were dropped to combat that, that . . . and it's allegations that they were utilizing First Nations' reserves in Ontario to do that and some individuals within that reserve . . . not sanctioned by the reserves. Do you perceive that or is that a potential problem here if we went down this road for enforcement or increasing the . . .

Mr. Thomas: — I don't know. I know I have been to Cornwall and I have talked to the staff sergeant in regards to smuggling. And most of the smuggling activity was done by upper income, non-Native people, that had cabins on both sides of the St. Lawrence, who thought nothing of going to get gas on the other side or buy tobacco and alcohol products and doing that. That accounted for the majority of the problem.

Mr. Addley: — Okay. I'm glad I was careful in how I asked the question.

Mr. Thomas: — And I . . . saying that there are some individuals at the community that were engaging in free trade and were profiting . . .

Mr. Addley: — Euphemistically speaking.

Mr. Thomas: — . . . but weren't sanctioned by the band councils.

Mr. Addley: — Okay. So it's no more difficult of a problem on-reserve than it would be off the reserve. It's sort of location.

Mr. Thomas: — Yes. I think the location more than anything else contributed to that.

Mr. Addley: — Okay and the last question I had. You made mention of . . . you endorsed reduce the consumption and tobacco use but that you highlighted or indicated that reducing the need for young people to be involved in that. And that's something that really hasn't been talked about very much. Could you expand a little bit on that in what you mean?

Mr. Thomas: — If you increase the socio-economic status of everyone, you'll find that the health status increases as well. And you'll find that you'll have fewer smokers. And that people in upper income bracket already enjoy a two-tiered health system.

Mr. Addley: — Okay. Partly a social problem as well. Okay. Well thank you very much for taking the time.

Ms. Eagles: — Thank you Felix for your presentation. I agree with you about the smuggling, like it depends on the location. I live close to the American border. People are going down there all the time to fill up with gas and they also pick up some cigarettes while they're down there.

And another thing I agreed with you on was the ads on the Internet. I don't know how you'd ever control that. And it's the same with the ads that are coming up on American TV, you know, like how are . . . just because we have programs here that don't have smoking in them, we're still going to get it from the states, either on TV or at the movie theatre. So I just wanted to make a point that I think that's something that would be very hard to control.

Ms. Higgins: — Well actually I think Graham has covered most of it but I guess just kind of a comment for me and to have the opportunity to be able to talk to you. For me personally, what I'm looking for out of this: is there some way that with any rules or regulations that we may come up with — and it's fully recognized that tobacco is a health hazard — but keeping in mind the religious and traditional use that Native peoples have, is there some way that we would be able to work together to dissuade young people, I guess, on-reserve and off-reserve from taking up the non-traditional use, the more addictive — just smoking.

And I'd hate to see things end up in court or us trying to put in legislation that First Nations opposed. I mean that's a waste of time and energy. It would be nice to be able to find a way to work together and accomplish something, I mean, for better health for everyone.

Mr. Thomas: — Yes. I think alternative, just an alternative lifestyle in terms of, rather than . . . in terms of programming at the schools, I think would be a . . . is a good start rather than having kids hanging around after school or during lunch hour. But being involved in different programming is, whether cultural or whether mainstream, it doesn't matter to me as long as . . . if they're doing that, they're not smoking. And having more positive activities I think was . . . if we poured our energy and time into those activities, it would basically straighten itself out I think for the most part.

And after there's still going to be some smoking and no matter what you do, but I don't think . . . if we get 70 or 80 or 90 per cent people not smoking, or especially kids, I mean we wouldn't have to spend 100 per cent of our time with the 10 per cent that do smoke.

Mr. Bjornerud: — Just a short question, Felix, and I think you maybe partly answered it before. But I was wondering what FSIN's view was of the total ban at the Regina Correctional Centre and I think you partly answered that maybe by saying, that maybe, you know, between the inmate population and FSIN and that negotiations or discussions should have taken place, and correct me if I'm wrong, but . . .

Mr. Thomas: — Yes I think sometimes we . . . when we put in something we don't recognize the whole cause and effect thing. So we can minimize a lot of that if we have taken some of the steps beforehand.

