Third Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Economic Development

Chairperson
Mr. Mervin Tweed
Constituency of Turtle Mountain

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

Monday, June 23, 1997

TIME – 7 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

VICE-CHAIRPERSON – Mrs. Shirley Render (St. Vital)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Pitura, Praznik, Hon. Mrs. Vodrey

Messrs. Chomiak, McAlpine, Ms. McGifford, Mrs. Render, Messrs. Sale, Sveinson, Tweed

Substitutions:

Hon. Mr. Gilleshammer for Hon. Mrs. Vodrey

APPEARING:

Mr. Steve Ashton, MLA for Thompson
Mr. Kevin Lamoureux, MLA for Inkster

WITNESSES:

Bill 41–The Regional Health Authorities Amendment and Consequential Amendments Act

Mr. Ernest Wehrle, Manitoba Interfaith Health Council
Ms. Shirley Timm-Rudolph, Councillor, Transcona Ward, City of Winnipeg
Ms. Jan Bailey, Council of Women of Winnipeg
Ms. Mary Scott, Council of Women of Winnipeg
Mr. Rudy Comeault, Carpathia and Westboine Park Housing Co-op
Mr. Peter Sim, Manitoba Association for Rights and Liberties
Mr. Paul Nielson, Manitoba Library Association
Ms. Virginia Menzie, Ombudsman, City of Winnipeg

Bill 50–The Freedom of Information and Protection of Privacy and Consequential Amendments Act

Mr. Ian MacIntyre, Manitoba Teachers' Society
Mr. Fred Vallance-Jones, Canadian Association of Journalists

Bill 51–The Personal Health Information Act

Ms. Marilyn Goodyear Whiteley, Manitoba Association of Registered Nurses
Ms. Karen Dunlop, Manitoba Association of Registered Nurses
Mr. Peter Sim, Manitoba Association for Rights and Liberties
Dr. Brian Ritchie, Manitoba Medical Association
Ms. Margaret Soper, Consumers' Association of Canada, Manitoba Branch
Mr. Bill Martin, Canadian Mental Health Association
Dr. Ken Brown, Registrar, College of Physicians and Surgeons
Ms. Maureen Hancharyk, Manitoba Nurses' Union
Mr. Brian Kelcey, Manitoba Taxpayers Association

WRITTEN SUBMISSIONS:

Robert Andrew Drummond, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 41–The Regional Health Authorities Amendment and Consequential Amendments Act

Bill 50–The Freedom of Information and Protection of Privacy and Consequential Amendments Act

Bill 51–The Personal Health Information Act

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Mr. Chairperson: Good evening. Will the Standing Committee on Economic Development please come to order. This evening the committee will be considering Bill 41, The Regional Health Authorities Amendment and Consequential Amendments Act; Bill 50, The Freedom of Information and Protection of Privacy and Consequential Amendments Act; and Bill 51, The Personal Health Information Act.

To date, we have had a number of persons registered to make presentations to the bills this evening, and I will now read aloud the names of the persons who are preregistered: Bill 41, Dorothy Browton and Ernest Wehrle; Bill 50, to be determined on the behalf of the City of Winnipeg, Jan Bailey, Rudy Comeault, Peter Sim, Paul Nielson, Virginia Menzie, Dr. Brian Ritchie, Fred Vallance-Jones, Brian Kelcey, Cynthia Devine, Ian MacIntyre, Glen Murray, Anne Lindsey, Robert Andrew Drummond; and on Bill 51, Marilyn Goodyear Whiteley, Peter Sim, Dr. Brian Ritchie, Margaret Soper, Bill Martin, Dr. Ken Brown and Maureen Hancharyk.

* (1910)

If there are any persons in attendance today who would like to speak to the bills referred for this evening and whose names do not appear on the list of presenters, please register with the Chamber Branch personnel at the table at the rear of the room and your name will be added.

In addition, I would like to remind the presenters wishing to hand out written copies of their briefs to the committee that 15 copies are required. If assistance in making the required numbers of copies is needed, please contact either the Chamber Branch personnel or the Clerk Assistant, and the copies will be made for you.

It is my understanding we have two out-of-town presenters registered to speak to bills today, and I ask what is the will of the committee in that regard. Is it the will to allow the out-of-town presenters to present first? [agreed]

Does the committee wish to use time limits for hearing of presentations?

Mrs. Shirley Render (St. Vital): I suggest, since we have quite a few presenters, that we do as we traditionally do when we have many presenters and even if we do not have presenters, limit to 10 minutes presentation, five minutes for questions.

Mr. Steve Ashton (Thompson): Mr. Chairperson, I am a bit concerned about doing that, particularly given the complexity of some of the bills. For example, just looking at Bill 50, this is a sweeping bill, 76 pages, 101 sections. If we have a limit of 10 minutes in presentations, by my calculations that is six seconds a section, and then we are going to give presenters three seconds a section in response on average.

I was just in a committee the other day where no time limits were put on. There were about eight or nine presenters. This is not an unusually large number of presenters but I suspect, given the nature of the bill, that what we may find is that this may be very useful to the committee to have presenters be able to have the ability to have some leeway.

We often tend to assume in terms of time limits that–I know the member said this is traditional–I would just point out that we have opposed time limits every time they have been imposed and particularly something as rigid as 10 minutes and five minutes. So we are fundamentally opposed on the opposition side to time limits on this type of bill in particular, and I would strongly urge that the committee not do that. I think with 14 presenters on such a complex bill, it would be to all our benefit if we not unduly restrict the presentations. To that end, Mr. Chairperson, I would suggest we have no time limits, and I think we can then start to do the main thing tonight, which is listen to the public.

Mrs. Render: Mr. Chair, we had time limits at our last committee meeting, but we on our side will be more than happy to show flexibility. If there is a need to allow a presenter to expand, we have no problem giving that flexibility. But I do remind the member opposite that for the Constitutional Task Force it was a maximum of 15 minutes. For us as members in the House, for our private member's bill, it is 15 minutes. So I just suggest these as guidelines that we operate under. As I say, we have many presenters, and I suggest that we have the 10 and the five with flexibility.

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, I want to indicate at the onset, I have never, ever liked the concept of time limits in committee. We always brag in this Legislature about how we allow the public to make presentations, and then we slip into this committee and then we limit the amount of time the public can make presentations to us, the only chance and the only opportunity the public has to make presentations. So I, in principle, have never approved

of and we have generally opposed the imposition of time limits in committee.

But, more importantly, Mr. Chairperson, with respect to this issue and this motion before us, how ironic that for a Freedom of Information bill, a bill affecting every man, woman, every person in the province of Manitoba, we are going to allow presentations on this bill, but you are limited by time from voicing your opinion on Freedom of Information. Your freedom to make presentations, your ability to speak to a bill and your freedom to express your opinion to us the legislators who are supposed to respond to that, are limited to 10 minutes for presentation and five minutes for questions. Even if we are flexible on the odd occasion, I think this is fundamentally–and it is ironic that on a bill of this kind, the Freedom of Information, that we in this committee would limit the time to make presentations.

I want to indicate that we are certainly fundamentally opposed to limits in general. But in particular when you look at this bill, when you look at the point in time when it was presented before this Chamber, if you looked at how we have tried to persuade the government that if, in fact, this bill is as favourable and as positive as the government has indicated, then allow Manitobans to have an opportunity to make their voices heard. We proposed a six-month hoist which was rejected. So now you are saying: Well, we listened to the public; we are putting our bill forward and it is the right bill. You have had a couple of weeks, and now we are going to committee and the only people who are allowed a time to make a presentation are going to be limited by 10 minutes and five minutes. I think this is fundamentally wrong, particularly if you look at the aspect and the kind of bill that we are dealing with.

Secondly, Mr. Chairperson, in response to the member for St. Vital and concerned about many presenters, I have been in this committee when we have had 50 and 60 presenters. I have been in this committee when there have been a lot more presenters, and I opposed limits then. But, even at this point and even if it causes some difficulty on the part of individuals who are making presentations, even if it means we have to stay late, even if it means they have to come tomorrow or the next day, I think this bill is so fundamental to what we are doing in the Legislature that I think it is wrong, that it is absolutely wrong to impose time limits on a Freedom of Information bill when you are making presentations with the public. This would not matter whether or not we felt this bill was fundamentally flawed and had difficulties, which in fact we do in some instances, or whether or not we approved of this bill, just by nature of this kind of bill.

I might suggest that, if we look at the three bills before us today–The Regional Health Authorities Amendment Act, The Freedom of Information and Protection of Privacy and Consequential Amendments Act, and The Personal Health Information Act–I would make that same argument for all three bills. I would say no time limits. As fundamentally opposed as we are to some aspects of The Regional Health Authorities Amendment Act, the government, I think, could argue, under The Regional Health Authorities Amendment Act, that they are going to set time limits because there has been some debate and there has been opportunity. I would not agree, but you could perhaps make that argument on The Regional Health Authorities Amendment Act, despite the fact that it is fundamentally changing the way that health care will be delivered in the city of Winnipeg, not just by virtue of imposing regional health boards in Winnipeg, but by virtue of imposing a system where health care, which has formally, in some instances, been delivered by the City of Winnipeg, will no longer be delivered by the City of Winnipeg by virtue of this bill. But, if the government makes that argument even on that bill, we are still dealing with fundamental aspects of democracy.

When you look at the two other bills, The Freedom of Information Act and the privacy bill, we are dealing with acts that affect the fundamental rights of every single citizen. We are dealing with the kind of acts where in fact the authority for the acts should not actually vest in the government, in our humble opinion, but should vest in the Legislature, which means that these are acts of a different kind. Even if I accepted the government's argument about limitations, certainly the two acts, Freedom of Information and privacy legislation, are both so fundamental to the way we carry on our practice and to the way we conduct our lives in Manitoba that we have no choice but to look at special circumstances for these two bills.

So, Mr. Chairperson, on no count can we support the imposition, and I do not know how to say it any stronger except perhaps to talk about issues of principle and issues of philosophy. If we truly represent democracy and if we reflect democracy, it is anathema to think that we are saying: Well, you who come forward, you who may make a complex argument or you who have any kind of opinion, be it in favour, against or neutral, on a Freedom of Information bill or on a privacy bill, are going to be limited in your presentation only once in your life to a bill that is going to be in effect for how long, 10, 15, 20, 25 years? For the rest of your lives perhaps you are limited to 10 minutes and five minutes. I think that is fundamentally wrong.

* (1920)

Let us just look at this for a second. Putting aside the freedom of information bill, let me talk about the privacy bill, Mr. Chairperson. The privacy bill is the most extensive, deals with the government's plan for the most extensive introduction of government technology and information in the lives of Manitobans that has ever been embarked upon in this province. We have had the imposition of this bill and the establishment of SmartHealth are going to affect everyone in the province of Manitoba for years to come on every single aspect of their lives, be it their drug information that will be on-line, their personal health information that will be on-line, all of their health information, all of their caregivers will be on-line. Do you not think Manitobans deserve an opportunity to express their viewpoints on this, whether you are in favour, against or neutral? This is so fundamental to the conduct of our lives, not just in health care but in every aspect of our lives, that it necessitates an opportunity to speak more broadly and with respect to the freedom of information.

This is something that I think should almost be apolitical. Freedom of information is something that goes beyond simply a government bill. This is a bill that deals with the Legislature. This is a bill that deals with the inner workings of government and every aspect of government and for everyone in the province of Manitoba. This allows people to undertake their work; this allows people to know what government is doing; this allows people to have their rights protected. And when we come to issues of protection of rights, protection of personal liberties and information, how can we restrict the ability of individuals to comment, and I dare say make very positive suggestions, with respect to these bills? I do not think we fundamentally can, and I think it is contrary to every aspect of representative democracy particularly when you look at the manifestations and the effects these two bills will have to limit the time of presentation that anyone can have before this committee.

You know, Mr. Chairperson, the member for Thompson (Mr. Ashton) spoke about the issue of the complexity of the freedom of information bill. I think that very well summed up the difficulty, but it goes further than that. One can spend literally hours on various aspects of freedom of information bill. Well, perhaps, members could indicate that is the same with any bill. In fact that is true, but when you are talking about a bill that deals with the access an individual may have to the records of their government, their own records, their lives, then we are selling ourselves and them short by not allowing for an opportunity for them to express themselves.

I have been in this committee and these committees of this kind ever since I was elected in 1990. I have heard, and we have heard hundreds and hundreds of presentations. I cannot recall an instance where the process was abused by individuals who appeared where people unnecessarily strung out their presentations. People are not going to come here to string out their presentations in order to delay the bill. The people are going to come here to speak in order to improve the bill or to help us in our jobs, so how can we therefore come before this committee and say you are restricted in the amount of time that you have to offer us advice and to offer us suggestions with respect to these bills?

You know, Mr. Chairperson, I suppose I have said it earlier in my comments, I cannot suggest strongly enough that we have never approved of time limits on the presentations, but when you look at the two bills in particular that are before us today, the personal information bill and the freedom of information bill, I think that if members opposite could see their way clear and they can make the argument and we can have the argument again in some other committees and some other time with respect to the merits or nonmerits of

limiting time in presentations. We can have that argument in other committees, and I am sure we will. We will have the arguments probably over and over and over again. But when you are dealing with bills of the type that we are dealing with tonight, when you are dealing with bills of that type, I do not think we have any choice but to say, no time limits. We are opening the floor because these bills so dramatically affect your lives and the inner workings between the public and the government that we have no right to limit the presentations that can be made.

I just look back to questions that were asked in the House by our members, in particular the member for Osborne (Ms. McGifford), when the minister stood up and said, this is a great bill with respect to freedom of information. The minister argued that this bill was well consulted, and the minister argued that this bill would stand the test of time. Well, if that is the case–and the minister is nodding in the affirmative–then what is wrong with hearing from presenters who I am sure will come forward and tell us how great the bill is. I am willing to listen to that. Perhaps they can convince me, and perhaps they can convince us in this committee that the bill in fact merits our complete approval. But I suspect we might hear otherwise, and I suspect we should hear otherwise, and I suspect we must hear otherwise. We are not doing ourselves a favour, and we are not doing the government a favour by virtue of limiting presentations made before this committee.

Mr. Chairperson, I want to just reflect on a personal aspect of this particular bill and what happened. I had the occasion, and I do not personally reminisce so allow me the indulgence; it is quite relevant. I was at a cub camp this weekend. I was one of the cooks at a cub camp. Thank heavens, rarely during the full three days I was there did I think about my job here in the Legislature. I appreciated that. It was a chance to get away. But I will tell you something, it bothered me all weekend that we would be coming to this committee, and I knew a motion was going to come forward as the government has proposed to limit debate on this bill. It bothered me all weekend, and it has bothered me all day, and it bothers me right now. I think it is wrong. I think it is wrong on this bill, and I think it is wrong on most bills, but I do not think you can make a case on this bill to limit debates and limit the presentations from the public.

Mr. Chairperson, if members opposite feel there is a problem, perhaps we could listen to the presenters, and if there is a problem and there is difficulty, many members want to come back and introduce a resolution later on. Maybe that is an option for members opposite, but do not start out a process of dealing with a bill on freedom of information and privacy of an individual's information and say that you are only limited to a certain amount of time. That is wrong.

If members opposite are concerned and think it is a problem, they can bring a resolution further on in the committee and they can present at that time, but do not do it now. Do not do it before people have had a chance to speak. Do not limit their right to speak on a bill that affects their lives on a regular, on an intimate basis. It is wrong, and I will probably argue against it if you bring it back later on, if you agree with some kind of compromise. It is wrong to do that on these particular bills.

I am urging members opposite to withdraw the motion and let us go through committee and let us see what happens. If members opposite indicate and feel that we really do not need time limits or they are going to be flexible, then let us not have the motion on the floor. Let us just see what happens. Let us go through the committee. Let us see how long the presentations take place, and if we find we are getting into a problem if someone goes on–well, I do not think that will happen, but if someone goes on and is repetitious over and over again then perhaps members opposite will entertain a motion at that time, because perhaps they may be able to make a case, although I am not sure I would agree or we would agree at that point in time. But do not start out a process of dealing with a bill on freedom of information and the privacy of an individual's information and say you can only speak for a limited period of time. I think that is wrong.

I am urging committee members to reconsider their position. I am asking members to consider the kind of bill we are dealing with, and I urge you to look at the particular situation that is before us today, the particular bills that are before us today and reject, withdraw the motion. If you have a problem later on, you have the option of reintroducing the motion. Certainly, Mr. Chairperson, we trust our constituents and Manitobans

to have common sense and good sense, otherwise we would not have these committee hearings in the first place. Surely we can trust them with the fact that they have an opportunity to make a presentation, that they ought to be heard and that they will conduct themselves with the same decorum and in the same kind of manner and fashion that the people have in the past at committee hearings and that members tend to conduct themselves in in the Chamber and during other committee hearings.

For members opposite, if they are concerned about the kinds of presentations, I go back to what the minister's comments were in the House on many occasions that if in fact the bills, the trio of bills before us today, are so favourable and so good that in fact members opposite ought to be wanting to hear long presentations outlining the advantages and the merits of the government program. So the government cannot lose by this, but the public can lose. The public can lose by virtue of limiting the right of an individual or individuals to make presentations. I think there is no doubt, and I do not want to go on too long because I know people want to make presentations, but I want the Chair and members of the committee to understand how seriously we view this particular instance and how we view the difficulties that occur if the government should limit presentations in this regard. Thank you very much.

* (1930)

Mr. Chairperson: Could I just make a suggestion before we–I know there are other people who want to speak, but I know there are lots of people at the back who came here to listen too. As we did on Friday, you gave the Chair a little bit of discretion on the 10 and five–I think for parameter sake, just to give some of the presentations time limit, if not, I am prepared to hear it all.

Ms. Diane McGifford (Osborne): Mr. Chair, I would also like to address the issue of time limits and begin by saying I concur with the member for Kildonan (Mr. Chomiak) and the member for Thompson (Mr. Ashton) who, I think, have both very eloquently outlined the serious issues and serious freedoms at risk if we do not give our citizens a right to speak as long as they want.

My side of the House, in my experience and when we have been present at legislative committee hearings, have always favoured unlimited time. I recall last fall, during the very controversial Education Bills 72, 32 and 33, that we ran into the same problem and the same kind of attempt to sequester speech and not allow people to fully develop the ideas that they wanted to present on some very, very serious educational issues. Mr. Chair, if we have presentations of 10 minutes and presentations of five minutes, I think it is clear to anybody that the complex ideas that are embodied in any one of these bills cannot possibly be properly enunciated and analyzed in 10 minutes.

Some of the presenters I know have historical information that they want to bring to bear. They want to put their presentation in a context; that, alone, would take at least 10 minutes. One of the other problems, as far as giving five minutes for questions, is, in my experience, five minutes for questions does not give either government members or opposition members a wide enough opportunity to ask the very necessary questions. It simply–[interjection] Now somebody opposite is saying, well, they did on Friday and it worked on Friday, but the bills that are on the floor today or at the table today were not the ones that were there on Friday. These are fundamental bills that will affect the lives and rights of Manitobans. As the member for Kildonan has said they are not the bills that were on the table on Friday.

Members opposite may be in a rush to get home tonight, we are prepared to stay. We are prepared to hear each presenter say everything that he or she wishes to say. I know that I personally had 60 minutes to make my presentation in the House, and that 60 minutes was not really adequate. I did what I could, but I could certainly have made many more statements.

I think that I would like to remind people of what John Ralston Saul says about time and efficiency. He points out that efficiency is not a moral principle but a business technique, and surely at this table we are in the business of ethics and moral principles and not practising business techniques. The member for Kildonan has pointed out that the freedom of information, by its very purpose and title, suggests the importance of freedom of speech. Freedom of information, of course, is intimately related to freedom

of speech, and both are at the very heart of our democratic freedoms.

Tonight, I think, it is extremely important that we observe those democratic freedoms and give people each and every opportunity to say what they need to say. I know that government may wish to sequester speeches. I think they have sequestered access to information, and in talking about the need to give presenters as much time as they need, I think we could mention the initial stages in the history of this bill.

We all know that historically the way this bill began was through a discussion paper that went to a select group of people, which meant that only a select group of people have to date had the opportunity to make presentation to this government. After this select group of people received their document, a discussion paper, and then submitted in turn their own response to that discussion paper, the materials were supposed to be collected together in a document called What You Told Us, which was to be recirculated so that people who wished to respond to the government legislation would have another opportunity. That opportunity was denied because this part of the process was never honoured. Mr. Chair, it has been a flawed process, and one of the of the serious and gray flaws in the process has been the failure to give Manitobans the right to respond to this bill.

I would also like to point out that although this session of the Legislature opened on March 3, the first reading of this bill was not until June 5, and then the minister did second reading on June 10. This very, very complex bill was left to the end of the session so that the public has hardly had the opportunity to read the bill, let alone gather their thoughts and be in a position to make public presentation on this extremely complex legislation.

So once again, personally, of course, what I think and what we have said in the House, we have moved a hoist, is that the whole bill should be delayed six months so citizens have more time to think before they do presentations.

The member for Kildonan (Mr. Chomiak) has made the point and I want to make it again, that freedom of the information and privacy protection strikes at the fundamental rights and lives of Manitobans. This is not a mere housekeeping bill. It is fundamental to democracy, and it is fundamental to the workings of democracy, and we have no right to sequester and limit the speech of our citizens tonight.

Also, Mr. Chairperson, I am sure that many of the presenters who we have with us tonight have spent several hours doing their research. That suggests to me that we should have the courtesy and grace to give them unlimited time to present those very complex ideas and the results of their research to us.

As I look down the list of presenters, I see that many people–I could read their names out but let me just pick, for example, Fred Vallance-Jones is representing the Canadian Association of Journalists; Cynthia Devine, Manitoba Association of Women and the Law. Clearly these two speakers and many, many speakers tonight are not here only as individuals. They are here to represent many, many citizens because they represent groups of citizens and, once again, I think we need to do them the courtesy of giving them more than a paltry mere 10 minutes of time at this table.