Mr. Bjornerud: — I'm a smoker so I think that I can relate to what some of the people in there are going through, or the shock to the system, and I kind of felt it was a sudden bang, all of a sudden, and that's why I was very interested to know where you would come from on that.

Mr. Thomas: — Yes and, if you are doing it as a health thing, and institutionalize it and stuff, I mean . . . I think people I've talked to have said, well how does it matter if you're outside. I think there's a lot more contaminate in the air than natural smoke.

Mr. Bjornerud: — I guess that would be my concern too, if there's some point to where we go too far, I think with some of these things.

Mr. Thomas: — And swinging a pendulum to the other side and sometimes causes more problems than it solves. So that's why I said common sense and to be flexible and some of those things.

Mr. Bjornerud: — Thank you.

The Chair: — Well thank you very much, Mr. Thomas, for coming and I just want to express that it looks to me like when it comes to health effects and addictions and preventing addictions, we're looking at parallel tracks here.

Mr. Thomas: — Yes, we're on the same side.

The Chair: — So we'll probably want to stay in contact as we go through this process, which obviously is going to take more than just a month or two if we're going to be successful. So

please pass our regards onto Chief Bellegarde and the grand council. And thank you again for coming.

Mr. Thomas: — Okay thanks a lot. Good luck.

Ms. Eagles: — Myron, before we go . . . (inaudible) . . . could I just move a motion here? I move that the written tobacco — or pardon me — the written commissions provided . . .

The Chair: — Okay, carry on. Sorry.

Ms. Eagles: —

. . . to the Special Committee on Tobacco Control during the course of the public hearings be considered public documents and made available to the public upon request.

The Chair: — Okay, I have a motion moved by Doreen Eagles:

That the written submissions provided to the Special Committee on Tobacco Control during the course of the public hearings be considered public documents and made available to the public upon request.

Could I just get a little background from anybody on this? Or was it all clear to everybody?

Mr. Wartman: — I have some questions on it.

The Chair: — Okay, could you just give us a little briefing on this first of all, Donna?

Ms. Bryce: — Sure. We've had a few requests from the public to get copies of the submissions that witnesses gave to us. And from my understanding, the normal course here in Saskatchewan is that any submissions submitted to the committee require the approval of the committee before they're given to the general public.

And that would of course exclude any confidential documents provided for the committee's use only including draft reports, that kind of thing. It's just the submissions provided by the witnesses.

The Chair: — Okay. Thank you very much. Mark, do you have a comment or question? Or anybody for that matter?

Mr. Wartman: — I guess when Doreen was reading it, I just pictured that mass of materials that Rob Cunningham gave us, and what I'm wondering is if we say yes to this are we responsible for providing that kind of material for anybody who asks? Because that was a submission to our . . .

Ms. Hill: — There's only one copy of that. And I don't think the committee would give the one copy they have away. So we could direct them to a source to get it.

Mr. Wartman: — So to make available could mean that it's in the library. Is that correct?

Ms. Bryce: — People could, depending on . . . You know, when people come they usually give us multiple copies of things so we all ready have a lot of copies. For things that are an

undue requirement on staff resources, there would probably be a charge for photocopying and what that does is it places a value on the document.

Also you know, that one document that you're referring to, the big large one, I think something like that, very clearly people would be told to come in and have a look at it. You know, we could maybe make the motion a little more specific if that's a concern.

Mr. Wartman: — If the tobacco manufacturers came and said they want a copy of everything that was put in and each of the companies wanted a copy . . . I'm just . . . Like I don't . . . I have no problem with it being accessible for their perusal. I just don't think that we should be on the hook for paying for copies for everybody. So just a little bit of concern that way.

Ms. Bryce: — Yes. I want to say in my experience with Ontario, we've had that before where law firms, for example, want one of everything. We've made it very clear that we don't have the resources to do that, that it may take a few weeks, and we would charge, you know, 25 cents a page for photocopying. So we kind of take that angle at it. But it's just for the average submission, you know, it's not . . . it doesn't become an issue.

The Chair: — So I would be led to believe then that we, the legislature would have the authority to recover costs if they felt they were getting prohibitive or if they were just beyond the normal.