The member for Thompson (Mr. Ashton) has addressed the extreme complexity of this bill. He has pointed out that there are 101 sections, and I think he has pointed out that what is required here is close scrutiny, wide discussion. I would like to add, full and democratic discussion.

Mr. Chair, we would not limit discussion. We want to hear what our citizens have to say. We value their ideas and their suggestions. We think their ideas and suggestions may well be important in formulating the amendments, both for the opposition and perhaps for the minister. Perhaps during the presentations, the minister will see the need for amendments and take the advice that citizens offer.

Mr. Chair, in my opinion, an open floor is a sign of an open mind, and I am for an open mind and let us have an open floor. Thank you.

Point of Order

Mr. Ashton: On a point of order, I think just by way of some assistance here, I do not believe we have a

motion on the floor. I believe the member was suggesting a procedure. I get the feeling there is no consensus, so I would suggest that perhaps if we could get the government proposal put in the form of a motion, we can then deal with the motion and if need be have a vote, but there is clearly no consensus. The New Democrats and the committee oppose the suggestion. Perhaps if we can get a formalized motion, we can deal with it.

Mrs. Render: Do you want a motion?

Mr. Chairperson: Do you want to put it in the form of a motion?

* (1940)

Mr. Ashton: We would normally proceed by way of motion on something like this where there is no consensus. I suggest if the member could just write out what the motion would entail.

Mrs. Render: I will move, that–

Mr. Chairperson: You have to put it in writing Mrs. Render.

Mrs. Render: I move, that presentations be 10 minutes with five minutes for questions with latitude given to the Chair, as we have done in past times.

Mr. Chairperson: It has been moved by Mrs. Render that we limit presentations to 10 minutes in questions to five minutes, and I know she is going to put that forward to me in writing–

Mrs. Render: And with latitude to the Chair.

Mr. Chairperson: With latitude of the Chair. I will ask that question be put.

Voice Vote

Mr. Chairperson: All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Formal Vote

Mr. Ashton: I request a counted vote.

A COUNT-OUT VOTE *was taken, the result being as follows: Yeas 6, Nays 3.*

Mr. Chairperson: The motion is sustained. Great.

Committee Substitutions

Mr. Gerry McAlpine (Sturgeon Creek): Mr. Chairman, I move, with leave of the committee that the honourable member for Minnedosa (Mr. Gilleshammer) replace the honourable member for Fort Garry (Mrs. Vodrey) as member of the Standing Committee on Economic Development effective June 23, 1997, with the understanding that the same substitution will also be moved in the House to be properly recorded in the official records of the House.

Mr. Chairperson: First of all, I need to ask for leave of that, but I have been asked by the minister who does have to leave, would like to make some suggestions and some amendments that she is going to put forward before she leaves. Do we have the leave of the committee to do that?

Mr. Ashton: I am not sure of which minister we are referring to, and I would have thought the minister would have been here.

Mr. Chairperson: Mrs. Vodrey has requested that she put forward some information on her bill and then we will make the switch on the committee, due to reasons she is not going to be here for the duration of the meeting. Is there a willingness of the committee to do that? That would be on Bill 50.

Mr. Ashton: I realize there may be some personal circumstances. That will not be a problem. I would just suggest that we may wish to also deal–and my apologies for this–but how late we will sit. I would suggest we assess where we are at say at 11, 11:30 to see if we are making progress tonight.

Mr. Chairperson: Is it the will of the committee to look at the time between 11 and 11:30?

Some Honourable Members: Agreed.

Mr. Chairperson: Agreed and so ordered. I would ask Mrs. Vodrey to make an opening statement and then we will move into the presentations.

Hon. Rosemary Vodrey (Minister of Culture, Heritage and Citizenship): Thank you very much, Mr. Chair, and my thanks to the committee. This is a human business first and foremost and I have a very unexpected, very pressing personal matter which I must attend to this evening. But I wanted to attend in the early part of the committee before asking for leave for my colleague to continue, because I met this morning with a coalition of groups that are interested in this bill. As a result of that meeting, I will be bringing forward a number of amendments which help to further clarify the access provisions of this legislation. I am prepared to circulate those amendments now to the members of the committee for their opportunity to see them, and I will just speak to them very briefly in order that members who are here, people who are here this evening to present, this may assist you in your presentations as well.

First of all, in Clause 10(1)(b), concern was expressed that the use of the phrase "the head is of the opinion" and they were concerned that this would be subjective and therefore reduce access to information. This was not our intent, but our proposed amendment will now strike out those words.

Secondly, in the subsection 13(1), there were some concerns that the wording was too broad, specifically the words "relates to" may not be precise enough. Since this was not our intent, the proposed amendment will omit these words and state more simply "is for information already provided to the applicant." Addressing the same concern, a second change is proposed which would delete the final part of the clause "or amounts to an abuse of access." So that part I recommend by amendment that that will be stricken.

Thirdly, concern has been expressed that the phrase "relating to government decisions or the formulation of government policy" concern that that creates too broad an exception. So I will be, therefore, making an amendment to propose new wording "relating directly" which makes it clear that the record must relate directly to government decisions or policy.

Finally, in Clause 23(1)(f), our intent was to maintain the confidentiality of authorized in-camera meetings. However, we feel that there might be a concern that this clause would be understood to restrict access to information which is currently available. This was not the intention, and we are prepared to propose an amendment which would simply eliminate Clause (f) in the bill as drafted.

These changes in these amendments are being brought forward in the interest of clarity to help people understand and use this legislation and also as a result of consultation which I was able to hold this morning, and I trust that this may assist presenters this evening in some areas which they outlined to me earlier.

Mr. Chair, thank you very much and I hope that I may be able to rejoin the committee, perhaps, tomorrow. Thank you very much. Thank you to my colleague for standing in for me.

Mr. Ashton: Partly in response not to the content but the fact the minister is moving the amendments, also the fact that she cannot be here tonight, I just want to suggest, and there have been some discussions earlier with the government House leader, but it would seem to be appropriate that we not proceed with clause by clause on this bill tonight to make sure that any of the subject matter of the presentations would be made available to the minister both on these specific amendments and other concerns that may be expressed by the bill.

Unfortunately, the government House leader is out of the committee right now, but I just want to indicate that, on the opposition side, we will give leave to sit tomorrow afternoon when the House is in session to deal with clause by clause to enable the minister to be able to hear from the presentations, get written copies and perhaps with Hansard, if it is available. I realize we cannot formalize that here, but if we can agree between the parties that may assist considerably.

Hon. Darren Praznik (Minister of Health): Mr. Chair, I think we have tried to operate committees in as civil a means as possible. One would argue that giving some sense of time is part of that. The member's suggestion is a good one. I think our government House leader has spoken to us, and given the length of

presentations and the amendments, that would be excellent. I imagine that committee would be called for tomorrow and my colleague the Minister of Culture, Heritage and Citizenship (Mrs. Vodrey) wanted to make sure that not only her critic but members and presenters had copies of those particular amendments now so they could assess them prior to tomorrow. I think I have one as well that I would also like to just table for the benefit of my critic for tomorrow just so he has it to have a look at it.

Mr. Chairperson: There is leave of the committee to substitute the member for Minnedosa (Mr. Gilleshammer) for the member for Fort Garry (Mrs. Vodrey). [agreed]

We have two out-of-town presenters. Is it the will of the committee to hear those first? [agreed]

I would now call on Fred Vallance-Jones to come forward, please. I would ask, while you are coming forward, if you have any presentations for the committee. Do you have any presentations for the committee, handouts? All right. We will get them circulated.

Bill 50–The Freedom of Information and Protection of Privacy and Consequential Amendments Act

Mr. Fred Vallance-Jones (Canadian Association of Journalists): I assure you that I live in Winnipeg still, have not moved.

An Honourable Member: Bottom of the list.

Mr. Chairperson: Bottom of the list then, I am sorry. No. You are shown as an out-of-town presenter and I have called you so–

Mr. Vallance-Jones: That is fine.

Mr. Chairperson: As previously discussed in the committee, they have allowed the Chair a little bit of discretion so, as you get near the 10 minutes, I will give you a wave just to give you an idea of where we are at for time. Please proceed.

* (1950)

Mr. Vallance-Jones: I would like to begin by thanking the committee for providing us with this opportunity to present our views on Bill 50. Just to give you a little background, the Canadian Association of Journalists is a nation-wide organization representing more than 1,500 reporters, editors and other news media across the country. One of our jobs is to advocate on behalf of journalists and journalistic freedoms, and that is why I am here today. So I am here as a representative of the CAJ, not in my capacity as a journalist in Manitoba; let me make that clear.

In a few moments, I am going to address our specific concerns about this legislation. This brief was prepared before the intervention a few moments ago by the minister, so you will understand if some of what I have to say may well be covered by what the minister has suggested tonight.

First, I would like to talk about what I consider to be one of the finest of human qualities, and that quality is the quality of courage. One of the most courageous acts of governments in western democracies has been the introduction and passage of freedom of information laws. No large organization likes to air its laundry in public, let alone its dirty laundry, and government organizations are absolutely no different in that. The natural human tendency is to want to control information to present your organization in the best possible light, so the passage of freedom of information laws takes courage. It takes the courage to say the public's right to know what the government is up to takes precedence over any embarrassment or discomfort or ultimately even electoral defeat that may come with the release of information, because information is power and sharing that information with the people essentially means sharing that power. That can be a hard thing to do, so passing a law giving people access to government records takes courage. That courage was shown by this Legislature in 1985 when the existing Freedom of Information Act was passed, and it was shown again by the newly elected Conservative government in 1988 when it decided to proclaim the act. It was among the first things that this government did.

The Canadian Association of Journalists feels we have come to a crossroads in Manitoba, a time to

choose between yet another act of courage, which would be a loosening of restrictions that still exist in the Freedom of Information Act, or an alternative, which is to tighten the act and make it harder to obtain information. The CAJ believes that Bill 50 follows the latter course, dimming the light that citizens can shine on their government to make sure that it remains accountable to them.

In a recent address to the Canadian Access and Privacy Association, the federal information commissioner John Grace said: In the federal bureaucracy a wind of hostility is blowing against access values, disfavour, born of indignation against the perceived waste in times of thrift, of valuable resources in responding to access requests. Special hostility is reserved for those requesters who make multiple requests and those who use the information so acquired to embarrass government or for commercial purposes. We feel that the same wind of hostility may be blowing here in Manitoba. Let me turn to some specifics now.

Section 10(1)(b) would allow the head of a public body to refuse a request for electronic records if the head is of the opinion providing them would interfere unreasonably with the operations of the public body. This is an entirely new provision and would give the head of a department wide latitude on whether to grant a request for records in electronic form. It would place records that are electronic in a class for themselves and would allow records to be denied on the basis of form rather than on the basis of their content. We would like to see this clause eliminated altogether or at least amended to eliminate the words, "the head is of the opinion that."

Now, under Section 13(1), "A head of a public body may refuse to give access to a record or part of a record if the head is of the opinion that the request is repetitive, incomprehensible, relates to information already provided or that is publicly available," that seems to give almost infinite latitude to request just about anything, especially with the word "relates" there. As well, abuse of the right of access is not in any way defined. So we are pleased to see tonight that the minister is recommending that these two sets of wording would be eliminated from the act, and we hope that the committee follows through on that.

Section 19(1)(e), this is a section about cabinet confidences. We believe that this defines cabinet confidences far too widely to the point where we think briefing notes for a news conference could be refused if they relate to a matter that is going before cabinet, in other words, if a matter that is going to go to cabinets now or in the future. So we would suggest that 19(1)(e) be dropped.

The act also leaves in place the antiquated 30-year ban on the release of cabinet records. In B.C. and Alberta they can be released after 15 years, so the CAJ is at somewhat of a loss to understand why Manitoba records need to be protected for twice as long as those in provinces further to the west.

Section 23(1), Advice to a public body, we feel that this exemption has been expanded too. Under the present act, policy advice can be exempt if it is provided by government employees, but under the new act, policy advice from anyone could be refused, even if it comes from the outside. The limitations on that exemption are much narrower in Manitoba than they are, for example, in B.C. and Ontario.

I would like to provide the committee one further set of paper. These are the clauses in British Columbia, which we feel are much, much more liberal, if you want to call them that, more open to access. We might suggest to the committee they might want to consider this wording, which has hardly caused a major furor in British Columbia.

Section 23(1)(f) would allow officials to refuse any minutes or agendas of a meeting of a public body. The minister has suggested that that clause be removed. We are pleased, we are gratified, because we felt that would have made it impossible to obtain minutes if a public official did not want them to be released, of any meeting.

Section 46(2), "When a public body (b) receives a request for disclosure on a volume or bulk basis of personal information in a public registry or another collection of personal information; the personal information may be used or disclosed only if an approval is given by the head of the public body under this section".

This provision is new. It does not exist in any other act in Canada as far as we can tell. It means that information that is now public, such as Land Titles information, tax assessment information, would now be subject to an onerous and special process if requested in electronic form. Now, the intent here may be to stop corporations from obtaining databases for commercial purposes. However, this could be accomplished we think by wording specifically outlawing that kind of use. This section, we believe, places unreasonable hurdles before anyone seeking access to electronic records in an age when more and more records are in electronic form.

Because of the broad definition of personal information in the act, and it is extremely broad, it would cover an incredibly large number of lists of personal information that are in the hands of the government. We feel that under this section, even the telephone book, if it were a government record, would be subject to this process to be released because it would be a bulk collection of personal information.

This is an extremely important section, because we believe it represents the first time a government in this Canada has moved this way to reduce or control public access to records that have always been public.

Journalists are often accused of being negative, so I would like to make a couple of suggestions on the proactive side here. First of all, we suggest that the consideration of this bill be suspended and that in effect it be treated as a white paper. We suggest that a wide-ranging public hearing process be held this fall and then a new bill be drafted for consideration next year. Second, we would like to suggest that in that review serious consideration be given to narrowing exemptions, putting limitations on the exemptions for cabinet confidences and public policy advice, as I have handed out the B.C. exemptions, which are much, much narrower than those in Manitoba. This has been done in other provinces, as we said, with no adverse effect.

We would also like to suggest that the Ombudsman be replaced as the appeal mechanism by an information commissioner such as already exists in Quebec, Ontario, Alberta, and B.C., which is the case with most modern access laws. The information commissioner would have the power to make binding rulings.

The use of discretionary exemptions should be reviewable to determine whether officials had made proper use of them. In his 1994 report to the Legislature, Manitoba's Ombudsman noted how officials often exercise discretion to deny access without identifying any adverse effects that would result from the release. As it stands now, as long as the discretionary exemption exists and the record can be exempted, nobody, not even the courts, can force release of the records. We feel that this is an invitation to abuse, and there is no change under the new act, so we suggest a commissioner model with the right to review exemptions.

To help in that, we recommend a harm test be introduced for discretionary exemptions. A public body would have to show how the public interest would be harmed upon the release of information. It would not be good enough for an official just to say, that is a matter of policy advice, and it cannot be released. They would have to say, that is a matter of policy advice, and it cannot be released because to release it would hurt the public interest.

I am almost finished anyway. So you have a choice between courage and, we feel, fear, and that is the fear of open public access to records. We feel you have a choice between courage and suspicion and the suspicion about what the media and the public might be up to when they ask for access to records. Ultimately you have the choice between courageously following the examples set in 1985 and '88 or passing this bill as is and taking Manitoba a step backward in information access.

* (2000)

I will finish off by quoting Gerald Mercier, who was a Conservative MLA when the original FOI pack was passed in 1985. "Mr. Speaker, I believe that open government has to be the basis of a stronger democracy and hopefully through this process, through more information being made available to members of the public, that the democratic process can be strengthened."

Those were wise words then and those are wise words today. Courage, ladies and gentlemen, courage. Thank you for your time.

Mr. Chairperson: Thank you, Mr. Vallance-Jones.

Ms. Diane McGifford (Osborne): Thank you, Mr. Vallance-Jones, for your presentation and for being here with us tonight. I notice that several of the sections that are troublesome to you have already been amended by the minister. I am referring to Sections 10(1)(b), 13(1), 19(1)(e), 23(1) and 23(1)(f), and I wonder if you have had the opportunity to analyze the minister's amendments–I realize you just received them a few minutes ago–but I wondered how you are feeling about those amendments and whether they cover your concerns.

Mr. Vallance-Jones: Maybe we can just go over them one by one. Maybe the Chair could remind me of exactly what–

Mr. Chairperson: Just for the sake of the people in the audience, we are getting copies of the amendments made up to be circulated so that you will get copies as soon as they are available.

Mr. Vallance-Jones: Section 13(1), as I said during my comments, we feel that it looks like–and I would have to run this by our lawyer. I am not the lawyer. All the comments come from our lawyer–but it appears that this would answer certainly our concern about the vague word "relate" and the vague term "an abuse of access."

Now, 19(1)(d) and (e), we are concerned about briefing notes on a matter which will go to–just by eliminating the word "relating" still does not, I think, answer the question or answer the issue of briefing notes on a matter that will go to cabinet in the future, because it could assumedly still be a matter that will go to cabinet sometime in the future and meanwhile briefing notes have been given to the minister. So my immediate reaction would be that I am not sure that completely answers our concern.

Then Section 23(1), by striking out Clause (f) , naturally, we are happy to see that because that was a clause that we were very concerned about. That is essentially the essence there, is it not? We still feel that advice to a public body has been widened too much. For example, under this section, the sense we get is that consultants' reports done for an oil company, say, on an oil spill would be unavailable, or could be unavailable, if the exemption were applied because those reports would have been done for a fee for a body other than the public body and so would come under the exemption, and those are presently available. Is there anything else? There is one more. Subsection 7, that is not something that I addressed here.

Ms. McGifford: I think, Mr. Vallance-Jones, I asked you a very unfair question, and I certainly appreciate the difficulty of trying to digest these legalistic terms and turn them around and understand. So I do not think it was a very intelligent question, and I am sorry for it.

I wonder if you could tell me if the Canadian Association of Journalists made a submission to the original discussion paper and was it easy for you to find out about that? Did you receive the discussion paper, and were you able to respond, or some of the circumstances of your discovering that indeed there was going to be some new legislation.

Mr. Vallance-Jones: In fact what happened was I was visiting the Legislative Library on another matter–and I think that was during the summer–and I happened to notice the paper sitting there–I think it was being distributed at the library–and I wondered, what is this? So I got a hold of it and took it back and sent it up to our CAJ people and we realized all of a sudden what the process was that was going on. Certainly, the paper was never distributed to us as a journalistic organization for comment. I understand it was distributed to a select circle of people. I guess we were not on the list. Luckily, we found out about it and were able to make a presentation.

Ms. McGifford: Thank you. Would you not think that the Canadian Association of Journalists would be a place that such a document would be automatically sent to, considering that journalists, of course, have as part of their stock in trade information and information gathering, and whatever legislation is in place would affect the kinds of stories that can be written, the kinds of research that can be done. It seems to me a glaring omission and I wonder what you think.

Mr. Vallance-Jones: Sorry, I have to get used to the format. We were surprised that we did not receive it. We were surprised that that process would be going on without our being aware of it. We honestly would have much preferred, as an organization, that there had been a full and open public review, perhaps with hearings around the province which other people could attend, rather than the process as it was where you made a presentation in private and then had the opportunity much later to read what other people had said in paper form. The association was not entirely happy with the process.

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, one of the areas that I have not developed adequately in terms of my approach to the bill is Section 46(2) that you referred to, and it cuts many ways because of the concern in terms of the release of personal information. Can you give us an example, so that all members of the committee are aware of the ramifications? Do you have an example or two you might cite of your concern with the kind of information that might be refused under this discretionary section?

Mr. Vallance-Jones: Our essential concern is that this covers quite a bit of information that is presently publicly available. We think it is a big step for a government to take information which has been freely available and then, because of the form that it is contained in, to place major restrictions on it. Putting aside the particular privacy concerns that may have led to this, we just feel that maybe there could be better wording, that this could be worded in such a way as to allow reasonably free access to researchers and journalists, while maybe putting restrictions on people who may be seeking to obtain this information for the purposes that I think are really the concern, and that is commercial purposes and so on.

A suggestion was made to me that Wal-Mart might want to get the assessment database to send out mailings or whatever. But there are many journalistic purposes where, in a fairly short order of time, a reporter might well want to obtain the assessment database in order to analyze some matter of tax policy in the city of Winnipeg or maybe in the province. This process has all the appearances of something that would take a long time to get through. There would be all these layers of approval. There would be a committee established by regulation which would have to review the proposal. It would then go back to the head of the department, and to us it looks like it could be a nightmarish process for really essentially innocent requests. I think what is happening is maybe the baby has been thrown out with the bath water here in an attempt to sort of control commercial use, and we think maybe there could be a simpler way of doing it.

Mr. Chomiak: You cited the harms test. Can you indicate, just in general principles, what your understanding of the harms test is? Is that a judicial interpretation or is that something that has been included in legislation? Because it is significant that members of this committee, since we have already received–amendments have come forward already–that there might be some hope for including something along those lines in the amendments that are coming forward. Can you give us some advice on the harms test, your understanding of it?

Mr. Vallance-Jones: The problem as it is now, the way we see it, is that once a discretionary exemption is claimed, this is an exemption that does not have to be applied. Then as long as the record falls under an exemption, there is a clause in the act towards the end which says that the court may not order, is not allowed to order, the release of the records. In other words, the court is bound to respect the use of a discretionary exemption. So you cannot really question it. The Ombudsman could question it in the sort of informal process that goes on there, but once having been recommended and say the department persisted in refusing to release, at that point the court cannot order if it falls within the ambit of the exemption. So what we are suggesting is that is an invitation to abuse, because it basically says, once you claim this, that is it, you can stick to your guns and it will not be released. What we are suggesting is that on discretionary exemptions, there should be a test of harm to the state or public interest. I do not know what the wording would be, the lawyers could tell you that.

* (2010)

Essentially it would put it to a test then that could then be adjudicated later. The Ombudsman could look at it, and ultimately the court, if the court came into the process, could say, no, we do not buy your argument or

we do buy your argument that there is a problem with the public interest in releasing this information. It would give the court something to hang its hat on. Right now, if you go to court and it is based on one of these discretionary exemptions, you are going to go nowhere if it is based on one, because they cannot order otherwise. So we are just trying to suggest something that would provide a test.

Very well, many times, the officials might well be able to justify the application of the exemption, and that would be the end of it.

Mr. Chairperson: Mr. Sale, with a final question.

Mr. Tim Sale (Crescentwood): You made reference to the need for a privacy commissioner that could make findings a fact and impose some kind of sanctions or mandate certain things to happen. Would you consider the reason for doing that is to encourage people not to use those kinds of blanket exemptions or gee, we could not find it? I ask you to recall in your answer the case of the Free Press and the Jets data which, when it was first released, was a file about a centimetre thick, and ultimately by the time Mr. Benson and his colleagues recalled where the other information was, it was three binders, about that thick, but it took the best part of a year.

Is that the kind of case where you would see a commissioner being appropriate?

Mr. Vallance-Jones: That is a case where I guess information was recalled to exist that did not exist before. Perhaps a commissioner–

An Honourable Member: It did exist.

Mr. Vallance-Jones: Well, they thought it did not exist. I am not going to comment on the motives or whatever in the case, but I would take the gas prices case as an example that might well fit it, where the refusal to release the information that was deemed to be of a commercial nature, even though this was the same information that was posted on gas pumps and eventually took a going to the courtroom steps before this gas price information was released by the department.

Perhaps an information commissioner with the ability to make a binding ruling could have intervened early on and said: No, this is not commercial information; you must release it. It would have saved some people some time and expense, and perhaps that is the main reason for having the information commissioner or information privacy commissioner with the ability to make rulings.

It saves a lot of people a lot of hassle. It allows somebody to take their case to somebody who will make a decision and give you a ruling, and it is dealt with. Then you can really only go to court to deal with the functioning of the commissioner's duty if you feel that the commissioner erred or something, but it works very well in the provinces where they have it.

Mr. Chairperson: Thank you, Mr. Vallance-Jones, for your presentation tonight.

Mr. Vallance-Jones: Thank you for your time; I appreciate it.

Mr. Chairperson: I now call on Cynthia Devine. Cynthia Devine. Seeing that Cynthia is not here at this point, is it the will of the committee to move her to the bottom of the list and bring her around a second time? Okay. Moving along.

Bill 41–The Regional Health Authorities Amendment and Consequential Amendments Act

Mr. Chairperson: Dorothy Browton. This is on Bill 41. Dorothy Browton. Seeing that Dorothy Browton, is not here, we will move her to the bottom of the list, and she will be called again. Can I call now Ernest Wehrle?

Mr. Ernest Wehrle (Manitoba Interfaith Health Council): Thank you, Mr. Chairman.

Mr. Chairperson: Thank you. Do you have pass-outs? Okay. We will get them circulated, and as soon as you are comfortable, I would ask you to begin.

Mr. Wehrle: Thank you, Mr. Chairman, committee members. I am Ernest Wehrle, a lawyer with D'Arcy and Deacon law firm, and I am here representing the Manitoba Interfaith Health Council. If you look at the

last page of the brief, you will see there the label of Interfaith Health Care Association. I apologize for the difference. It is, in fact, one and the same association. We received notice only last Friday that the matter would come up for discussion this evening, and I was asked to make a brief.

Just to highlight the brief for you, on page 6, there is a summary of the recommendations, which are six in number, from this association. I will mention each of them in turn briefly. First of all, subsection 8(2) of this Bill 41 would expand the minister's control over health care facilities in respect of borrowings for capital purposes by adding the word "encumber." This association urges you to not to include this reference because the word "encumber" means all manner of things, including simple things like a Manitoba telephone caveat, giving notice of a right of way for a telephone line. The word "encumber" includes signing a contract for cable television services or for leasing a corner office in a hospital to a dental or a medical practice, which is a frequent thing, particularly in rural areas in Manitoba.

Now, because the regional health care act already contains, in subsection 59(1) and subsection 54(d), adequate and extensive control by the government over borrowings by health care facilities, it is submitted that this new provision is unnecessary, and so the recommendation is that 8(2) be deleted from Bill 41.

Secondly, Section 13 of Bill 41 would create a new subsection 56.1 wherein it would empower an interim manager to "exercise all the powers and authority of the health corporation and its board or the board of the facility."

Now, it is purported in this new 56.1 that the manager, when exercising his or her authority, could (a), or (1) if you like, do so despite the provisions of any other act or regulation. It is, I think, an astounding provision that I submit is probably unconstitutional. Secondly, it provides that the person, the manager could ignore the by-laws of the health care facility. This is of grave concern because, if a health facility is taken over by a manager under order of the minister, that manager could ignore provisions in the by-law which may, for example, prohibit euthanasia, and this too would be of grave concern to many citizens of this province.

Finally, this 56.1 would allow the manager to ignore any agreements which had been entered into with faith facilities in the past or pursuant to Section 5(2) of the RHA act. So the recommendation is that the new provisions 56.1(5) and 56.1(7) be deleted.

Those are the two recommendations that relate directly to the provisions of Bill 41. The association takes this opportunity to recommend further matters which ought to be included in amendments such as Bill 41. First of all, we point out that Section 17 of the RHA act states (a), (b) and (c). (a) is that a director on a board of an RHA shall (a) ensure–and the plain dictionary meaning of that is to guarantee–and so it would provide that a director on a regional health authority board would personally guarantee that the business and activities of the RHA are carried out in accordance with the act and the regulations.

Now, compare that provision with the provision of Section 117 of The Manitoba Corporations Act. You see there are two provisions which require the directors of corporations (a) act honestly and in good faith with a view to the best interests of the corporation, a very sound, well-tested and tried provision; and (b) that a director exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Again, a proper, well-tried, tested provision governing directors of corporations.

But why is it that there is a new provision (a) which would make directors personally liable to guarantee that all the acts of the RHA are in compliance with the act and the regulations? It would, I submit, destroy the limited liability that is otherwise normally afforded members and directors of corporations. So the recommendation is that 17(a) ought to be deleted from the RHA act.

* (2020)

Recommendation 2, a new provision we recommend be made to the RHA act. We note that Section 58 of the RHA act provides some measure of protection whereby individual directors of RHAs could not be sued for attending to their duties, whether negligently

or otherwise. Now, this clearly gives some significant protection to persons who are directors of RHA corporations. I submit that for legal technical reasons the protection is not sufficient and adequate but whether it is or is not, if you eliminate the 17(a) then there would be no need for giving such protection to directors.

More so, Section 58 has a problem, in our opinion, because it purports to give protection to people who are not directors of an RHA. Rather astounding. It says that you cannot sue a person who was told to do something by a director. That is astounding for two reasons. First of all, under corporate law, a director qua director has no authority to give instructions to anybody. You know well that a corporation acts through its board of directors and not through the authority of any individual director.

Secondly, why is it that any person who is carrying out the duties or directions of the RHA is given protection from lawsuit when in fact the duties and authority set out for an RHA extensively spelled out in the act include such things as providing medical care services adequate to the needs of a community, et cetera, and carrying out and delivering health care services to prescribed standards? I submit that a medical doctor now delivering such health care services who commits malpractice, who pulls a big boner and incurs a big lawsuit, or which would otherwise be a big lawsuit, that medical person if employed and directed by an RHA could gain immunity under this act when, I submit, it is not in the public interest and it is not fair to members of the public who might be injured through the negligence or malfeasance of such agents whether doctors, nurses, civil servants or others.

So it is recommended that the application of Section 58 be restricted to directors themselves, an official administrator appointed under Section 52, a person appointed under Section 53 and a commissioner under Part 6, but certainly it ought not to apply to anybody who is simply carrying out a function of the RHA.

Now we come to a new recommendation 3. Section 49(b) and (c) of the RHA act requires that a health care corporation cease to exist after it has turned over a health care facility to the RHA. Now that, I think, would be of little significance if a health care corporation operated only that particular health-care facility. We know that there are many organizations, religious institutes, nonprofit corporations and the like, who operate many facilities.

I could give you an example of Mother Teresa's Sisters in this very city who happen to be clients of mine. You may or may not know that Mother Teresa's Missionaries of Charity in Winnipeg operate a shelter for battered women and they operate a soup kitchen facility. I think that is done without government funding, but should they receive government funding of, let us say, $2,000 to buy new beds, which beds by the way the nuns would not use themselves because, as you may know, they sleep only on pallets as Mother Teresa does when she is not in hospital. So there are Sisters worldwide who sleep on pallets, but if the government gave them a grant for beds, they would use the beds for their shelters. Now it is preposterous, having made a grant of $2,000, let us say, for beds or a new soup-kitchen stove, for this legislation to claim that Mother Teresa ought thereafter, if she turned her soup kitchen over to the RHA, thereafter the Sisters would have to shut down their operation worldwide. So the recommendation is that subsection 49(b) and (c) of the act be deleted.

Finally, my last point is a new recommendation that you look at subsection 53(3)(c) of the RHA act. It is set out there that, on the winding up of an RHA, all the debts of the RHA will be assumed by the province. I submit that is not in the public interest because, and I give the example in my paper of an RHA that might fail because at one of its owned hospital facilities it might be sued for malpractice, it might suffer a judgment of $10 million, and in the ordinary course it ought to wind up. It will be insolvent, and either insurance companies or other parties should take their losses where they lie, but really the government should not in advance, by legislation, commit itself to assume all of the debts of the failed RHA.

Mr. Chairman, that concludes my remarks.

Mr. Chairperson: Thank you, Mr. Wehrle. Questions.

Mr. Dave Chomiak (Kildonan): Thank you for your presentation, Mr. Wehrle. We have also had

presentations made to us about the difficulties of the use of the word "encumber," and the minister and I have had a discussion across the table here. I will defer to the minister's comments because there may be a means of narrowing that or there may be resolution to this. Just to specify, you are asking that the word "encumber"–which is also part of the amendments that I have brought forth tonight to remove the word "encumber" as well. That would be your preference. Is that correct?

Mr. Wehrle: Yes.

Mr. Chomiak: Mr. Chairperson, then I think, pending the minister's comments, we may be able to try to deal with that.

I want to return to the second point you made, and that is in respect to the provisions dealing with what I call the Holiday Haven amendments, the 56.1 amendments, which are something we have–I was actually very encouraged by your presentation because one of our concerns with respect to–because of the issues and because of the difficulties that occurred at Holiday Haven recently, we were very concerned about the ability of the government to step in to deal with issues like that. Now I recognize that in that instance it was, some may say, an exceptional circumstance, and certainly from my political perspective it was a privately run, profit facility, and I think that has a factor in all of these issues. I was pleased–but we are reluctantly supporting this amendment on the basis that we think it will do more good than harm. Am I correct in my interpretation of your review that you, from the Interfaith group, can live with this amendment except for the provisions that you have outlined in your presentation? Is that a correct observation?

Mr. Wehrle: Yes, Mr. Chairman, it is.

Mr. Chomiak: I thank you for that because that is very helpful to us in this committee in terms of dealing with these issues.

With respect to the other issues raised, some of them are interesting and are issues we had not picked up on, and I thank you for them. What I think that I intend to do in terms of the committee is try to query the minister and his staff, who will be present for the clause-by-clause review of this bill, in order to try to get some clarification and try to clarify some of the issues raised. There are some good points. Some of them I am unaware of, and I am not quite certain of the application, but I thank you for that.

With respect to the two major amendments regarding the bill that is in front of us, I look to the minister's comments regarding the encumbrance issue, and I am pleased that your organization can support the powers that have been given to the minister to deal with some of those crisis situations, and I thank you for that.

* (2030)

Hon. Darren Praznik (Minister of Health): Mr. Chair, I appreciate the comments of my colleague the member for Kildonan. Mr. Wehrle, on the encumber issue, it was never our intention to deal with all leases and the matters you flag. If our provision is somewhat broader than we intended, what we were attempting to do is, should we put sizeable capital, public money into a private institution, in essence, we wanted to ensure that that could not be used to secure additional debt without our approval, because it was public money.

What I am going to do is have our staff look at your proposal. I also appreciate your concern with respect to the interim management provisions that we put in place, provisions I hope I never have to use or any minister has to use, but it is again not our intention to deal with by-laws, particularly those dealing with faith-based issues, abortion, euthanasia, et cetera, in a facility. So we are going to have our legal people have a look at that to make sure we can manage that.

There are some other issues you flag, and my legal advisers are somewhat–they look at some of them and quite do not appreciate your position. On others, they have noted some of your concerns. So, Mr. Chair, I know our time is limited here. I would like to ask on the record if Mr. Wehrle after his presentation may meet with Mr. Olson and some of our staff. I would appreciate the counsel of the two of them, being very learned in the law, to have a chance to go over that presentation, but I want to thank you for your presentation here this evening. This is what committee is really all about, this kind of exchange to make sure we get it right the first time. I want to thank my

colleague the member for Kildonan (Mr. Chomiak) for his comment and co-operation.

Mr. Wehrle: Thank you very much for the opportunity, Mr. Chairman and committee members.

Mr. Chairperson: Thank you. I appreciate your coming out. We are moving on to Bill 50, The Freedom of Information and Protection of Privacy and Consequential Amendments Act. The first name I have is to be determined, the City of Winnipeg. Is there someone here from the City of Winnipeg? I will have you introduce yourself to the committee.

Ms. Shirley Timm-Rudolph (Councillor, Transcona Ward, City of Winnipeg): Good evening, Mr. Chairman, honourable members, ladies and gentlemen. My name is Shirley Timm-Rudolph, and I am a city councillor at the City of Winnipeg and a Chairman of the Standing Committee on Planning and Community Services.

I am actually here to make representation today on behalf of the City of Winnipeg to Bill 41, the regional health authority, and I understand you have us down as well for Bill 50, but I should indicate to you at this point that there is just a letter of submission, that I understand the Clerk of the committee already has that.

Mr. Chairperson: Just for clarification, we had called Dorothy Browton. Is that who you would be now replacing on Bill 41?

Ms. Timm-Rudolph: Dorothy Browton is a city clerk and so she just, I think, listed her name down for any presentations that wish to be made by the City of Winnipeg.

Mr. Chairperson: Okay, so you are going to discuss Bill 41.

Ms. Timm-Rudolph: Yes, I am.

Mr. Chairperson: Please proceed.

Ms. Timm-Rudolph: The City of Winnipeg Council believes that health services are a provincial responsibility and should not be dependent on the municipal property taxes. The City of Winnipeg, therefore, supports in principle the transfer of health programs and services to the regional health authority.

However, the City of Winnipeg wishes to register very serious concerns about Bill 41. Most particularly the City of Winnipeg requires clarification about the intent of Bill 41 with respect to the public health programs, services and staff, and its financial implications. Therefore, we require immediate clarification about the process that will be utilized between the province and the City of Winnipeg to sort out the service delivery and the cost issues.

Specifically the City of Winnipeg is concerned about the effect of this bill on our current City of Winnipeg governance and the impact on our current public health service delivery model. The implications of this bill for the city's current and future abilities to enforce public health regulations, i.e., The Public Health Act and The City of Winnipeg Act and health-related by-laws; the continued integrity of a strong urban public health model that is responsive to the unique problems of Winnipeg's urban centre.

Although the City of Winnipeg believes that health is a provincial responsibility and that the municipal property taxes should not support health services, the City of Winnipeg also believes that a strong urban public health system is essential. We are very proud of the excellent and the comprehensive public health programs delivered by the City of Winnipeg. For fiscal reasons, the City of Winnipeg supports in principle the transfer of the existing health programs to the regional health authority. However, the city advocates maintaining its excellent grassroots service delivery model that has gained recognition throughout this community and beyond.

Over the past several decades, the City of Winnipeg has developed neighbourhood public health programs and services that are responsive to the needs of the community. The key element of these programs and services is the interdisciplinary relationship between the medical health officer, the public health inspector and the public health nurse. These disciplines appear to be fragmented in Bill 49 and Bill 41. Before this legislation is proclaimed, much work, negotiation and consideration must occur to ensure that synergy is maintained between these three essential arms of the

public health team. Namely, the medical health officer, the public health nurse and the public health inspector/environmental health officer must be a co-ordinated and integrated unit of service.

The medical health officer provides the public health inspector and the public health nurses powers and authority to carry out activities or enforce a number of health regulations and by-laws. Therefore, if the City of Winnipeg retains responsibility for the public health inspection services, as implied in Bill 41, it will require some of the services of a medical health officer. The legislation before us is unclear as to how that service will be provided. For example, Bill 41, Section 22(3) repeals subsection 4(2) of The Public Health Act. Therefore, it would seem that, once proclaimed, the City of Winnipeg no longer has the power to appoint a medical health officer for the city.

Also, Bill 41, Section 22(4) amends subsection 4 of The Public Health Act, which, again, at the proclamation, would delete the ability of the City of Winnipeg to hire, remunerate or dismiss a medical health officer. However, Bill 41, Section 22(6) amends subsection 39(3) and adds 39(4) to The Public Health Act. Subsection 39(3) indicates that any monies above and beyond the base salary of the medical health officer will be paid by the regional health authority. Only medical health officers and public health nurses are referenced here. There is no mention of a public health inspector.

The new Section 39(4) of Bill 41, however, referenced the responsibility of the City of Winnipeg for expenses: "Any expenses incurred by a medical officer of health appointed by the council of The City of Winnipeg in the performance of duties or the exercise of powers under this or any other Act, or under any regulations, shall be paid by The City of Winnipeg."

This example was cited to demonstrate the confusion with regard to the intent of this legislation on the City of Winnipeg powers, public health programs and services, staff roles and program costs. If the regional health authority does not assume responsibility for the public health inspectors, we require confirmation that the City of Winnipeg will not be liable for remuneration or expenses of the public health inspector or the medical health officer. As stated, the remuneration for all health services should not rest on the municipality or the municipal property taxes.

The City of Winnipeg requires confirmation that its current health by-laws will continue to be enforced and that any ability to pass new health-related by-laws as required will be retained. We are certain that these issues can be addressed and clarified through negotiations between the city and the province. The City of Winnipeg looks forward to early negotiations process with the Province of Manitoba on this very important initiative.

The City of Winnipeg also requires more detail relative to the provincial plans regarding ambulance services. We have delayed a major study of fire and ambulance amalgamation. It is therefore requested that we be advised of the province's intention on this matter.

Thank you for the opportunity to present the City of Winnipeg's perspective this evening.

Mr. Chairperson: Thank you, Ms. Timm-Rudolph.

* (2040)

Mr. Praznik: Thank you, Councillor Timm-Rudolph, for appearing tonight. I just want for the basis of the record that, in conversations that we have had and with the mayor, the reason why many of these provisions, of course, are in the act–and I say this for the benefit of the record, because we have had these conversations, and I think it is important, though, that they form part of the public record–is there is still a host of issues to be sorted out administratively between the City of Winnipeg and the two Winnipeg health authorities as they become operational.

We wanted to provide, should those negotiations work out with the successful transfer of services, with the City of Winnipeg's concurrence, that these appropriate sections of the act could then be proclaimed. Our fear was that, if we had reached an agreement to transfer certain health services to the health authority, the various acts required the City of Winnipeg to still provide that service, so these acts, I can reiterate for the public record here tonight, our intention in these areas is to negotiate suitable

agreements; otherwise, status quo prevails. As regards these sections of the act, it is not our intention to proclaim them unless we in fact have agreements with the City of Winnipeg. So those are matters by way of process that we will have to work out over the next year.

With respect to your comments on ambulance, I know we have had opportunity to discuss this. The city has, as you have rightly mentioned, a decision to make about where they house the ambulance. We wanted to make sure that those discussions did not preclude housing it in the health authority. Tonight I do not want to, for one moment, envision that I have the answer, nor anyone in my department, but I think that is something we have to sort out in a rational way. Should it be the decision of all concerned that the ambulance best be housed in the Winnipeg hospital authority, then this bill, we could proclaim that section to relieve that authority of the City of Winnipeg of that requirement to maintain an ambulance. If we feel mutually, if you feel that it is best it be with the fire service, and that is where everyone agrees, so be it. This section would never be proclaimed. So I wanted to put that on the public record tonight to deal with your specific concerns. Thank you for attending.

Mr. Chomiak: Thank you for the presentation, and I am glad you made the presentation because one of our concerns about bills like this is they tend to be omnibus, and sometimes the implications in some aspects of the bill get far more attention than the implications to the other aspects of the bill. From our perspective, certainly, the changeover and the potential delivery of service of health care in the city of Winnipeg is one that merits discussion and one that merits a review prior to implementation. So I am appreciative. I have just found out tonight from the minister's comments some of the aspects of the process that have taken place in this regard. Can you tell me, from the city's perspective, when and how they were alerted and informed about the significance of this bill?

Ms. Timm-Rudolph: No, I cannot be specific as to the date, but there was a call from the minister with regard to this issue. There had been some previous discussions administratively, and we have had the opportunity to meet. So there have been a number of discussions on it. I think, very specifically, the actual written legislation we received just not long ago, and so there needs to be clarification in those areas.

Mr. Chomiak: One of our concerns, and we have raised this in the House, that we have with this aspect of the bill is that the public health services delivered by the City of Winnipeg are excellent, first class, some of the best in North America. In a lot of ways, historically, the City of Winnipeg public health department has delivered services and a type of service that in some cases was revolutionary and in advance of many other services.

I guess you had indicated concerns that property taxpayers in Winnipeg ought not to be footing the bill of these services, but leaving that aside, you also indicated concerns that the by-laws be respected. Do you have any concerns about the base level of care that may or may not be delivered if this amendment goes through? How will Winnipeg City Council ensure that the high level of services that are presently offered and delivered by the City of Winnipeg will continue to be delivered, and do you have concerns about that?