Ms. Bryce: — You could amend the motion to say, you know, available for viewing.

The Chair: — No. But without, without amending the motion, would we have that authority?

Ms. Bryce: — Yes.

The Chair: — You still would have that authority so you don't need it in the motion. Yes, Graham.

Mr. Addley: — Just a couple questions. Would this apply only to probe hearings that had *Hansard* in attendance? Or would this be the school groups as well?

Ms. Eagles: — It said public hearings, didn't it?

Mr. Addley: — I'm just being . . . (inaudible) . . . or were the school groups public in your mind?

Ms. Eagles: — Schools weren't public.

Mr. Addley: — Okay. That's all I was . . . So you're not meaning the school groups.

Ms. Eagles: — No. We're just saying public hearings.

Mr. Addley: — Okay. Well someone might come in and say well, I was at the school group one, and I wanted all the ones in the school groups. Just so I make sure that we're clear on that.

Ms. Eagles: — No. Because, I mean, *Hansard* never recorded anything even . . .

Mr. Addley: — Right. I just wanted to make sure of that because we could get that question.

The other one is, were any of the . . . What was the assumption by the groups that were presenting? Was it that it would be what they presented was going to be public? Or was it that it was going to be for our eyes only?

The Chair: — Well, no . . .

Ms. Eagles: — They must have assumed . . .

The Chair: — Excuse me.

Ms. Eagles: — . . . they were going to be public if they come to a public hearing, wouldn't they?

The Chair: — On any item that is recorded in *Hansard* is automatically public domain. So it's not . . . It's just a matter of convenience here I think.

Mr. Addley: — I just want to . . . No, I agree with your resolution. I just want to make sure that we haven't . . . like, I'm concerned that we pass this, and then we get a phone call well, I was talking to someone in the committee that when I made this presentation it was . . .

Ms. Eagles: — Yes. But if they did it at a public hearing anybody could have heard it.

The Chair: — I wonder if we could just speak one at a time here because . . .

Mr. Addley: — Right. But I just want to make sure that no one has given reassurances or assurances that any document that was provided for the committee, either follow-up, background information, that that was used for the committee's purpose only. Otherwise, I agree with the resolution. I think it's a good idea as long as the cost factor is taken care of.

The Chair: — Thank you. Do you have a response? Ms. Eagles.

Ms. Eagles: — I'd just say that everything was presented at a public hearing, so I feel it's public information.

The Chair: — Are you ready for the question. Those in favour? Opposed? Carried unanimously.

We have two items left. The item, a briefing by Tanya Hill research officer, who has looked at the Massachusetts' program, is ready to give us a presentation, estimated about 20 minutes. Then there's the item of in-camera session to start giving some direction to Tanya about report writing.

Could I suggest that we would do that first and then adjourn? And then perhaps, Doreen, we could meet as a subcommittee and just to give initial instructions, then we could meet at a convenient time.

Ms. Eagles: — It only takes 20 minutes. What time do you guys have to go?

The Chair: — Do you want to start on that or do you . . .

Mr. Bjornerud: — Why don't we leave that until we really have time to do it properly? We don't want to rush it. I think it is something we should do.

Mr. Addley: — I think Tanya has lots to say and we'll have lots of questions. She's probably the most important presenter of the day. No pressure, Tanya.

Ms. Hill: — Can I just add, that if you need more information than what you have, let me know as soon as possible. Because this week, if we're going to defer this say for another week, this week gives me a good opportunity to investigate more things like Massachusetts or like BC's legislation on licensing or reporting . . . the tobacco industry having to report what the contents of their product and things like that. Please let me know, like today, and then I can start investigating those for when we do more deliberations on topics like that.

Okay, anyway so I'll just move on to Massachusetts, and I have a video to show which is about 20 minutes which really covers it.

Mr. Addley: — Weren't we going to . . . Or are we going to wait? I think we were going to wait.

Ms. Hill: — Oh I thought you were just waiting for the deliberations. Sorry.

The Chair: — So we'll postpone that. Before we have a motion to adjourn, could I ask for a motion to go in camera for about two minutes? I have a comment I'd like to make. Agreed? Agreed.

The committee continued in camera.

The committee adjourned at 11:47 a.m.