Ms. Timm-Rudolph: I would indicate that is why we are stressing that there needs to be really full discussion on these matters. There needs to be within the legislative act the ability for all of the sections, whether it is public health nurses, the medical health officer, as well as our environmental health inspectors, an opportunity to continue their discussions, because they are very interrelated people in the sense that ultimately, if we can head off a lot of the difficulties in our living environment, we can sustain a healthy environment as individuals and hopefully take some of the pressure off of our health care system at the end of the road on a preventative basis rather than, you know, trying to deal with the problems at the end of the day.

Mr. Chomiak: Mr. Chairperson, of course, if you look at The City of Winnipeg Act and specifically Section 434(1), that act is being repealed by this piece of legislation which is basically the mandate on the part of the City of Winnipeg to deliver a variety of services, including prevention treatment, mitigation of disease, dental inspection, child health centres, public nursing services including clinics and the like. I guess I have real difficulty, and you may disagree or not disagree, we certainly have real difficulty in an act that is going

to eliminate a well-provided service in lieu of the unknown, in lieu of the provision of some other service. The City of Winnipeg, in fact, will have no–once this legislation is passed, I mean, you are out of the business effectively, and I am frankly quite concerned.

I hope City Council will take a very strong stand that if this legislation goes through that there is 100 percent assurance that the level and the kind of service and care that is now delivered will continue to be delivered by, presumably, the new regional health authority that is coming on board, but I am–the past experience we have had in certain other areas that have seen a change and an offload have not been that favourable in other areas. I must admit we are quite concerned about that. You may or may not agree, but we certainly are going to be seeking to amend this act in this regard to allow the City of Winnipeg to still have the option to deliver the service.

Ms. Timm-Rudolph: Well, I would just say that the minister has indicated that he and people from his departments would work with us in resolving some of these issues, and I feel quite comfortable that that negotiation process will take place. He understands, and I am sure he can speak for himself, that we have raised some of these concerns. They have been raised internally, and I think that if we get at least acknowledgment that we will work on solutions to those problems, I do not see this being really a problem at the end of the day.

Mr. Chairperson: A final question, Mr. Praznik.

Mr. Praznik: Mr. Chair, just a point of clarification and a question. The clarification, I am not sure if the member, if all members, appreciate that many of the services that the city now does provide are restricted to the old inner city only, and services are delivered by the province in the suburbs so there is an inconsistency in delivery.

Second, and my question to the councillor is: Would her advice be to follow up on the comment of the member for Kildonan (Mr. Chomiak), that municipalities, not just the City of Winnipeg, but municipalities in this province be given the authority to deliver health care services within the province of Manitoba? Because the issue, of course, is if you give it to one municipality, then why not any other. So I just ask your opinion.

Ms. Timm-Rudolph: Well, I cannot speak for other municipalities, but the problem is trying to sustain running a public health office on the municipal property tax is quite difficult. Most people do not understand, especially those who live in the surrounding areas outside of the old city of Winnipeg boundaries cannot understand why there is a split in jurisdiction and why is the province providing the services outside of that old municipal boundary and the City of Winnipeg is responsible for the interior of that. If we were to expand those boundaries, I think it would be totally cost prohibitive on the municipal tax base in order to provide those services. Right now the costs are very large.

Mr. Chairperson: Thank you for your presentation tonight. I appreciate your taking the time to come out.

Ms. Timm-Rudolph: Thank you. I have left some copies here for members.

Mr. Chairperson: Great. We will see that they get circulated. Thanks again.

I would now call on Jan Bailey to come forward, please. Jan Bailey, while you are coming up, I will ask if you have any handouts for the committee.

Mr. Tim Sale (Crescentwood): Mr. Chairperson, could we ask the clerk to distribute the city presentations?

Mr. Chairperson: Yes, she is on her way there now.

Ms. Jan Bailey (Council of Women of Winnipeg): With your permission, I would like to have Mary Scott, the president of the Council of Women of Winnipeg, join me.

Mr. Chairperson: Is there leave for that? [agreed]

Yes, there is. Just for the record, I have Jan Bailey and Mary Scott. Please proceed.

Ms. Mary Scott (Council of Women of Winnipeg): Thank you very much, Mr. Chair and committee

members. We appreciate having the opportunity to speak to you tonight from the Council of Women. Our brief is being circulated to you now.

One of the things I want to emphasize is that the council is a group of volunteers. We are here representing the volunteer or community groups that are part of the council. I am just going to go through a little bit of introduction, and then Jan is going to proceed with some concerns and recommendations with respect to Bill 50. So that is the process that we want to use tonight.

We, the members of the Council of Women of Winnipeg, are here to raise our concerns with the proposed Bill 50, The Freedom of Information and Protection of Privacy and Consequential Amendments Act.

* (2050)

We noted that the minister, Rosemary Vodrey, has proposed amendments. We were part of that earlier discussion this morning which resulted in those amendments, and we are very happy to see those amendments and recognize that the minister is listening to some of the points that we are making. We are very, very happy about that.

The Council of Women has been an active member of our community, and many of you may have heard of some of our federate members. Ten local groups came together to found the council back in 1894, so we have been a member of the city of Winnipeg now for over 100 years, and currently our council represents 30 local organizations working in Winnipeg. Our brochure is the blue one in your package there. Basically, our policies are based on resolutions that have been passed, circulated to all of the member organizations and form the basis for presentations to government. We have dealt with the whole area of public access to information, which is what we are discussing tonight, since 1970, urging governments to provide timely, accurate, and complete information to the public.

As well, and I would like to recognize Leonora Saunders, who is a past president of the provincial council. This brief is supported by the Provincial Council of Women, which represents some 24 provincial organizations. All together these two councils represent over 75,000 members in Manitoba, and there are about 700,000 members across Canada. Jointly we have worked on many projects to improve the quality of life for women, their families in the community during those years. It is interesting to note, and some of you may have seen the yellow brochure that is with your package, that this spring the Council of Women co-sponsored a public forum during Access to Information Week. From a variety of speakers we heard time and time again that access to information was necessary for a strong and involved community.

With this current Bill 50, neither the provincial or Winnipeg council has been able to analyze the bill in detail–we do not have a lawyer–as no time has been allowed for real public consultation. The swift introduction of the bill on June 4 without release of the draft legislation puts us a bit in a confrontational mode, but we do have real, constructive recommendations to make and, as I said, we are very pleased with the minister's response to some of them.

We also have some serious concerns to raise. Our comments tonight are focused on the freedom of information section, not the privacy section. I am now going to ask Jan Bailey, who is the Chair of our Resolutions Committee, to bring forward the concerns and recommendations. Thank you.

Ms. Bailey: Premier Gary Filmon, in a written memo to deputy ministers in 1994 stated, I am concerned that uncertain and inconsistent response by some departments is reflecting poorly on government's commitment to The Freedom of Information Act. In proclaiming The FOI Act, this administration made a commitment to open government. In order for that commitment to be honoured, it is important that each and every department commit to the principles contained in the legislation.

We support this commitment to open government and, as the details of the proposed bill will not result in the Premier's objective, we would urge the government to withdraw the proposed act and to start over by reviewing other models, such as the one in place in B.C. We fear that the details as spelled out in the proposed legislation could bring about a less open government where the public would not be able to

access information to assist and monitor government activities and policies. We have appended the guidelines for sustainable development, because we feel that the proposed Bill 50 would violate guidelines No. 2, 3, 4, and 6–that is proposed Bill 61.

The present Freedom of Information Act is inadequate, as reported in the 1995 provincial Ombudsman's report, particularly in the enforcement area. This is an area that we think is really quite important. There is a growing number of complaints for access. They were up from 40 in 1994 to 49 in 1995. Further, contrasting the effectiveness of the Manitoba Ombudsman's recommendations, in 1995 only one of seven of the recommendations he made was fully complied with voluntarily. When you compare this to the powers of the B.C. commissioner of information, whose recommendations are binding within 30 days, it leads us to conclude that both the current and the proposed systems are inadequate to ensure any consistent access of information.

The Councils of Women have worked now for many years with others in the area of development and planning. We have completed briefs to municipal, city and provincial governments on such things as zoning, water, land-use planning, health and social services, libraries, Plan Winnipeg and more. Other non-governmental organizations also play a useful role in monitoring government and coming up with constructive ideas for a plan of action or a government policy. It is important that a Freedom of Information Act support the public's right to know so that the community can continue to play a useful and essential partnership role with government.

We request this committee specifically discuss the proposed fees in particular charged for information. They have to be reasonable and affordable. Costs should not mean a department profit. Time required to do a search should be explained; just getting a bill is not really adequate; and there should be an option of revising the request for access. We wonder whether the present wording of the draft act is too vague and too open to bureaucratic interpretation.

Finally, a concern we would like to raise is with respect to contracting out of government services. We think it is important that The Freedom of Information Act specifically allow the public to review all government expenditures, including private outside contracts, and the review would include the specifics of the contract, evaluation criteria and evaluation itself. There is a lot of concern about the loss of competitiveness, but one does not have to focus on the means by which the contract is achieved, rather just the evaluation and the criteria for evaluation.

The following recommendations are now presented in point form: First, that the act be withdrawn from this session and deferred until an appropriate process of public consultation has taken place, and until the act properly reflects the balance between public interest and government effectiveness.

I would like to suggest that the minister has answered a number of our concerns in the amendments that have been proposed. I think the part that has not been addressed is the issue of enforcement. It is not realistic to expect people or even the Ombudsman, who is woefully underfunded, to be taking cases to court. We really have some questions about whether that is realistic. So we would like to see more around enforcement of decisions.

We are asking also that the act be redrafted, using models from other jurisdictions, such as the current B.C. legislation, which reflects a more democratic, transparent and open process, such as the Premier described in 1994.

We are also asking that the wording be amended to ensure that it does not contravene the guidelines of The Sustainable Development Act re: public participation, access to information, openness to government, and research and innovation. As well, we are asking that the act be revised by limiting the number and scope of exemptions to disclosure.

The section dealing with electronic communications we would like to see altered to reflect an open information highway, and I understand that some of the issues for government are around format and the expense around that. It is something that probably could be dealt with to some extent. Yet I am sure there are realistic problems. Reasonable standards need to be developed for availability of information in alternate formats.

The Section 19(1) dealing with cabinet confidentiality should not cover background materials, departmental proposals and recommendations, expert analysis and assessments, general statistics and records, et cetera. These materials should be available to anyone working in the public interest and wishing to participate in a meaningful dialogue with bureaucrats and politicians prior to cabinet decisions and afterwards.

* (2100)

Further, we would like to recommend that the period that cabinet documents be withheld from the public be a more reasonable 10 years or even 15, rather than the proposed 30-year period, which does seem excessive. Time frames should be spelled out for responses to the Ombudsman or commissioner, such as in the B.C. legislation which states that there is a duty to comply with orders within 30 days.

In closing, I think that the committee has been concerned that with each passing session the government seems to be getting farther and farther away from participatory democracy, and if the government believes in the responsibility or accountability to its electorate, it will not pass this act in its present form. But I want to say that we are really pleased about the amendments that have been put forward. We are really pleased to have been heard and the response. At any rate, that is our proposal.

Mr. Chairperson: Thank you for your presentation today. Questions?

Ms. Diane McGifford (Osborne): Thank you, Ms. Bailey and Ms. Scott, for your presentation. I noted that you represent 75,000 women, and certainly make the point, I think, that we made at the beginning that many of the presenters here tonight are here on behalf of large groups of people, and I am very pleased to see two women speaking for 75,000. As the critic for the Status of Women, I am very pleased to see that the Council of Women of Winnipeg is making a presentation, and such a fine presentation. More than asking questions, I want to make some comments.

I want to assure you that your recommendations 1, 2, 6, 7 and 8 are all part of the suggestions that I have been making to the minister, and it is very intimately related to questions I have been asking the minister in the House and certainly were part of my presentation in the House, part of my debate. So we certainly, on this side of the House, support all those recommendations. I want to thank you for recommendation 3. It certainly is giving us something to think about, and I know that the minister has probably dealt in her amendments with your recommendation 5. I assure you that when we go through clause by clause we will be moving amendments that reflect your recommendations. So I do not know whether you will be here for that process, but we will certainly be making those amendments.

Mr. Chairperson: Ms. Bailey, any comment to that?

Ms. Bailey: No, that is fine.

Mr. Sale: Just to ask you if you could elaborate a bit. You make a very strong statement in your conclusion: With each passing session this government seems to be getting further and further away from participatory democracy. Could you just indicate why you have that concern.

Ms. Bailey: I think that, in part, looking at some of the clauses in this bill as opposed to the previous bill would indicate some concern. As well, some of our committees have experienced a fair amount of difficulty accessing information, and I am not sure whether that is getting worse or whether it is chronic, but it does seem to be. I think that the open involvement of people, even if they do not come from the same point of view as the government, can be a very, very healthy thing. I think this morning's meeting in fact was a good example of that with a lot of opinions stated and explanations given for the reasons for opinions. So we feel that things have been closing down. I see this as an opportunity. I will be real honest with you. I think B.C. is considered the state-of-the-art legislation, and my hopes for Manitoba were that when this came through we could do them one better, and I still have hopes for that. I would like to see that happen.

Mr. Chairperson: Thank you for your presentation today, and come again.

I now call on Rudy Comeault, and if I am not saying that right, please correct me. If you have a presentation

to hand out to any of the committee members, I will ask–

Mr. Rudy Comeault (Carpathia and Westboine Park Housing Co-op): Mr. Comeault is all right if you think of Perry.

Mr. Chairperson: Okay, that is what I wondered. Please proceed.

Mr. Comeault: Mr. Chairman, our original request to the Manitoba Culture, Heritage and Citizenship that dealt with the matter of access to Highway Traffic Act information, basically that of the licence plate information, that would lead us to conduct our business in a continued, co-operative manner. In my letter I have stated, by the bullets outlined in this thing, the three points for which we need this information, and we are not sure whether or not Bill 50 would eliminate that, except that there is a faint-hope clause in No. 46 which seems to give other provincial agencies the right to determine the access. So, basically, we wanted to make sure that your committee and the members of the Legislative Assembly dealt with that concern of access. I would assume that we are not the only ones that have to deal with this type of vehicular abuse by the owners, so we just wish for you to review this thing.

Mr. Chairman, if there are no other questions, I would just like to make a private comment. I am not an expert in the field of Freedom of Information, but what I hear from the expert in the field and from the media people, I have to state that I am somewhat concerned about the intent of this bill. I think the minister has put some amendments forward this evening that seem to alleviate some of the concern. However, in dealing with the Freedom of Information, my questions are: What is the government so afraid of to release information? Is this government here to serve all Manitobans by showing that it is transparent, that it is open, that it is acceptable and that the people of Manitoba must have access to information as a basic democratic right? We must make a sound decision based on facts. That is, they are factual, actual, concise and true, not rumours. Therefore, why limit the level of access as stated in this bill?

Mr. Chairperson, is this act a measure for the government to hide the truth from the citizens of Manitoba? Please do not keep your citizens in the dark. Open government is good government. Thank you.

Mr. Chairperson: Thank you, Mr. Comeault. Questions.

Ms. McGifford: Thank you, Mr. Comeault, for your presentation. I want to assure you, as I did the previous group, that your concerns are our concerns, and that many of the questions we have asked in the Legislature, many of the points we have made in debate, are the points that you made tonight. We, too, have asked the government what it is afraid of. We, too, have asked the government why they seem to be interested in expediting this process without giving the public the opportunity to make presentation. So I want to assure you that we are protecting or attempting to protect the interests of the citizens of Manitoba. Thank you for your presentation.

Mr. Chomiak: Mr. Chairperson, you raise an interesting issue in your initial presentation, Mr. Comeault, with respect to the ability to search for motor vehicle information. I am wondering if the minister here today can indicate, under the new provisions of the act, how your request would be dealt with under the Freedom of Information so that we can perhaps provide you with the information that you are in fact requesting to determine whether or not the introduction of the new act will restrict, enhance or maintain the status quo with respect to the information that you have brought forward. So I am looking to the minister or the minister's staff to perhaps enlighten you and enlighten the public with respect to your request.

Floor Comment: That would be appreciated, I can tell you.

Mr. Praznik: Mr. Chair, I understand that staff from the minister's office have had some discussions with you about mechanisms for resolving your particular issue, and despite Ms. McGifford here tonight indicating she has heard you, there are some very legitimate concerns about the release of information related to licence plates, one of which has to do with stalkers and the protection of particularly women, which the New Democrats forgot here tonight, I would mention on the record.

* (2110)

There are methods for legitimately obtaining that information. I understand that that has been discussed with you, and I know when the minister addresses each clause in the bill tomorrow, we will make sure that that information is available.

Mr. Chomiak: Perhaps you get a bit of a flavour, Mr. Comeault, for how developments work here in terms of providing information, wherein the minister used the occasion to try to score some political points, which I think is unfortunate when all in fact you are doing–[interjection] I did not understand specifically. There are valid concerns with respect to the release of information. I believe you acknowledged that and all members acknowledge that.

I guess the question is: Other than the minister's assurances that there has been some talk, can the minister or other staff indicate what the provisions are with respect to The Freedom of Information Act as it relates to this particular concern raised by yourself, keeping in mind there are legitimate concerns for all information to be dealt with where necessary to protect the public?

Mr. Chairperson: Just before we go any further, I would like to make two points. The questions that are asked of this committee are to be asked of the presenter and it is basically for clarification and explanation of the statements that are being made. These types of questions directed directly to the minister are to be dealt with in the clause by clause or in the House during Question Period. So I will allow the answer because the question has been put, but I will advise members from this point on that I will not accept those questions.

Mr. Praznik: Mr. Chair, for the information of the presenter, the section that established this process for that information is Section 46 of the act. I understand that that was discussed with you, and this is the information provided to me by Minister Vodrey's staff. So the staff who drafted this tell me that your matter of legitimate use of information certainly can be dealt with under the current provisions of the legislation. Mrs. Vodrey will probably speak to that with greater knowledge than I can offer tonight when we do get to clause by clause.

Mr. Comeault: To obtain a search of a licence plate, until now we have had to make formal requests to the Highways branch for that information and get formal approval and get a client number. That is totally acceptable to us. There is no problem, because it will prevent the type of abuse you are talking about, stalking notwithstanding. However, we just wanted to make sure that this would continue. It was not sure to us under the present bill whether or not it was available, and we will hope to see it realized when the bill comes out.

Mr. Chairperson: Great. We thank you for your presentation tonight. Thank you, Mr. Comeault.

I would now call on Peter Sim. I understand, Mr. Sim, that you are presenting to both Bill 50 and Bill 51. I guess I will ask you now, is it a combined presentation?

Mr. Peter Sim (Manitoba Association for Rights and Liberties): No, I will be presenting separately on each bill.

Mr. Chairperson: Okay, and I understand there are pass-outs to the committee, so whenever you are ready to start, please proceed.

Mr. Sim: Mr. Chairman, I am here on behalf of The Manitoba Association for Rights and Liberties. MARL is a provincial nonprofit group which seeks to promote respect for human rights and fundamental liberties in Manitoba. I should indicate that MARL forms many ad hoc coalitions, and we have been involved in coalitions on both of these bills, and as part of those coalitions met with both the Minister of Health (Mr. Praznik) and the Minister of Culture and Heritage (Mrs. Vodrey) to discuss the legislation previously. I would thank the ministers for that opportunity.

Now, to get to this bill, I will not read from my presentation because since I have written it, obviously there have been a number of significant changes, but to begin, when MARL first saw the bill, we saw it as basically a praiseworthy attempt to bring Manitoba's legislation on freedom of information in line with other

provinces by adopting integrated freedom of information and protection of privacy legislation.

However, on further examination of the bill, we saw very little to commend. The protection of privacy provisions are largely ineffective because of the lack of an information and privacy commissioner with order powers, and the freedom of information sections are in many respects a major step back from the existing legislation. So we would urge the government at this stage to withdraw the bill and give it more careful study. Like some of the other presenters, we feel that there has not been adequate time to study the bill and its implications, and we should spend more time on it, so that there can be a proper public consultation process.

As I said on the subject of the information and privacy commissioner, MARL believes that there should be an information and privacy commissioner created with the power to issue binding orders concerning both freedom of information and privacy matters. I have dealt with this issue in much more length in my submission on Bill 51, so I will not deal with it further here.

The next point I want to make deals with access to information and public benefit. Freedom of information is an essential element of free discussion. MARL has always believed that freedom of expression is the foundation of a free and democratic society, and reasonable access to government information is essential to worthwhile exercise of free expression. Therefore, MARL believes that access to information from the government is a fundamental right and should be limited only where there is a clear and definite basis for doing so. That would arise in two circumstances, one, where confidentiality is necessary to protect the right of an individual to personal privacy, and, secondly, where disclosure of information would seriously interfere with the ability of the government to do its job.

Now, we believe that it is time that some of the exemptions should be rethought fundamentally. The rationale for many exemptions in the present act and the proposed bill is that the cabinet system of government requires that deliberations of cabinet and advice given to ministers by civil servants be confidential. We believe that this rationale may be valid at the upper reaches of cabinet and the civil service where political and civil service issues often intersect, but we are concerned that it is often now being extended far too broadly to deny far too much information. The rationale underlying this assumption is that public employees would be less likely to give complete and accurate advice to their ministers if there was a possibility that this advice might become public. MARL believes that this assumption should be rethought, particularly when one is dealing with material primarily of a professional or technical nature.

What public interest would be injured if more of the briefing papers that are prepared were confidential? How would the public interest be injured if the public were aware that in some cases the Civil Service presented to ministers policy options other than the ones which the minister ultimately selected? Would the advice of the civil servants be less candid or complete? Would ministers be less willing to seek advice from their employees? It is true that sometimes disclosure of this information might be embarrassing to ministers or ministers might have to work harder to justify their policy choices, but MARL does not believe that political embarrassment or the difficulty of dealing with better informed debate should be confused with genuine injury to the public interest.

There may be some specific circumstances where confidentiality is still necessary, for example where a civil servant is being asked to comment on the performance of a fellow civil servant, but MARL believes that these cases are not as frequent as the present legislation and the present practices regarding freedom of information would assume. We would therefore urge the government to conduct a more comprehensive review of the bill and, as part of this review, to examine very closely the whole rationale for some of the very broad exemptions that it has introduced.

Now, to deal with some of the specifics; MARL has examined the bill. We have met with some of the other groups who have made presentations, and we found a number of changes in the Freedom of Information sections which significantly reduce the access that now exists under law to vital government information.

* (2120)

To begin with, with Section 10, which deals with access to records in electronic form, this is a section that, you know, did not exist previously and creates a distinction between electronic and other records which does not have a clear policy basis. Paragraph 10(a) MARL believes is unnecessary. It says that a public body need not produce a copy of a record if the record cannot be produced using the normal hardware, software, and technical expertise available to a public body. MARL believes that there is another way of dealing with this.

Generally speaking, if you have a record in electronic form and there is a request for it in a form that the public body cannot immediately provide, then it will often be possible to prepare the information by hiring a consultant at a price of a few hundred dollars. If that is the case, and the applicant is willing to pay, the applicant should be given the option of paying the reasonable costs of preparing the information rather than simply saying the public body being able to say, no, we cannot produce it using our existing equipment, therefore we are not providing it. There is a simpler way of dealing with that, probably by regulation that would not require a complete denial of access in cases where there is sufficient public interest in disclosure.

Paragraph 10(b) was something else that MARL very strongly criticized, and we are pleased to see that the minister has agreed to introduce a change which would deal with our largest concern there.

Paragraph 13 on repetitive or abusive requests is something else that MARL was very concerned about. I have just received the proposed changes to paragraph 13(1) which do represent a significant improvement. MARLs one concern is that we still have this phrase "if the head is of the opinion," and as I read this legislation, once you have this word, if the head is of the opinion, once the head formulates an opinion on any basis, that is the end of the matter. The exemption applies and neither the Ombudsman nor the courts have any jurisdiction to override that decision by the head. So I would submit a further amendment–I do not have the exact wording prepared–which would make it clear that where a head of a department refuses information under this section, there should be a right to go to the court or to the information and privacy commissioner to have the head's opinion reviewed and overturned if appropriate, and the head would have the onus of justifying , of showing that the opinion was indeed reasonable and justified.

Section 19(1) on cabinet confidences. Once again, paragraph 19(1)(e) was MARL's most substantial concern. We felt that it denied a great deal of information that might not otherwise be confidential, where there is no definite public interest in maintaining confidentiality, simply because it related to matters that might be discussed before cabinet. Now we had a couple of concerns. First of all the scope of the material covered. It deals with virtually anything prepared to brief a minister, which may include simple factual information which does not in any way disclose an opinion on a matter of public policy from a civil servant or another minister. MARL believes that this kind of exemption for purely factual or technical information is not justified in the public interest.

A second concern we have is that it refers not only to matters that are before cabinet but merely to matters which are proposed to be brought before cabinet with no time limit or time requirement within which this exemption applies. Once again we feel that is too broad and too uncertain.

Now to some extent I have examined the changes which the minister proposed, and I do not believe that adding the word "directly" significantly deals with these concerns. Therefore, I would urge that this clause be deleted in its entirety. I would submit that there is more than enough protection for legitimate cabinet confidences in the remaining very broad provisions of the bill.

Paragraph 23(1) deals with advice to public bodies. As we have said, this whole scenario, which should be given more careful consideration–and I would urge the government to consider the much less restrictive provisions that are found, for example, in the British Columbia bill as an approach to follow. We were very pleased to see that the minister recommends the elimination of paragraph 23(1)(f) dealing with minutes of meetings, but there are still some remaining concerns. One concerns the use of private consultants. The existing Freedom of Information Act makes it clear

that reports prepared by private consultants for a public body are not exempt from disclosure. This bill, in fact, reverses that provision. It is now provided that any advice prepared to a minister regardless of whether it comes from an employee of the department or a private consultant can be protected from disclosure. Furthermore, paragraph 39(2)(f) of the existing bill, which specifically made reports of private consultants subject to disclosure has been eliminated. So we think that this is a significant change that is not justified.

There is a rationale for protecting policy advice from public servants, particularly senior civil servants, who may be called upon to give candid opinions on government policies and later called upon to implement these policies, but where you have a private consultant who is being consulted on an ad hoc basis for a specific matter, MARL does not see why these people need protection. What public interest is being served here? MARL would submit that where the government chooses to go beyond the normal confines of the public service for advice it should be prepared to justify its decisions to the taxpayers by making the reports of these outside consultants available as a matter of course.

Other concerns in this section deal with subparagraph 23(2)(i), which creates an exception to an exception. Now presently reports, environmental assessments, technical reports, scientific reports relating to environmental assessments are not exempt from disclosure. This section would create an exemption to an exemption where an environmental assessment has been created for a fee for a person other than the public body. MARL is concerned about the longer term implications of this kind of exemption where one considers it in context of some of the developments in environmental law, particularly the polluter-pays principle. If we call in the polluter to pay for matters such as scientific reports, then that should not be used to protect the polluter by making these matters privileged from disclosure. Other matters, you know, I have commented at some length on the information that is or will be available to the public. I am concerned this may make the public pay twice for information that is only available at a very high cost.

One concern on the disclosure sections on disclosure of personal information–paragraph 44(1)(g) permits the government to use personal information for the purpose of administering the personnel of the government of Manitoba. This indicates to me that the government might have a right to see any government file relating to its employees. I would submit that that is excessively broad, that the government, like any other employer, should only be able to access information about its employees under specific legislation or with the employee's consent.

Finally, on the disclosure for bulk and research purposes, MARL tends to agree with the philosophy of the legislation that where bulk disclosures are made, there should be some protections available to deal with matching of data and use to contact individuals, but we would suggest that in some cases the bureaucratic procedures defined may be too onerous, where particularly when one is dealing with bulk information where you can simply remove the individual identifiers.

I have been given a time signal, so I will close my submission and respond to questions.

Mr. Chairperson: Thank you, Mr. Sim.

Mr. Chomiak: Mr. Chairperson, I certainly do not have a problem with hearing more comments in this regard. This is a very thorough, as has been all the other presentations, presentation and very instructive and helpful to us.

* (2130)

I thank you for the presentation, because it makes very clear, I think, a point that has not come out during the course of some of the debate, particularly some of the government pronouncements with respect to The Freedom of Information Act. If you take the existing Freedom of Information Act, and if you line it up beside the proposed act that we are dealing with today, when it comes to cabinet information and advice to government, it is so clear that the act, the new act, the act we are dealing with now is far more restrictive on the release of information than the present existing act.

I think MARL, Mr. Sim, in your presentation, has made that point very, very clear, particularly when it deals with advice to cabinet, advice to outside consultants. No objective reader of those acts, by

comparing them and looking at them side by side, can say otherwise. The new act that we are looking at today is far more restrictive in providing information to the public than is the existing act, and to my mind that is reason enough to significantly amend this act and certainly not to support this act on that very principle alone. I wonder if you might comment on that, Mr. Sim.

Mr. Sim: Well, I certainly agree. We have examined it section by section, and we have found that in almost every case where there has been a change from the present act, the effect of the change has been to deny access to information.

Ms. McGifford: Mr. Sim, thank you very much for your presentation. It was certainly very, very educational, and I appreciate it. I wonder if you could tell us the difference between the powers of the Ombudsman as outlined in this act and the powers of the privacy and information commissioner as you would envision them to be.

Mr. Sim: Well, this is a subject I will deal with in more length, you know, in my presentation on the health act, but generally there are two areas where you would need work under this legislation.

First of all, the information and privacy commissioner would have the power to order disclosure of information. What this does is, it changes some of the onus. Presently with the Ombudsman, you complain to the Ombudsman, the Ombudsman investigates, makes a recommendation. Then if the government, you know, decides not to comply with the recommendation, you the citizen have to go to the Court of Queen's Bench to apply for an order. So you are faced with the expense of hiring a lawyer, drafting pleadings, paying a $120 filing fee and waiting for several months or weeks to get a date on the contested motions list.

Under these provisions, an information and privacy commissioner, on the other hand, would have the opportunity to make an order. Once the order is made, it becomes as legally binding as an order of the court, and if the government or public body wish to deny access they would then have the onus of initiating appeal proceedings.

The other area which I will deal with in more length in the privacy provisions is that the information and privacy commissioner can have a much broader scope in dealing with the privacy protection provisions of the act. As the act now stands, there is very little or no recourse available to individuals who feel that the government is not complying with the privacy provisions, for example by disclosing personal information without their consent or by collecting or retaining personal information unnecessarily. Another important example would be by refusing to correct inaccurate personal information. In all of these cases there is no legal remedy available as the act now stands. An information and privacy commissioner, on the other hand, would have the power to issue orders to give teeth to some of these very generally worded privacy sections.

Mr. Chairperson: Thank you very much, Mr. Sim, for your presentation.

I now call on Paul Nielson, and I see you have handouts for the committee, so I will ask that that be done. I will ask you to proceed.

Mr. Paul Nielson (Manitoba Library Association): Thanks very much. I would like to begin by talking a little bit about, first, principles of accessed information, from the user point of view in particular, which is what my profession deals with on a daily basis. It is that kind of perspective that I have used in looking at this act.

Librarians strive to offer their users timely, accurate, quality information relevant to their needs. They also have to strive to avoid censorship and bias and to provide users with a variety and a balance in point of view so they can make up their own mind and so that you do not force your views upon them. They also strive to provide information in the format and at the level and depth that the user is comfortable. Sometimes people do not want a lot of information, they just want a summary or the very briefest of information. You are always, of course, trying to lead people along the path to thinking and experiencing deeper.

Governments also have a duty to inform, and if you take the same perspective and try to apply it to them, you would say they need to provide their citizens, first

of all, I think everybody agrees, with information to use their services and programs and to meet their legal obligations. Ignorance of the law is no excuse.

Of course, governments do a lot to try to educate for the public good as well, but it goes beyond this, and this is what we are dealing with today. They must provide timely, accurate, quality information on their performance and decisions so they can be held accountable for their stewardship. Most Canadians are finding, I think, more and more that waiting for election time to make these pronouncements and buying the pig in the poke at the election time is a bit of a problem, because they are not getting what they thought they voted for. I am saying this of all parties, I am afraid, not just the government in question here.

When they propose changes in policy and legislation in this complicated, modern world where issues are very complex, they should always do the following things: No. 1, examine the current situation in-depth, especially at the operational level, i.e, consult with their own staff, their line staff, their operational staff. Then they should canvass for alternative solutions from other jurisdictions and from outside experts and interest groups. They should consult any current users and stakeholders, especially those who have problems with the current situation. You know, the ones that are happy, unless you are going to wreck it for them, is not so much of a problem. They should present their proposals to the Legislature or to the public with sufficient time for review, feedback and, yes, even amendment. I guess I should also add I am fully aware that there is a fiscal dimension to all of this too, because you have to make choices. You cannot do everything.

Such a process of openness and participation without bias and secrecy is increasingly rare in Canada. Manitoba has pioneered such a process. I, personally, when I witnessed the Meech Lake consultation process, was hoping that kind of model would catch on. I know it cannot always work that way, but it achieved unanimity. It also achieved a lot of creative movement and ideas in a situation that was, you know, looking for new ideas, and, of course, the citizen constitutional conferences under the Charlottetown were doing similar things where people were getting down and talking and working out solutions and exchanging ideas and discussing and deliberating in-depth without holding to hard and fast positions, which seems to be more the rule in politics.

I would like now to take these kinds of standards and look at The Freedom of Information Act as it stands now and as is proposed to change. I want to remind everybody that the first act was passed in 1985 unanimously, and what that means is that the people that were originally passing it were thinking of it, I think, as an act dealing with rights, an act of a semi-constitutional, if not a full constitutional, status. Again, my personal preference would be to entrench Freedom of Information in the Constitution right up there with the other freedoms, because I think they all go along together.

* (2140)

The consultational process was not perfect, but Section 56 again has to be looked at honestly and fully by any committee that proposes amendment. Their intention was that this act, which at the time I think in comparison to other provinces was reasonably progressive, that it was–I mean no act is perfect, but they said, we want a comprehensive review of the operation of this act to be done within three years and after that, with consultation and deliberation a report should be issued within another year. That report should be submitted to the Assembly, and amendments should grow out of that statutory, mandatory review, comprehensive and consultative. That is the standard, I think, that was set within the act, and I am now going to go on and ask whether that standard has been followed in any way, shape or form.

The Standing Committee on Privileges and Elections was appointed to the task. They met five times in 1992 and 1993, and I reviewed every single page of their record. Three of the meetings were spent in organizational work, and then two were public hearings. Actually, only one was, and the second one was to hear a latecomer. No report was ever issued by that committee, comprehensive or otherwise, in any shape or form. Yet, some sort of report does exist, because I attempted to make a Freedom of Information request for that report from the department that was working on it, and the response from the department was not that the report did not exist but that it was

going to be denied to me on the grounds that it was a cabinet document, not a legislative document, which again I do not understand, and that it was policy advice. Now this to me is an illustration of how the current act works and how the whole process of struggling to evaluate it, struggling to improve it is not working and not in the spirit of the law. I hate to use–well, maybe I do not, but a phrase of spirit, principle and so forth, I think, is very important.

There was a long hiatus, and then the government issued a discussion paper in the fall of 1996 on amending the act, but the consultation process was again not comprehensive and open, and it was focused on privacy rather than access. If you read the discussion paper, there is very little discussion of the record of the act. You know, the privacy was new. The act itself needed to be reviewed–how was it working, what was the government proposing to do?–so that people could react to that. Again, the consultative process that is used by the Manitoba government is very often top-down submission. What you do is, you ask people to come and submit. You do not give them very much chance to interact and discuss, to share ideas, to form alliances. Again, the coalition that I have been working with right now, we are not even allowed to call ourselves a coalition necessarily because we do not have any binding force. But what happens there constantly is that ideas come up and information is found out, and this is a healthy society. This is a society that is growing and thinking, as far as I am concerned, and it is far more of a model than what seems to be going on here.

Again, the Manitoba Library Association–the participants did have a chance, if they were willing to come down to either the Legislative Library and the Archives to examine each other's submissions. Again, I do not think that is convenient, and I do not think that is the way to do it, but it is something. When we looked at the submissions and saw the 60 submissions from private citizens, we noticed that there were no government submissions. What were the government's ideas on privacy? Again, what were the government's, department's, agencies' reports? We requested them, and we discovered that there were 28 government submissions, and we were denied all of them on the grounds of Sections 38 and 39.

Okay, I am now told that I have two minutes. I will concentrate then on the type of analysis that I did with the act. I did a content analysis. The closest type of analysis that you can use, as far as I am concerned, is when you compare the existing act line by line with the proposed act in order to discover what the changes were, how extensive they were and what their nature was and also what their source is.

If you use techniques like biblical hermeneutics, you know, this is the kind of thing you do, very close textual analysis, and I can tell you that what I have discovered is that of over 50 changes, 40 of them constituted, in the exemption section alone, 40 of them constituted additional clauses. Twelve of them were additional clauses in the mandatory section. I think the sheer mathematics of that, the counterargument could be made, and so forth, that these were clarifying and tightening and serving access, but when I went through these ones, each and every time asking where would this have come from and comparing it with what I knew of other acts, it looked to me like it was emanating from a very comprehensive consultation with the bureaucracy. What do you find wrong with the act? How can we enable you to have a more comfortable time with the act? I could not find most things that would relate to the helping of the user. Piling on clause after clause is not, in my opinion, a quality improvement.

The other interesting thing is that certain things were withdrawn, and what was withdrawn were exceptions to the exemptions. There were five of them that were withdrawn. These included environmental impact statements; other people mentioned consultant studies; abusive law enforcement investigation process and techniques, that is two different ones; and if somebody asked for an excerpted summary of a confidential evaluation as much as possible so that the person that did the evaluation could not be identified without their consent.

Then I turned my analysis to the question, and I have not done this in enough depth with enough time, to, what are the benchmarks of the most progressive acts in Canada? I consider, by the way, Alberta to be right up there with B.C. and Ontario. So, again, if you want to say what kind of government produces it, Alberta, as far as I am concerned, is an interesting example–not

perfect–of an open, consultative society that does allow information out and does allow time for consultation. I give you the list of things, and I am not prepared to do the type of in-depth analysis that, say, Peter had done at this particular point in time.

What I consider the benchmarks are a public interest override that stands against all of the exemptions and can be used by an ombudsman or commissioner to say, in all the complexity of the situation, in all the attempt to balance access rights and what is this information for and is it in the public interest, you hold that up as a standard and it may lead you to override some of the other concerns. Again, B.C. and Alberta both have that power of a commissioner to order expeditious release or remedy. Our own commissioner is bogged down. His 1996 annual report, which I believe is necessary for evaluating the performance of the act, is not available at this time in order to use as evidence for any type of analysis. Again, I am very concerned about the broad cabinet exemption, and in looking at Clause 19, I suddenly realized hermeneutically that Clause 19 came not entirely but in part from a discussion paper of the Information Commissioner of Canada called Access to Information Act.

I think again this shows the danger of the current act. What you have there is they took the exemption part largely and added further exemptions. Then, balancing that exemption, was an exception clause which tried to say, like Peter discussed with you, how important it is for a citizen to have factual decision-making information so that they understand what the government is doing and so they can make their own evaluation. That entire part of the amendment is missing. Again, there may be a rationale for that, but I do not find that it is in the spirit of openness and it is in the spirit of tightness and removal.

Another particular thing that is not very prominent in Canada, but I would like to draw your attention to is a whistle-blowing section to allow civil servants to release information to an ombudsman or a commissioner of ethics, if you have one, for possible public disclosure, again, of any kind of maladministration, any kind of corruption, et cetera. Again, I am not of the conspiratorial sort that believes everything is corrupt whatsoever, but I certainly believe that would enable civil servants of conscience, people of professional and technical skills who feel that something is not being done right have a chance to take it somewhere, not to the media, not to the opposition and not to lose their jobs as a result.

Again, my only conclusion is that it is practically impossible to fully evaluate all of the changes, and I would ask that the committee hold intersessional hearings on it. It has been done before, and I would ask that time be given to do a far further analysis of what exactly is the intent of these changes and make up counterproposals. Thank you.

Mr. Chairperson: Thank you, Mr. Nielson. Questions.

Ms. McGifford: Thank you, Mr. Nielson, for your presentation. You said that you saw certain parts of the bill and perhaps the whole bill as being the result of a comprehensive consultation with the bureaucracy, and I wonder if you see a relationship between your view that it is a comprehensive consultation with the bureaucracy and the Manitoba Library Association's inability to obtain the 28 government submissions. I might also ask you at the same time, did you file FOIs for these 28 submissions, or how did you go about asking for them?

* (2150)

Mr. Nielson: Yes, I was trying to use The Freedom of Information Act as a tool to illustrate the weaknesses in the act itself–was my purpose.

Ms. McGifford: How about the connection between the comprehensive consultation with the bureaucracy and the inability to obtain these submissions? Is there a link there?

Mr. Nielson: Yes, there definitely is, as far as I am concerned. I would love to see those 28 consultations, and again, I am sure there are lots of legitimate things–and by the way, I would like to say that the privacy side of this bill and the extension of the scope to local public bodies are a progressive step, and are, as far as I am concerned, good. So the bill itself has very good parts to it as well.

Ms. McGifford: So you filed, under the Freedom of Information, for submissions that were intended to help draft Freedom of Information legislation, and you were denied them.

Mr. Nielson: Yes.

Ms. McGifford: There certainly is a grand irony there. I wanted also to ask you about the report that the Manitoba Library Association was denied grounds to because it fell under the exemptions for cabinet policy and advice, and I understand that this report contained the results of public meetings, and so public meetings became cabinet confidences.

Mr. Nielson: Again, I was so confused about where the trail went and where the accountability went and so forth that I was not sure what manner of beast I was asking for. Definitely, I can tell you that the public hearings aspect of the statutory review did take place–I was there–and also that there are verbatim transcripts of the standing committee. There is just no report, no conclusion, no amendments–nothing.

Ms. McGifford: Have you been able to get those verbatim transcripts of the hearings?

Mr. Nielson: Yes.

Ms. McGifford: You have those.

Mr. Chairperson: Thank you for your presentation tonight. I would now call on Virginia Menzie, and again if you have handouts, if you just set them on the corner, when we have someone available, I will get them passed out for you. I will ask you to proceed.

Ms. Virginia Menzie (Ombudsman, City of Winnipeg): Good evening, Mr. Chair, members of the committee, ladies and gentlemen. I am Virginia Menzie. I am the Ombudsman for the City of Winnipeg.

Section 81.1 of The City of Winnipeg Act sets forth provisions whereby the City of Winnipeg is authorized to establish a by-law which embodies the rights of citizens to access information held by the city. On January 1, 1996, a by-law of the City of Winnipeg relating to access to information came into force. That by-law states that every person has a right of access to any record unless it is exempted under this by-law. This underlining principle is evident in access statutes in other jurisdictions and is consistent with the principles contemplated under Bill 50.

The purpose of my appearing before this committee is to shed light on the experience of the access to information in the city and to request that consideration be given to exempting the city from the provisions of Bill 50.

Access to information is no doubt an important element of a democratic society. Special interest groups and private citizens alike can play a more effective role in public policy debates if they have more information about government policies and the decision-making process. This concept takes on a more profound meaning at the City of Winnipeg.

Municipal government is the most intimate level of governments. For the most part, municipal governments are not concerned with the big questions relating to criminal law amendments or international or interprovincial relations; rather, it concerns itself with fundamental home issues, issues such as providing the water we drink, the bus we ride to work, and removing waste, either via the garbage truck or the sewage system. For city dwellers, every aspect of the planning, inspection and zoning of homes is affected by municipal by-laws and regulations.

When we go out to eat, a city health worker will have inspected the restaurant kitchen. When we take our child to play a Little League sport or to borrow a book at the library, chances are that we are visiting a city-run facility. How much we pay to license our dog, enter the zoo, own property or operate a business all will be regulated by the city. The quality of the roads we drive on to get to work and the maintenance of the greenery we gaze at while stopped at a red light are examples of the many daily contacts between citizens and their municipal government.

By virtue of the expanded role municipal government plays in the day-to-day lives of citizens, access to information plays a vital part in how the city conducts its business. It was in this desire for openness that the city embarked on the process for establishing the access

to information by-law, which I certainly will not be reading, but Appendix "A" of my presentation provides a summary of the city's access to information by-law.

With my appointment in April 1994, not only did I become the first Ombudsman for the City of Winnipeg, but Winnipeg became the first city in Canada to appoint a municipal ombudsman. More importantly, establishing the office of the Ombudsman for the city was a clear indication of the commitment to the principle of openness and fairness inherent in the concepts of ombudsmanship and access to information. Under the act, that is The City of Winnipeg Act, the role given my office is to act as the final level of appeal. This has provided me with an opportunity to view the practical application of the by-law at its various levels and stages, and Appendix "B" of my presentation provides you with some statistical information on the situation to date. Over the past 18 months I have witnessed a growing commitment to the principles of openness and fairness among those responsible for administering the by-law. There is recognition that the city's approach to access to information differs from that of the province and from other jurisdictions; however, it is within this difference where the real success of the by-law has been experienced.

Although my role as a final level of appeal under the by-law is unique, it has afforded the city's access to information process a measure of efficiencies that may not exist in other jurisdictions, including at the Province of Manitoba. First, in fulfilling the traditional responsibilities of an ombudsman, I have fostered a relationship with the administrators of the city in which there is a mutual understanding of our respective roles. On a practical level, this allows administrators to understand how I approach issues raised by citizens, and it allows me to understand the intricate details of the administration.

Second, in providing me with ordering powers under the by-law, the city adopted a system which enhances the time frames within which decisions on access applications are dealt with and minimizes costs to all concerned. At the city, access appeals are not subject to protracted litigation, legal expenses and delayed court decisions. Appeal decisions are provided in a timely manner by an independent, objective third party who understands the workings of the city and the by-law. In my 1996 annual report, if I may quote from myself, I stated: Computer and telecommunications technology increasingly make it simple to collect private information about practically every aspect of citizens' lives. The genie is out of the bottle. It is too late to protect the information itself; rather, efforts must be made to protect the way in which the information is used. The ombudsman's role of ensuring access to information principles are upheld also includes the flip side of the coin, which is safeguarding the privacy of information held by the city regarding Winnipeg citizens.

Personal information is protected under the current by-law as an exemption. Although the by-law does not deal with how or why personal information may be collected, it has been my approach in a number of cases under my traditional Ombudman role and my role under the by-law to address this issue in consideration of and in accordance with the code of fair information practices.

In this code, the principles of fair information practices set out what a government is required to do when gathering information, including: collect information needed to operate programs; collect information directly from the individual wherever possible; tell the individual how it will be used, keep the information long enough to allow the individual access to it; and take all reasonable steps to ensure its accuracy and completeness.

While strengthening the privacy act would be welcomed, the proposed amendments have already been in practice at the city in respect of privacy access issues I have been asked to address, but let us discuss the practical implications for a moment. In accordance with subsection 3(1) of the by-law, the city is currently in the process of compiling its access guide, a massive undertaking. It is to be completed on or before January 1 of 1998. It will represent a complete listing of the types of records available at various city departments. Extensive consultation and staffing resources have been invested in compiling this document, which will be unique in its application to the city.

* (2200)

Various sources have suggested that Bill 50 in its present format will result in additional resources being required at the provincial level. I would suggest that by not including the city, under the scope of Bill 50, the need for additional resources would be significantly reduced at the provincial level. The principles of Bill 50 are already being carried out by the city at a cost that is being borne solely by the city.

Section 81.9 of the act provides for a by-law pass pursuant to Section 81.1 of the act to be reviewed within three years of being adopted by council and, of course, at this point we are 18 months into that three years. Thus, any new elements of the current legislation, Bill 50, that are found to be particularly useful may easily be incorporated by the City of Winnipeg into the by-law at its scheduled review, approximately 18 months hence.

In conclusion, I respectfully submit to this committee that the area of privacy protection is being addressed by the method of citizens lodging complaints with the Ombudsman and the area of access to information is being successfully dealt with by the current access to information by-law put in place by the Winnipeg City Council based upon The City of Winnipeg Act as implemented by the city's administration.

The city's current system is efficient and effective in terms of the quality of results, the timeliness of results and the cost-effectiveness of the overall system. Amending Bill 50 to allow the current Winnipeg system to continue to exist in its present form would support the continuing evolution of access to information and best serve both the citizens and the City of Winnipeg.

Thank you very much for your attention.

Mr. Chairperson: Thank you, Ms. Menzie. Questions?

Ms. McGifford: Thank you very much for your presentation, Ms. Menzie. It sounds like you are saying: Thank you very much; our own act is working very well. Is that accurate?

Ms. Menzie: I believe the colloquialism would be, if it is not broke, do not fix it.

Ms. McGifford: Have there been any discussions between you and the minister's office as to how Bill 50 would affect you if indeed there is no amendment passed excluding the city?

Ms. Menzie: No, there have not been.

Ms. McGifford: So you have not been approached by anybody from Culture, Heritage and Citizenship with regard to the act?

Ms. Menzie: In approximately mid-1996, we received a copy of a discussion paper, but in that discussion paper there was no indication that there would be a change in jurisdiction, and so we really only became aware of the implications of Bill 50 approximately 10 days ago.

Ms. McGifford: So it seems like the whole act was something of a secret to you and quite a surprise, I guess.

Ms. Menzie: I would concur with the description of a surprise.

Ms. McGifford: I would like to ask if you are speaking as the Ombudsman or are you speaking on behalf of the city tonight, or who are you representing specifically.

Ms. Menzie: I would like to be very clear that I am speaking in my capacity as the Ombudsman of the City of Winnipeg. I do not represent the City of Winnipeg, either the political level or the administrative level.

Ms. McGifford: So you are not aware if the mayor, for example, has asked for an amendment that would exclude the city from this legislation.

Ms. Menzie: No, I have made attempts to find that information out, but I have been unable as yet.

Hon. Harold Gilleshammer (Minister of Labour): I wonder if I could table a letter from the deputy mayor, Jae Eadie, regarding the view of the City Council on this bill.

Ms. Menzie: Mr. Chair, would it be possible for me to get a copy of that letter?

Mr. Chairperson: I am sure it is very possible. Is it the will of the committee? Do you want it read in or just submitted as a document? What is the will? Seeing there are no more–

Mr. Chomiak: I thank you for this presentation. I think it is significant that the Ombudsman for the City of Winnipeg was only informed about 10 days ago with respect to this piece and type of legislation. Do you have any idea how the provisions of the act would function with respect to your ability to carry on your duties at this point?

Ms. Menzie: My understanding would be that we have always had two sides of our house in effect, the traditional ombudsman role and our role under the access to information. I would assume that, if Bill 50 goes ahead in its present form, our role under access to information would simply disappear. We would continue on with the ombudsman role.

Mr. Chomiak: So it is your understanding that your function and role as the information officer, your function in that capacity would no longer exist.

Ms. Menzie: I understand that may not happen immediately. However, within a predictable period of time, yes, that is my understanding.

Mr. Chomiak: It is certainly apparent to me that, in the midst of all of the lack of consultation and the irony of this lack of consultation with respect to freedom of information, this just serves to illustrate to me another example of a very good reason to delay the passage of this legislation to allow the affected individuals and bodies to participate in the process, rather than as–I do not know if it was yourself, but in fact the previous presenter indicated this top-down approach that somehow government knows best, this government knows best. I do not know if you want to comment on that, but that is certainly a comment that I think we strongly feel in this regard.

Ms. Menzie: Thank you, Mr. Chomiak. Because an ombudsman must remain impartial, I will not, but I would like to comment that I had not seen the letter before. I have always protected my right to speak as an independent Ombudsman, but I wish to make it clear that whatever the Winnipeg City Council wishes will, of course, be respected entirely by my office.

Mr. Chairperson: Mr. Chomiak, with a brief final question.

Mr. Chomiak: Thank you, Mr. Chairperson. Well, in fact this letter contradicts some aspects of your presentation, and I concur with your presentation. I do not think that–if one is to look at the legislation proposed and the legislation that you outlined under whose auspices you function, they are very dissimilar, and I think that this letter is relatively meaningless in terms of informing us as to how we should proceed in this regard.

Mr. Chairperson: Ms. Menzie, thank you for your presentation.

I now call on Dr. Brian Ritchie to come forward, please. Mr. Ritchie, I understand you have two presentations, or are they two separate.

Mr. Brian Ritchie (Manitoba Medical Association): No, thank you. We will not speak to Bill 50. We will speak to Bill 51.

Mr. Chairperson: Okay, go ahead. If you have–oh, I see, you are going to wait till 51 then. That is my understanding.

Mr. Ritchie: Yes.

Mr. Chairperson: Okay, thank you. I will now call Brian Kelcey, and it is the Chair's understanding that Mr. Kelcey is away and has left a message that he will come back. We will drop him to the bottom of the list. Ian MacIntyre. If you have any written handout, I would–please proceed.

* (2210)

Mr. Ian MacIntyre (Manitoba Teachers' Society): Thank you, Mr. Chair, it is very nice up here, nice and breezy.

The Manitoba Teachers' Society welcomes this opportunity to provide its comments to the legislative committee about certain aspects of Bill 50 of 1997.

Bill 50, 1997, reworks The Freedom of Information Act approved by the Manitoba Legislative Assembly in 1985 and enacted by the government of Manitoba in 1988 and adds new provisions recognizing privacy protection rights.

(Mr. Gerry McAlpine, Acting Chairperson, in the Chair)

The Manitoba Teachers' Society has long been concerned about the absence of statutory law upholding the rights of Manitoba citizens to privacy protection. Manitoba is one of very few Canadian provinces not to have enacted a modern protection of privacy statute.

In October 1996, the society expressed this concern in submitting a paper to the government records panel assigned by the Manitoba government to examine requirements of statutory protection of privacy. In examining Bill 50 of 1997, the society is generally pleased that many of the points identified in our presentation to the panel have been addressed with the proposed legislation.

In our presentation in October 1996, the society called for the forthcoming privacy protection legislation to have a clear and precise structure, to provide a clear and comprehensive framework of definitions and include a unifying statement of purpose for the statute. In structural terms, Bill 50 has met our expectations.

At Section 1, Bill 50 does define much of the terminology used in relation to matters of accessibility to information and privacy protection. At Section 2, Bill 50 does set out the purposes, the objectives of the statute to be acknowledged by the Manitoba Legislature in enacting this legislation.

The society is drawing attention to the scope of the definitions appearing in Bill 50 and the inclusion of statements of purpose because of the clarity these features bring to the provisions affecting accessibility and privacy. The people of Manitoba are better served by a statute containing clear definitions and statements of intentions. Many of the statutes of Manitoba can generally be characterized as being very weak in relation to definitions and precise statements of purpose. The intended application of the statute is thereby impaired and the legal rights of Manitobans are diminished. The Public Schools Act is one notable example of a Manitoba statute lacking definition and clear statements of objectives. The Manitoba public schools and the children, parents and teachers associated with them would appreciate that whoever was assigned by the government to bring the structure to Bill 50 could, as their next assignment, bring The Public Schools Act into the 1990s.

The society welcomes the definition appearing within Section 1, Bill 50, of local public body, which includes an educational body. The latter, in turn, is defined to include a school division or school district established under The Public Schools Act. The society notes as well the provision for any other body to be designated as the educational body by regulation. We would expect private schools to be designated as an educational body by regulation.

The society strongly endorses the inclusion of school divisions and school districts within the purview of The Freedom of Information and Protection of Privacy Act of Manitoba.

Section 101(2) of Bill 50 deals with the enactment of the requirements of Bill 50 in relation to local public bodies. The subsection signifies the proclamation of a series of designated requirements, "may relate to all or any of the following categories of local public bodies: (a) educational bodies."

The society notes the use of the permissive verb "may" in this subsection instead of the obligatory verb "shall" and is concerned there may be some equivocation of the applicability of the enumerated requirements to educational bodies. The high degree of clarity found to be prevailing through Bill 50 does not extend to Section 101(2) and, as a result, this section remains questionable and suspect.

Bill 50 vests responsibility for administration and compliance of accessibility and privacy with the Ombudsman of the Province of Manitoba. The Manitoba Teachers' Society is concerned that the Office of the Provincial Ombudsman will be overburdened by the full dimensions of these added duties.

In its submission of October 1996, the society advised the panel considering questions of accessibility

and privacy on behalf of the Manitoba government. A new Manitoba statute should establish an information and privacy commissioner similar to the office existing in a number of Canadian provinces. The society continues to be of the view that The Freedom of Information and Protection of Privacy Act of Manitoba could be more effectively administered and enforced by a distinct commissioner for information and privacy.

The Manitoba government is undoubtedly seeking to achieve economies of operation by adding to the duties of the Office of the Ombudsman. The society, however, believes this to be a false economy.

At Section 23(2)(f), Bill 50 instructs that the reason for refusal to disclose set out at Section 23(1) does not apply if the information being requested "is the result of background research undertaken in connection with the formulation of a policy proposal." Section 23(3) then intervenes specifically to exclude "economic or financial research undertaken in connection with the formulation of a tax policy or other economic policy of the public body."

The society does not accept the need for Section 23(3). Public bodies should be fully accountable for their economic, fiscal and taxation policies. The government of Manitoba should not act to preclude Manitobans from access to the background information contributing such policies. We are not just talking about tax policies of the provincial government here but also the tax policy of the public school boards, and the question is: What does the government think that school boards have to hide in relation to their tax policy?

The society would like to comment on the haste with which the Manitoba government is proceeding to move Bill 50 through the legislative process. The society first received a copy of Bill 50 distributed by the Minister of Culture, Heritage and Citizenship (Mrs. Vodrey) via the mail on June 9, '97. The bill was called to begin second reading on June 10. On June 20, the society was notified that presentations on Bill 50 would be heard three days later on June 23.

Given the ample magnitude of the bill and the scope of its implications, the government should have allowed more time for review of the proposed legislation by the public. The teachers of Manitoba trust that the final version of Bill 50 of 1997, reported out by this committee to the Legislature, will include the recommendations presented in this submission. Thank you.

Ms. McGifford: We cannot help you with the Manitoba schools act tonight, but thank you for your presentation. We will be moving amendments regarding the commissioner and Ombudsman later on, so I wanted to assure you of our having heard that, not only from you but from several other presenters.

You comment on the haste of proceeding with Bill 50, and I certainly concur. It has been a very quick process. I wonder how you think this problem could be solved or if you continue to perceive it as a problem that requires solutions?

Mr. MacIntyre: Thank you very much. I am glad you will be putting forward some amendments about the commissioner. I guess in proceeding, more time between the presentation of the legislation and when you hear committee and bring it for final reading.

Ms. McGifford: So, Mr. MacIntyre, you are talking about more time in the future for this kind of legislation, or do you think that this legislation currently requires more time and something should be done to ensure that there is more time and perhaps something that would allow the public the opportunity for more input into the legislation?

Mr. MacIntyre: As we have outlined, the Manitoba Teachers' Society is quite satisfied with the consultative process that we have been through and with what we have been able to provide for the legislation. There may be other groups, however, who do not feel the same way we do.

Mr. Chomiak: Thank you for the presentation as well. One of the provisions that you pointed out with respect to the designation of a school relates to the fact that it can be designated by regulation. Would it be your view that the bill could be improved by, in fact, not leaving it to the regulations but, in fact, designated in the actual act all those schools, not just public schools, but all schools to which the act would apply? Would that make sense to you?

* (2220)

Mr. MacIntyre: I guess, including the schools with which the act would apply; what The Public Schools Act applies to just includes public schools. I do not want to read into what the intent of the bill is, and that is why we question or had a comment about, we would expect that private schools would somehow be included as an educational body by regulation. I do not know what the intent of the government was on that point about leaving it out.

Mr. Chomiak: Mr. Chairperson, I have the luxury to speculate. I will not, but I think that is a very valid suggestion, the point that you have made and one that has not been raised before. It has been a long-standing issue on our part that so much that is designated in statute is left to regulation. In fact, we do not know, in many cases, to what acts will apply and what provisions in acts will apply, because we do not have the regulations in front of us.

I think your point is well taken, and I thank you for that, and we intend to pursue that.

The Acting Chairperson (Mr. McAlpine): Thank you very much for your presentation, Mr. MacIntyre.

Councillor Glen Murray. Councillor Glen Murray not here. His name will drop to the bottom of the list. Robert Andrew Drummond. Robert Andrew Drummond. Anne Lindsey. Anne Lindsey withdrew. I am sorry. Robert Andrew Drummond. Not here, his name will drop to the bottom of the list. Okay, we will call again Cynthia Devine. Not here. Is it the will of the committee that her name drop off the list? Okay, we will call her name again. I am going to call Councillor Glen Murray. Councillor Glen Murray, not here. Robert Andrew Drummond, not here.

Bill 51–The Personal Health Information Act

The Acting Chairperson (Mr. McAlpine): We will move to Bill 51. Marilyn Goodyear Whiteley. Do you have copies of your presentation to distribute?

Ms. Marilyn Goodyear Whiteley (Manitoba Association of Registered Nurses): I do. Yes, I do.

The Acting Chairperson (Mr. McAlpine): You may proceed. Please proceed.

Ms. Whiteley: Mr. Chairperson, Mr. Minister and committee members, my name is Marilyn Goodyear Whiteley, and I am presenting this evening on behalf of the Manitoba Association of Registered Nurses. With me to my immediate left is Karen Dunlop. She is a consultant registrar at MARN and also a member of the privacy and confidentiality committee.

The Acting Chairperson (Mr. McAlpine): Excuse me. Could you move the mike over possibly and speak directly in. Yes, thank you.

Ms. Whiteley: Can you hear me better now?

The Acting Chairperson (Mr. McAlpine): Yes.

Ms. Whiteley: Do you want me to start over?

The Acting Chairperson (Mr. McAlpine): No, that is okay. That is fine.

Ms. Whiteley: You know who we both are?

Floor Comment: Yes, very important people.

Ms. Whiteley: That is right. Okay. The Manitoba Association of Registered Nurses, MARN, is pleased to have this opportunity to comment on Bill 51, The Personal Health Information Act. As the regulatory body and professional association for over 10,500 registered nurses, MARN's mission is to regulate the practice of registered nurses and the quality of nursing to protect the public interest. MARN has representatives on each of two committees that are working with SmartHealth to develop an electronic health information network, the multistakeholder advisory committee and the privacy and confidentiality committee.

(Mr. Chairperson in the Chair)

In addition, MARN commented on the discussion paper Privacy Protection of Health Information, and we

were part of a group asked to review the consultation draft of this bill. We would like to congratulate the Minister of Health (Mr. Praznik) on his consultative approach, and although we disagree on certain aspects of content of the bill we fully support the process. We would like to thank the minister for incorporating some of our recommendations into the final draft of the bill.

MARN's interest in the issue of personal health information is directly related to our regulatory obligations and mandate under The Registered Nurses Act, which includes the mandate to develop, establish, and maintain standards for the practice of nursing. The practice of registered nurses in Manitoba is guided by the MARN Standards of Nursing Practice: Direct Care Provider and the Canadian Nurses Association Code of Ethics. One important component of both the ethics document and the standards document is the expectation that registered nurses will keep their client's personal health information confidential.

For example, the MARN standards state, the registered nurse manages information concerning the client in a confidential matter. In addition, the Canadian Nurses Association Code of Ethics states: Nurses safeguard the trust of clients that information learned in the context of a professional relationship is shared outside the health care team only with the client's permission or as legally required.

We take our obligations and accountability to the public seriously in order to fulfil their trust in registered nurses as professionals. However, as members of a health care team, registered nurses also have an obligation to collect and communicate pertinent client information to other members of the team in order to provide effective quality care and to provide for continuity of care. Our comments on Bill 51, therefore, will be mindful of the balance between privacy of and access to information. Concerns identified in this presentation focus on the following issues: the scope of the act, corrections to personal information, the health information privacy committee, and the administration and implementation of the act.

MARN supports the trustee framework of the act. However, in our view a serious limitation is the lack of inclusion of the private sector under the jurisdiction of the act. We are concerned that this limitation in the scope of the act may undermine the act's purpose. In our comments and responses on the issue of privacy protection of health information over the past year, MARN has consistently recommended inclusion of private companies holding personal health information, including insurance companies. Our views are unchanged.

* (2230)

It can be argued that the insurance contract offers protection to the consumer with respect to the protection of personal health information. However, disclosure of personal health information and the right to access personal health information is often bargained away in favour of coverage. The argument that both parties benefit equally in this arrangement ignores the inherent power imbalance in the relationship. Holding the health care professional, who may be an employee, to a higher duty than their employer in the private sector will, at a minimum, create confusion with the public. More importantly, it may place the registered nurse in a position where she or he unwillingly breaches the act.

While RNs may collect health information for a private sector company, they often have neither custody nor control over that information. This provides an additional argument for expanding the scope of this act to include the private sector. Bill 51 provides clarity on the issue of access to personal health information and places a great deal of responsibility on the trustee in that regard. Section 12 of the bill details the trustee's responsibility with regard to correction of health information. At the same time, the trustee has a responsibility under Section 16 to ensure that before using or disclosing health information the information is accurate, up to date, complete, and not misleading. In our view, clarification is needed with respect to the trustee's responsibility to validate the correction.

The purpose of this committee is identified in Section 59(1), and we support the inclusion of public representatives. We are assuming that government intends to replace the existing access and confidentiality committee with the health information privacy committee. Although we have a significant nursing research community in Manitoba, there are no

designated registered nurses' seats on the access and confidentiality committee. We suggest the inclusion of registered nursing expertise on the health information privacy committee and the access and confidentiality committee if it is to be continued and would be pleased to assist in the selection of that RN at a later date.

With respect to administration of the act, we wish to identify two major areas of concern: (1) designation of the Ombudsman rather than a privacy commissioner to administer the act, and (2) power to recommend as opposed to making binding orders in order to promote compliance with the act.

In our comments and responses on the issue of privacy protection of health information, we have urged the creation of a privacy commissioner accountable to the provincial Legislature to monitor and administer access and privacy legislation. We reiterate that recommendation in the context of this bill. The level of expertise required to administer this act is considerable, especially if the process is not entirely complaints-driven but includes a monitoring function.

We support the inclusion of "conduct investigations and audits and make recommendations to monitor and share compliance" with this act.

One immediate need is to monitor the development of the computerized health information network being undertaken by SmartHealth to ensure that the infrastructure of the health information network will facilitate compliance with this bill. It would appear that the Ombudsman's powers related to this act are powers of promoting compliance as opposed to enforcement.

In our view, these powers to recommend are insufficient and will result in a reliance on the courts to enforce the act and its regulations. This will constitute a significant barrier to the average person pursuing access and privacy rights and/or remedies to breaches under the act. Recourse to the courts is already available and has been identified as unreasonable and inadequate. Apart from the cost to individuals, abusing the courts to address access and privacy breaches, the time associated with legal action is at odds with the need for immediate action. Once a breach of privacy occurs, the damage is done.

MARN would like to raise three issues with respect to implementation of the act: (1) adequate resources for the Ombudsman's office; (2) education of the public, facilities and professionals; and (3) review of the act. Since the responsibilities and powers of the Ombudsman under this act are not restricted to simply receiving and investigating complaints, but include powers to conduct investigations and audits and monitor compliance, we would urge your government to ensure that resources provided to the Ombudsman's office are supportive to this comprehensive role.

Resources will also be needed to support education of the public, professionals, agencies, facilities and public bodies about this act and its effect. The act places enormous responsibility on the trustee in terms of some of the judgments that will be required to be in compliance. Although we support the use of plain language, in this case health care professionals will be required to make important judgments based on rather vague wording in the act.

Greater clarity is required to assist health care professionals in complying with the act, especially for those who are in independent practice with limited resources at their disposal for interpretation. MARN would be pleased to participate on any committee charged with communication of the effect of this act. You will recall that a similar process was required when legislation was passed with respect to The Health Care Directives Act.

We note that the review period designated in the act is five years. We would prefer that a comprehensive review of the operation of the act took place within three years of the act coming into force. Although the Winnipeg authorities will still be under development at that time, we see merit in an earlier review, given the importance of what the act is trying to achieve and the need to be responsive in a rapidly evolving world. The sooner inadequacies of the act are identified, the sooner remedied. In addition, a three-year review period provides the public with a sense of ownership of the act and may mitigate any current concerns about the act.

In closing, thank you for this opportunity to participate in shaping legislation, and we look forward to an ongoing partnership with respect to many aspects of The Personal Health Information Act.

Mr. Chairperson: Thank you, Ms. Goodyear Whitely. Questions?

Hon. Darren Praznik (Minister of Health): For information, I noticed your offer to be involved in the health information privacy committee. There are no designated seats on that in the act. We are hoping to deal with that by legislation. So we certainly will consider your interest in that committee at that time, but I wanted to clarify why they were not designated in the particular statutes.

I notice a couple of other comments with respect to three years versus five years, but by and large, other than the issue which we have talked about on many occasions, and where there is a disagreement between the Ombudsman, privacy commissioner and binding order, not binding order, generally speaking I gather your association, having worked on the bill, is supportive of the general thrust and framework of this legislation?

Ms. Whitely: Yes, we are, Mr. Minister.

Mr. Dave Chomiak (Kildonan): Thank you, as usual, for the thorough presentation from MARN. You raised several issues, I think, that generally have been raised by other individuals and presenters with respect to this act. One of them, of course, is the privacy commissioner and the need for a privacy commissioner, and I think it is significant that you point–I mean, often I get the impression that the government does not understand what the difference is between the role and function of an Ombudsman and that of a privacy commissioner, but I think your reference to monitoring is one of the examples and one of the needs that I think makes some sense.

* (2240)

My question to you is in respect of the designation of private agencies. That has also been a concern of ours since there has been a proliferation of private, profit health care. I have reviewed the act and tried to come to grips with the designation as to what role and function information held by private agencies will be. You raised the issue. Can you clarify at all your understanding as to what role the act will play with respect to information held by private profit-making agencies?

Ms. Whitely: I am going to let Karen Dunlop respond to that.

Mr. Chairperson: Ms. Dunlop. You will have to move to a mike, just so that we can record this. What number is that? Number 4. State your full name when you start, please.

Ms. Karen Dunlop (Manitoba Association of Registered Nurses): Karen Dunlop.

Mr. Chairperson: Karen Dunlop. Thank you.

Ms. Dunlop: It is our understanding that the act does apply to private health care companies and agencies or corporations that provide health care directly. Our concern was mainly raised in the context of those corporations that do not engage in the provision of health care services directly but rather may do so indirectly. We thought of two examples, one being a pharmaceutical company who could provide some health care services perhaps in the course of piloting or testing a new drug and would in the course of that trial collect much personal health information about a client or series of clients. Because they are a private corporation that is not directly engaged in the provision of health care services, it is our understanding that they would not fall under this act.

The second involves an insurance company which also may gather personal health information for the purpose of adjudicating claims or processing benefits. Again, it is our understanding that this type of a corporation does not fall under this act, although that kind of a corporation would house personal health information. There are nurses who are employed by insurance companies as well who undertake examinations and follow clients, case-manage them. They would be contributing to an overall file, but it is not a health care record per se. Therein is that other concern.

Mr. Chomiak: I thank you for that clarification, but is it your understanding that a private agency that provides health care service would have a trustee

function in their role as "A" or would the trustee function be through their relationship with another health care provider?

Ms. Dunlop: It is our understanding that the health care agency, be it public or private, would be covered under the act. Our concern really related to the types of corporations that were not directly but perhaps indirectly engaged in health care services.

Mr. Chomiak: I thank you for that clarification. It is very helpful and I intend to pursue this line of questioning with the minister. It has been very useful I think to us in the committee, and we will seek to clarify some of those issues, although my own interpretation is I am not entirely convinced personally that the act does apply to all agencies that are even health care providers in terms of the reading of the act, but thank you for that.

Mr. Chairperson: Mr. Lamoureux, with a brief question.

Mr. Kevin Lamoureux (Inkster): Very brief, Mr. Chairperson. First of all, I appreciate the effort that MARN put in in terms of bringing forward this particular presentation.

When you make reference to the provincial Ombudsman's office having the adequate resources, do you feel that there would be some benefit in terms of having those additional resources possibly even complemented with someone from within being designated the responsibility of this act? Do you think that would be to the betterment of enforcement of this–through the Ombudsman's office, is there something that could be done, because I concur with MARN when you talk about the need for a privacy commissioner? It does not appear that we are going to get that. Is there another way that we can compensate that through the Ombudsman's office, in your opinion?

Ms. Dunlop: I think that is an excellent suggestion. Our bottom-line concern was that, with the scope of responsibilities that are provided for in the act, there would be adequate resources in order to administer the act and protect the rights that this act creates for the citizens of Manitoba.

Mr. Chairperson: Thank you very much for your presentation tonight.

Peter Sim. There is a handout to be given.

Mr. Peter Sim (Manitoba Association for Rights and Liberties): Good evening once again.

Mr. Chairperson: Please proceed.

Mr. Sim: I am once again appearing on behalf of the Manitoba Association for Rights and Liberties, this time with respect to Bill 51, The Personal Health Information Act. MARL has been extensively involved with the issue of privacy of personal health information for a number of years now, beginning with some amendments to the Pharmacare act which were made to accommodate the new drug program information network. Since then we have been represented on the privacy and confidentiality committee concerned with the development of the health care, the health information network, and we have also had an opportunity to participate in some of the earlier consultation processes on this bill.

MARL has invested considerable time in this issue because we feel that it is an important one. Health information is some of the most sensitive personal information that people can have. There are very few types of information that touch more intimately on people's lives than their personal health, and MARL believes that it is important that the legal protections for this type of information be adequate and be backed up by proper resources and effective enforcement procedures.

At the outset, although I said I was pleased by the consultation process that has taken place, I have subsequently come to realize that much more could be done. Very shortly after I had done the first draft of this brief, I read in The Globe and Mail that Alberta had introduced a new personal health information act. The same day I was able to obtain a copy of the act from the Government of Alberta website, an innovation that I would urge the Manitoba government to implement as soon as possible. After reviewing the Alberta act, I found that, although I do not agree with everything in it, there are many sections which are much superior to what Manitoba has, obviously a different set of heads

have, you know, in some respects, done a better job of some things, a worse job of others, but obviously it is something that should be considered.

I also realize that Alberta was not planning to pass the act this session. They were introducing the act, tabling it and then allowing one nearly a year for detailed public review of the actual legislative text of the act before passing it in the spring of 1998. This, I would suggest to the Manitoba government, is the kind of consultation process Manitobans deserve. It is not enough simply to make general comments on a discussion paper. We should have the opportunity to consider in detail some of the detailed provisions of this act and have a chance to study them and research their implications before they become law and administrative changes are put into place to implement them.

So, in light of what has happened with Alberta, I would strongly urge the Manitoba government to consider withdrawing the bill and putting it for further study, at least to take into account the current changes that the Alberta government is considering, to see which of those are worthwhile and possibly even to follow the lead of Alberta and allow adequate time for public consultation.

Having said that, you know, my major concern with the bill, as it now stands, is the absence of an information and privacy commissioner with the power to issue binding orders. This is particularly urgent, pressing in Manitoba because of the health information network that is being developed. This will place an unprecedented amount of personal health information in a centralized database under the direct control of the Minister of Health. I know some other presenters may have some grave concerns with these developments. MARL is prepared to keep an open mind on it as long as this state-of-the-art health database is backed up with state-of-the-art legislation. I would submit that today's state-of-the-art legislation means an information and privacy commissioner with the power to issue binding orders.

* (2250)

Presently you have information and privacy commissioners with order powers to some extent in Ontario, B.C., Alberta and Quebec. The Alberta legislation, which deals specifically with health information, also includes a health information and privacy commissioner, once again with the power to issue binding orders, including the powers to order somebody to disclose personal health information to an individual, the power to order a correction of inaccurate personal health information, the power to order a public body or a health care provider to cease collecting or using personal health information collected in violation of the act, also to cease disclosure practices or to destroy personal health information which has been collected or retained in violation of the act.

What this means, in effect, is that a person who has a complaint about any section of the act has a right to apply to the commissioner in Alberta and to obtain a legally binding order, which is legally binding subject only to an appeal to a designated judge of the Court of Queen's Bench.

That, I would submit, is what Manitobans deserve, legislation with real teeth. It is not enough to be able to go to the Ombudsman and ask for a review and a recommendation. First of all, when one is dealing with matters of privacy, the only remedy that the Ombudsman can offer is publicity to your complaint, but people whose privacy has been violated may not want more publicity. They may want to get a legally binding order which can deal with their concerns without having to rely on the general public pressure that the Ombudsman can sometimes bring to bear.

More to the point, without a privacy commissioner with order powers, I would submit that many sections of the act are largely ineffectual. Previous presenters have commented on the very vague language of the act, and in some cases that is not bad. It is very difficult to draft language that will address every possible combination of circumstances when you are dealing with an area as broad and complex as health care legislation. But once you do that, you then have to consider, all right, how do you give the general legislation teeth without exposing people to penalties for breaches of very generally worded clauses. There is not a real answer when you are simply dealing with penal legislation that can only be enforced through the courts, because often when the courts find that legislation is vague, they may say: Well, we cannot tell beyond a reasonable doubt whether there was a breach

of this section; therefore, we are going to give the accused the benefit of the doubt and acquit. Now that works fine, that is a general principle, a good principle, but it also means that certain forms of legislation are ineffective when you rely simply on penal legislation.

The answer is to deal with the civil remedies that a privacy commissioner can impose. When you are dealing with a privacy commissioner with order powers, you do not have to worry about the clarity of language. The privacy commissioner issues an order. The order can be drafted in clear, unambiguous terms dealing with the specific situation, and at that point, only there, when the order is breached, do you have to worry about punishing somebody for a breach of the act.

That, I submit, is why MARL believes that a privacy commissioner is really necessary if the privacy provisions of the act are going to be anything more than window dressing. Without a privacy commissioner, the act does not really give individuals anything. Certainly, they can apply to the Court of Queen's Bench if a request for access to their personal health information is denied, but to a large extent, that right already exists as a result of a decision of the Supreme Court of Canada a number of years ago. So, therefore, I would very strongly urge the government to reconsider their decision not to adopt provisions for a personal health privacy and information commissioner at least for personal health information.

Now going on to some specific comments. One recommendation that MARL had made earlier that we regretted to see was not incorporated in this bill was that there should be a definition of sensitive health information which would include particularly sensitive things like information relating to sexually transmitted diseases, psychiatric records, treatment for sexual abuse. This kind of information would have to be specially flagged in health records and would not be subject to some of the general use and disclosure provisions. Before this information could be used or disclosed without the individual's consent, there would have to be either very exceptional circumstances or a specific consent signed.

Since writing that submission, we found that the Alberta bill adopts what MARL now considers to be a preferable approach. One of the objections to including a definition of sensitive health information is it is often difficult to determine what information is sensitive, and what is very sensitive to one individual may not be sensitive to another. The Alberta bill has dealt with this by giving individuals the right to decide for themselves what is sensitive. An individual can tell their doctor: I consider this to be sensitive and confidential information; you are not to release it without my consent.

Once that designation is made, then certain provisions in the Alberta bill which would allow for general disclosure do not apply, and only a much tighter set of provisions would allow disclosure without the individual's consent, for example, in circumstances where it is urgently needed to protect an individual's life or health.

So these are sections of the bill that MARL would strongly urge that the government reconsider and redraft, in light of what I think are very good provisions in the Alberta legislation.

I have many other specific comments. In the interests of time, I will not go through them all. You have the report before you. I am concerned about the definition of "trustee." I understand there are some difficulties in including insurance companies, for example, under the legislation, but I know that when we were dealing with the preconsultation process, the Manitoba Federation of Labour occupational health centre made a very strong plea for including employers, who provide health services to their employees as part of an occupational health program, under the definition of "trustee." I would urge the government to reconsider that brief and see if some appropriate amendments can be drafted.

Another area that MARL is concerned with is restrictions on collection. Often the best protection you can provide for individual privacy is simply to allow individuals not to provide the information at all. MARL would suggest that in many cases health bodies or heath care providers may ask for more information than they reasonably need and that in these cases individuals should have the right to say: No, I am not going to fill in; I do not think you need all of these answers in order to provide my health care; I do not want to answer them.

I can just, you know, think of a specific example that was brought to my attention of somebody who was applying for admission to a psychiatric day treatment program, and one of the things she was asked was, are you currently involved in any legal proceedings before the courts. She said: I am not prepared to answer that question; it is none of your business.

That is the sort of thing where there should be provisions in the legislation for individuals to say no, this is not reasonably necessary. Furthermore, individuals in those circumstances should have an effective means of going and challenging the right of the health care body to demand that information.

I have some comments on collection practices, and we are particularly concerned with the ability of health care bodies to collect information from sources other than the individual. Generally speaking, when somebody is collecting your personal health information, you should have a right to know that it is being collected, so I have made a number of suggestions where the language in some of the exemptions from the general principle that information should be collected only from individuals could be tightened up.

Another important area where health care records are being maintained in electronic form is security safeguards. Often we hear of problems where health care records are strewn in the back lane of a health clinic. That is a serious concern, but it is even more serious when you start dealing with health care records which are being stored on computer hard disks. There often, if the records get into the wrong hands, you may never find out about it until it is too late. Furthermore, with computer records, unlike paper records, it is often very easy for somebody to take them and to make use of them, whereas a paper record, if it is simply sitting in the back lane, it is probably not going to be of much use to anybody who is not able to spend hours picking through the garbage and processing it. So the point I am making is that once you start dealing with computerized health records, security safeguards are very important, and there should be an onus on any health care provider who is maintaining computer records to provide adequate security safeguards and, furthermore, to have those safeguards audited and made available for public inspection.

* (2300)

Mr. Chairperson: Mr. Sim, I will just advise you, you have about two minutes left.

Mr. Sim: Okay. Other areas: Disclosure is a major concern. I would urge the government to look at the Alberta provisions concerning disclosure by consent, and there is a proposal to provide some regulations which would deal with what consent means in the context of personal health care. So, for example, simply filling in and signing an application form where there is one paragraph buried in the middle of the fine print saying, you may see my personal health records, would not be a sufficient consent. That is something else that should be tightened up in the legislation itself.

I have some other specific comments on the various other disclosure provisions. I think once again these are all very significant sections of the act, and they should all be carefully reviewed in light of what I think is some better language in certain parts of the Alberta bill.

Limits on disclosure: There should be a requirement that where health care information is being disclosed, it should be limited to the minimum amount of information that is required for a specific purpose and also that information that identifies individuals should only be disclosed where the purpose cannot be accomplished using some less revealing form of information such as aggregate information or information with individual identifiers removed.

I have a concern about the health research section which deals with institutional research review committees. I think if you examine some of the definition sections closely, you will find that the power to set up an institutional research review committee is quite broad. Even as the definitions now stand and as I read the act, even a small clinic could set up one of these committees. That should be tightened.

Private information managers are another major area of concern, particularly when you consider the possibility that information managers who manage electronic information could very easily move it from place to place in the province or outside of the province.

A final comment–offences and penalties. I think the $20,000 fine in some cases is ridiculously inadequate. Where you are dealing with an offence for sale of health information, which is one of the really important and positive provisions of the act, and you are dealing with, say, a sale of health information relating to 20,000 individuals, a $20,000 fine is not a deterrent. That could be a copying fee if some drug company or an insurance company could get their hands on that much information. I would suggest that, at least regarding that section, the penalty should be increased.

In a final point I caught, there was no adverse employment action. There is what they call a whistleblower protection section here, which is good, but the problem is that you know you say there is to be no adverse action taken against an employee, but you do not give the employee any remedy. I would suggest that the employee should be given a right to appeal to the Manitoba Labour Board as is done in some other similar types of legislation such as, I believe, The Employment Standards Act.

Once again, subject to questions, those are my comments.

Mr. Chairperson: Thank you, Mr. Sim.

Mr. Chomiak: Thank you, Mr. Sim, for again an excellent presentation that raised a whole series of issues that I do not think members of this committee have had time to review and which I think bear repeating and bear very careful scrutiny, which I think is again suggestive, and I will give credit that the process that the minister adopted for this bill is an improved process from that of his colleague with respect to The Freedom of Information Act. I will recognize that. The minister did circulate a draft bill, and I give him credit for that.

Notwithstanding that, I think your presentation alone shows us why we should not proceed hastily to introduce and to pass this legislation. Let me just cite certainly the privacy–I believe it has been unanimous that all presenters have recommended a privacy commissioner. I think you outlined very, very good reasons.

Secondly, while we were promised cutting-edge legislation, it appears from your presentation that cutting-edge legislation is not present in Manitoba. In fact, if one looks to Alberta, or others have suggested B.C., there is much better legislation that could be utilized. Further, the information you have provided us on disclosure is relatively new to me, and I have been paying attention to this and I suspect many members of the committee. I think it is worthwhile to spend some time and energy to look at the disclosure provisions to ensure that they are adequately protected. The recommendations you make about an independent outside authority on periodically reviewing security safeguards is again a new suggestion that I think is very valid and ought to be looked at in this committee. I will indicate that we have a series of amendments to come forward to this committee, some of which have not taken into account many of the very positive suggestions you have made here today. Again, further justification for not proceeding with haste to pass this legislation.

Having outlined a preamble, my question is: I am very, very interested in the provision on sensitive personal information. I think it has been overlooked in this act. I understand that to be a provision called the lock-box provision. Is the reference that you have made to sensitive personal information the concept of the lock-box provision?

Mr. Sim: Yes, that is correct. I am looking at Section 16 of the draft Alberta bill. I think it is called the lock-box provision in some of the commentary, which is called a right to request nondisclosure, which reads that any time an individual or personal representative of an individual may request that a record or portion of a record under the control of a health services provider not be disclosed in the context of provision of further or other health services to that individual, unless the individual or personal representative consents to the disclosure.

Then there is a list of where this request is being made. It provides that the record may still be disclosed under certain sections, but in other circumstances the record is not to be disclosed. There is also in the next section: Every health care provider has a duty to inform individuals about their right to make this request.

Mr. Chomiak: Has MARL had a chance to make all of these recommendations to the minister or his committee? Have all of these recommendations been made to government officials?

Mr. Sim: Some of them. We had a meeting with the minister where we focused very extensively on the issue of the information and privacy commissioner, and I believe I may have circulated some earlier versions of the draft. I do not believe that–this draft, I just finished last night, so the minister would not have seen it and would not have seen some of my specific comments on the Alberta legislation up to this point.

Mr. Chairperson: Mr. Chomiak, with a final question.

* (2310)

Mr. Chomiak: I would like to indicate to you that we have never had and never been able to obtain a valid reason as to why there is no provision for a privacy commissioner in this jurisdiction. Secondly, I have yet to understand why a lock-box provision cannot be included. Thirdly, I am concerned, again, by the issue of the trustee relationship that you have raised and the use of private information that I think has not been adequately canvassed and reviewed.

As well, I am concerned with many of the issues you have raised with respect to disclosure, and I want to indicate to you that what we will be attempting to do will be we will try to bring these matters when we go clause by clause or when we review the bill, try to urge the minister either to accept recommendations of this kind or provide some kind of a reasonable explanation as to why the government is not proceeding to put in place these kinds of provisions if, in fact, we want to pass legislation that is the cutting edge insofar as you have indicated, and I think the minister–that we know in Manitoba, we are proceeding more rapidly in terms of putting information on line than any other jurisdiction in Canada or, I dare say, North America, and if anyone should have cutting edge legislation, we ought to.

My question for you is: Do you think, with all of those provisions basically in the legislation, that kind of legislation could then satisfy all the concerns of MARL?

Mr. Sim: Well, that is a very general question. I think the key to making this legislation work is having an effective information and privacy commissioner. You can fine tune the language indefinitely, but you are still going to have a lot of fairly broad discretionary provisions, and in order to satisfy the public that this discretion is not being abused, you need to have in place an independent officer of the Legislature who can examine the way in which some of the discretions that the legislation will have to allow are being exercised and to grant remedies in appropriate circumstances.

So we would submit that is really the key to making all of this legislation work. With that, a lot of the problems with specifics are really minor. Without that, I do not know. You cannot really fine tune the specifics adequately to make the legislation work.

Mr. Chairperson: Thank you, Mr. Sim, for your presentation. Dr. Brian Ritchie. I see there is a handout for the committee members. As soon as you are comfortable and ready, you can proceed.

Mr. Brian Ritchie (Manitoba Medical Association): Thank you. Mr. Chairman, Mr. Minister, members, ladies and gentlemen, I want to thank you very much for the opportunity of speaking before the committee and to express our concerns with regard to Bill 51, The Personal Health Information Act.

The Manitoba Medical Association is a voluntary professional organization representing approximately some 2,000 doctors in the province who day in and day out provide your necessary medical services, services to Manitobans, our patients. As one of these doctors, a member of the Board of Directors of the MMA and chairman of our committee, the Health Information Systems Committee, I have been asked by the board to speak to you this evening.

Throughout our history physicians have enjoyed a high degree of patient trust, trust that the personal information provided to them in confidence will be respected, and this is the very core of the patient-physician relationship, the importance of which cannot be understated. In this regard the MMA welcomes the government's initiative to seek greater legal protection for personal health information.

Manitoba doctors must be satisfied that the bill affords sufficient safeguards to protect individuals and assure the privacy of our patients, yourselves included, particularly as we move into the realm of the electronic network envisaged by the act. We asked for the establishment of an independent officer of the Legislature to be responsible for the administration of The Personal Health Information Act, the protection of rights of individuals and stakeholders and the enforcement of the provisions of the act, particularly as we face the issues raised by electronic collection and dissemination of personal health information.

If history is any guide, we can expect that something at some time at some point will go wrong, and while the current system may work most of the time, we have all heard stories about the medical files or other information ending up in the proverbial dumpster. What we need is a mechanism then to deal with these security breaches expeditiously, not really a long, drawn-out process that ultimately ends up in the court. It would be naive to dismiss the potential for unauthorized access, collection, use and distribution inherent in an electronic health information network. In the past we have worried about a leak of information; in the future, gentlemen, ladies, we will need to be worried about a flood of information. A system breach exposes many more people and personal health information than a dumpster ever did.

The Manitoba Medical Association feels that the only practical way then to deal with these concerns is to give a privacy commissioner or Ombudsman power to make orders. This is being recognized, as Peter pointed out, in other provinces. I would like to draw the committee's attention to the draft legislation recently produced in Alberta for public debate. Specifically, when you have time, look at Article 69, which outlines the ordering powers of the Health Information Commissioner. Again, we have some handouts.

Protection of personal health information is so vitally important that it requires the kind of control that makes everyone accountable, doctors, pharmacists, nurses and government.

We are aware that the minister has expressed concern about how to pay for such a position. It is a fair question. The MMA is prepared to assist government in identifying health expenditure savings sufficient to pay for the office. We believe that there are trade-offs that, if put to the public, would be readily acceptable. Money should not be a stumbling block. For example, we offer, the Minister of Health is currently funding the Manitoba Centre for Health Policy and Evaluation to the tune of about $1.8 million per year. Given a choice, the MMA believes that Manitobans would choose a privacy commissioner as a better use of this money. The additional savings could be used to deal with the crises that the minister could then allot to real provisions such as joint replacement and dialysis, just two examples.

We have confidence that the privacy commissioner will be well chosen by the government and that he/she will act responsibly and will have the power to issue binding orders. Our experience with government in using binding arbitration is a good example where independent thinking and power was successfully used to balance the right of individuals, in this case groups of physicians, with the policies of government.

The privacy commissioner is an important issue, because the MMA can foresee situations when it will be the government that is being called to task for its actions or failures to discharge its duties. Doctors, as advocates for their patients, believe that individuals, particularly those with disabilities or those dealing with mental health problems, should not be subject to a stressful, long, adversarial court process.

The MMA is very concerned that Bill 51 does not clearly articulate just what the government, the Minister of Health or the Health Information Network are. Are they trustees, information managers, both, or are they neither?

It is critical that these matters be determined, because there will be information exchanged between doctors and government. It has happened before, it happens now, it will happen in the future. Moreover, there are differences in what individual government entities need to know about the individuals, and these boundaries need to be clearly drawn and legally respected beforehand. Manitoba doctors want to focus on health care and not just worry that their data is safe.

The fact is that, frankly, most people do not trust government with their medical records. A recent Angus poll put the question to Canadians: Who should have access to your personal medical record? Well, the government ranked at the bottom. Only 14 percent thought government should have access. It is clear that government has a lot of work to do to convince the average citizen that government is indeed the protector of their personal health information. We believe that establishing a privacy commissioner with the power to make binding orders would boost your public and the public confidence.

Without the genuine safeguard that an independent privacy commissioner or Ombudsman with the power to make orders would provide, the MMA really cannot support Bill 51. The MMA strongly urges the government to reconsider its position on this matter and take its cue from other provinces such as B.C., Quebec and Alberta. The stakeholders have all requested a privacy commissioner with independence and real powers. The MMA has requested a privacy commissioner with independence and real powers. You could not get a more informed and representative sample of Manitobans. Please, listen to them. Thank you very much.

Mr. Chairperson: Thank you, Dr. Ritchie.

Mr. Praznik: Mr. Chair, I have one question for Dr. Ritchie, and it relates–I am sure he is aware that the Ombudsman is an independent officer of the Legislative Assembly currently. So I would not want to leave the impression that he was not aware of that. But my question has to deal with your comments with respect to a privacy commissioner and binding orders. In fact, the argument being used by many about the reason for having a privacy commissioner is because he in fact would have the power to make binding orders. Given the fact that your members are probably the largest holders of personal health information in the province, one of the largest holders collectively, given the fact that the whole concept of using an Ombudsman is to have an individual when there is a problem, a breach, inadvertent breach, I would assume, our difficulty with the way in which information is held, the concept of using an Ombudsman is someone who will then have the ability to sit down with the parties involved to come up with recommendations and solutions in a co-operative fashion. So that is why the bill is currently as it is structured.

Having the power to make binding orders means that that privacy commissioner, as you are recommending, can walk in then and make a binding order on the trustees, who are your members. My question today is: Have you canvassed all of your members in the province, and are you telling this committee that the vast majority of doctors in the province of Manitoba support having a privacy commissioner who will have the power to issue binding orders that may involve them in the way they conduct their practice, as opposed to the Ombudsman's role, which is one to work out these potential disputes in a co-operative manner. So my question is: Have you canvassed your members and have you put that question to them in canvassing them?

* (2320)

Mr. Ritchie: We canvass our members much like you probably canvass the other members of the Legislature, so I will go out on the neck and say, yes, we have canvassed them. Now, actually I am delegated to speak on this, and I cannot–you know, we are not lemmings, but I can assure you we do agree with the act, and if the act is done, if there is due process and the shortcomings that Mr. Sim outlined to you are looked at, if it is not especially onerous, then we are part of the process.

Mr. Chomiak: Thank you for the presentation. One of my hopes for the act is that the government would have canvassed all Manitobans with respect to their opinions and views on the provisions of this act so, as you indicated, all Manitobans who would know the type of information the government intends to put on line and that there will be access to, and all Manitobans have an opportunity, are afforded an opportunity to deal with many of those issues.

One of my concerns with respect to the act is the way that the patient-doctor relationship can be affected by the potential for information to be put on line. I think back to my career as a lawyer when I thought about solicitor-client privilege, and I thought about the occasions when much was told to me by a client that I am not sure if the client knew that that information would potentially be accessible, whether or not that relationship would be strained. I wonder if that is part

of the core difficulty that doctors might have with respect to some of the aspects of this legislation?

Mr. Ritchie: There are many ways of answering your question. Let me try again as I have in the past. The medical record the government uses, they use the term "medical record." Well, they are referring to everything, and we have no problem, we have been coerced into it, with the exchange of laboratory information, billing data, et cetera. What we are trying to make is a distinction between the material that is already public domain, and Dr. Brown is going to talk to it later, but there is material that is already "public domain," if you will, laboratory data, this sort of thing, administrative, et cetera, and that we have to live with. We are part and parcel of that. In fact, we have been told that if we do not get involved, we will not be able to bill on the network, so we are coerced into getting on the network.

The other difficulty is in clinical material and in clinical comments made to me by the patient. I do not think they have any right to that, and that is where I draw the line, and I think my colleagues would be very much on board.

Mr. Chomiak: Mr. Chairperson, so you would probably support the recommendations made by our previous presenter with respect to locked-box provisions, which I think would help alleviate that problem.

Mr. Ritchie: I find that possibility intriguing. We just got the Alberta material on Friday. The possibilities, oh, it just opens up a lot of hope, and I think it is quite intriguing. It also could spin off into other things, the ability of the patient to deny access at other times, and then, as Peter said, you get into a consent form that could even be time and site specific. So it has great implications, the locked box, but my primary concern is an Ombudsman with some puissance and ability to enforce.

Mr. Chairperson: Thank you, Dr. Ritchie, for your presentation today.

Margaret Soper. Do you have a handout for the committee? Thank you. Please proceed.

Ms. Margaret Soper (Consumers' Association of Canada, Manitoba Branch): Mr. Chairman, members of the committee, ladies and gentlemen, thank you, first of all, for allowing us to participate in this discussion and debate. We appreciate the opportunity.

The Consumers' Association of Canada, or CAC, as we call it, is an independent, nonprofit, volunteer organization that educates and informs consumers and advocates on their behalf to improve their quality of life.

Personal privacy has been noted as a priority with the Consumers' Association for at least 10 years, and I have to assure you that the resources of the Consumers' Association of Canada are limited, and so they take their priority-setting exercise very seriously. As use of computers grows exponentially, as access to the Internet increases on a daily basis, and as we recognize that databases can be held in any country of the world, it behooves us to recognize that the protection of personal privacy is indeed a very serious matter.

In Manitoba we have been active in the development of the Health Information Network, and already we have the Drug Program Information Network, which means that the information on the drugs and dosages that we are currently ingesting is available if one knows how to access it.

With regard to this Health Information Network, the Consumers' Association has been supportive of its development, because we recognize the potential that is there for those seeking medical treatment. If it is a traumatic situation, our record is on file and can be accessed or will be later on in its development. Also, of course, it is a tool for identifying abuse. However, the association's support has been contingent on the government of Manitoba proclaiming legislation that provides the legal safeguards required to protect the health information of Manitobans.

We are very pleased with the consultation process that has taken place, and the Consumers' Association has been involved at all levels, in the beginning with the focus groups; we have membership on the multistakeholder committee, the privacy and confidentiality committee. We have reacted to the draft legislations of both Bills 50 and 51. We have

responded to the draft legislation and we have met with the minister, and so the consultation has been fulsome.

However, we deeply regret that this Bill 51 indicates that the government of Manitoba has chosen to ignore the advice it sought and, further, this bill does not reflect the leadership that we see in provinces such as Quebec, British Columbia, Ontario, and now Alberta. We feel that Bill 51 does not provide adequate protection for the personal health information of Manitobans. The Consumers' Association of Canada, Manitoba branch, cannot support this bill as it is currently written.

We would hope that the government would see fit to rewrite this bill, and we make some recommendations for what we deem to be an improvement. The first one has to do with the scope of the legislation. The Consumers' Association feels that the scope of Bill 51 should, indeed must, include the private sector. CAC is concerned that employees of insurance companies, extended care facilities, physical fitness centres, and perhaps personal care homes, to name a few, are not covered by this bill. We have heard discussion on that point tonight, but I would point out to you, for example, that if you go to a jogging facility, it may not be considered to be a health care emporium. You are going there to become physically fit, and it has been suggested to us that such may not be included in the scope of this legislation.

Office of the privacy commissioner–the Consumers' Association has strongly recommended that an office of the privacy commissioner be created, because we feel this would give a strong signal to managers of personal health information and trustees that the government is serious, that the government recognizes the potential for leakage of information when the databases exist and that they would take serious steps to do something about it. We too feel that the privacy commissioner should be given powers to issue binding orders so that the average citizen, when an accident or misdemeanour occurs, has recourse that they can afford, that the privacy commissioner should be able to react to rumours, sniff, investigate, audit, adjudicate, and educate, educate the public as to what the bill means and inform them of their particular rights.

* (2330)

But to do all this, the privacy commissioner must have sufficient resources. The Ombudsman's office has recently publicly stated that there are insufficient resources for them to do the job, and this certainly gives our association pause.

The final recommendation, and we have many others, but we recognized when we saw the order in which we were to appear that it was going to be very late, and so we tried to concentrate on what we deemed to be the most important. Our final recommendation has to do with the restrictions on use of information and the disclosure without individual's consent. We feel that these two clauses, Sections 21 and 22, are very broadly worded. We would urge you to review them carefully and tighten up the wording.

We have one specific recommendation to make. With regard to research, health research, we recognize the value of using health information to conduct this much needed research, but we also recognize that the preservation of anonymity is essential. So therefore, the health information privacy committee, as named in the act, and the institutional research review committees will be accepting a great deal of responsibility. At the present time these two committees do not have a balanced membership, and we would urge, and probably in the regulations, that the membership of these two committees should be balanced to allow for effective participation by public representatives.

We have participated freely and gladly in this process. We urge the government of Manitoba to review Bill 51 as it is now written and to take into consideration the recommendations that you have heard over and over and over ad nauseam this evening, and hopefully you will come to the conclusion that we have come to, that they need your direct attention.

Mr. Praznik: Mr. Chair, I would like to thank the Consumers' Association for their work on the committee. I want to, just in addressing–I have a couple of questions and some information. I think it is very important when one makes presentations to make sure the information in the exchange is fully accurate. I fully respect the difference of opinion on extending this legislation to the insurance sector and that broader public sector, but I would refer you to the definitions in

the act that describe health care facilities with respect to personal care homes and other centres, because I think that deals with the concern that you flagged in part of your presentation, although it does not extend to insurance companies.

The other issue, I respect the difference on the privacy commissioner issue and the binding order, and we have had many discussions about that. I would also just flag tonight, because your point about consumer representation is a very, very important one, and I do not know if it was missed, but I believe the statute in Section 59(2) provides for at least one-quarter of the members on those committees to be consumers. My question is: Is that number one that you support or should it be higher or changed? Do you have advice on that particular point, since we are including it in the bill?

Ms. Soper: Yes, I should have congratulated the government on putting in that clause. What we ask for is that the membership be balanced and that the representation be equal and effective. Now, sometimes numbers do not necessarily achieve that result, and so therefore I did not speak specifically to the wording of the clause but made my point instead.

Mr. Praznik: Yes, just to clarify, because these points become the subject of potential amendment, I think the clause says, at least one-quarter must be from the public. So that current wording would be acceptable. Your advice to us would be a fine number, because it does become an issue of debate when we get to clause by clause, and I appreciate your comment on it, a little bit more specificity, although I appreciate the idea of a balance.

Ms. Soper: It is difficult to comment on the exact fraction, Mr. Minister, because we do not know how many other stakeholder groups are going to be involved but, yes, we are generally supportive of the direction that the government is taking.

Mr. Tim Sale (Crescentwood): Mr. Chairperson, the last couple of presenters and this presentation as well, there has been a kind of reference to the Ombudsman's office as being overloaded and not having the resources, but I am wondering whether it is really the issue so much of where the function of enforcing this act is located or whether it is a question of the clout to enforce, because it seems to me, it does not make much difference really whether you have a privacy commissioner that has the power, as you indicate, and that person is co-located with the Ombudsman, or whether you give the Ombudsman that power. The real issue is the power, not where the office is, and it seems to me in the last couple of presentations there has been a bit of a sort of sliding on that issue that, well, maybe, you know, if the Ombudsman had a couple more staff the Ombudsman could do the job. The issue is not the Ombudsman and the location, it is the power of a commissioner. Is that a fair comment?

Ms. Soper: Certainly we would agree that the powers to give binding orders takes precedence. However, the Ombudsman already has a number of matters to–I have to be careful here, because they cannot enforce, can they? They can only recommend.

An Honourable Member: That is the problem.

Ms. Soper: And that is the problem. However, we have considered this area very carefully and our considered opinion is that we need a privacy commissioner, as I said, to signal to the information managers and the public at large the importance of this legislation and the importance of protecting the personal privacy of Manitobans. If you added responsibilities to the Office of the Ombudsman, then the Ombudsman is going to have to prioritize the same way as the Consumers' Association of Canada has to prioritize.

Mr. Chomiak: I just have a couple of points. I thought it was very interesting that you talked about the privacy commissioner educating and you talked about the issue of rumour, because I think that has been one of the issues that has been overlooked in this whole process, that a privacy commissioner can function in a proactive role. For example, if the government is contemplating expanding the SmartHealth network to include something bizarre, the privacy commissioner could comment in advance: This, we think, is inappropriate for a government to be involved in, and would have the ability to deal with that issue even before it got down the road and was implemented and had a complaint procedure, which is in fact the way it is set up now. All the Ombudsman can do now is

comment or subsequently do an investigation about the use or misuse of privacy information, but the education role and the role of an expert in terms of commenting in advance and providing knowledge to the government, information to the government about their initiatives I think is a very important function. I think that is very important and crucial. I think that came out of your presentation. I thank you for that.

* (2340)

As you were going through your presentation, and I thought you gave government the credit for some of the consultation processes that have been put in place, but I am even more distressed about this act than I was coming in here tonight because it is very clear there is a consensus developing amongst the presenters that there are some major problems with this bill. At the very least, the government ought to take a step back and allow time for further information and presentation before they proceed. Would you agree with that general assessment?

Ms. Soper: First of all, to comment on the privacy commissioner. I believe that the privacy commissioner would act in a professional manner, and that professional manner would be to support the general direction that the community wants, whatever that might be.

With regard to the act, I believe we have already stated we feel that the act is in need of revision. We would be happy to consult on that revision, but, yes, there are some serious shortfalls and we hope they will be corrected.

Mr. Chairperson: Thank you very much for your presentation and your patience.

Bill Martin. If you have a handout, which you do, we will get that circulated and whenever you are ready, please proceed.

Mr. Bill Martin (Canadian Mental Health Association): Thank you for the opportunity to be here. One of our previous presentations some months ago, I was informed that Manitoba is one of the few provinces, if not the only province, that allows the public to do this kind of thing and so I thank all of the Legislature for that if that is true. I am impressed with your tenacity and your patience in going through this.

The Canadian Mental Health Association has been a participant in the process of SmartHealth. You know, we have been on the privacy and confidentiality committee and we have been on the stakeholders committee. Again, we want to express our appreciation for that and congratulate government for that process. We think that what is coming forward–the bill that is in front of us right now is going to be a vast improvement, if nothing else changes, for people with mental health problems. So we are winning already, but we think we could win a little more and that is why we are here. I would also express our appreciation for the special meeting that the minister set up for us to meet and dialogue and talk about those areas where we have not yet reached agreement, and that helped us to understand some of those points.

I am not going to go through all of the recommendations that have been put forward by those who preceded me because they have done just an excellent job, a better one than I think we could have done. We substantially agree with all of the comments, in particular that MARL has made and the Consumers' Association has made. One of the predecessors–I cannot let this one go by–said that we could take some money away from the Centre for Health Policy and Evaluation and could spend it better on this. I do not agree with that. I think the Centre for Health Policy and Evaluation is just an outstanding innovation by government, and I think we should keep it well funded.

The only, I guess, point that I want to make is one that has been made before as well. We initially were in favour and we still are in favour of a privacy commissioner, but we certainly are very adamant in saying that we should have the ability to make orders invested in either the privacy commissioner or the Ombudsman's office.

I just want to share one or two stories which we hear often from people who have mental health problems, and they go in and they authorize their doctor to provide information to an insurance company. The information goes off to the insurance company; they never get it, or they do not get it very easily. Sometimes they have been denied insurance coverage

and they do not know why. It is just a confounding thing that happens over and over again. If they get a lawyer, then they can get a hold of this information. What happens is the doctor says the insurance company is paying for this, so it belongs to the insurance company, and the person says, well, what about me? You know, it is my health. Well, I am sorry, sir, that is just not the case. It strikes me if we had a system set up where the Ombudsman could quickly just make an order on that, it would be a lot more efficient and effective.

I would address that there is a substantial cost, not only for the person who has to hire a lawyer and pay the fees to go to court and all that kind of thing, but there is a cost for the government to run the court system. I think it is more effective and more efficient if that person can make an order. One other statement, I think I mentioned it in the paper that I have handed out to you. There is a 30-day period allowed for a trustee to respond, and I cannot imagine why a hospital would take 30 days to say whether or not they would give me access to my health information.

You know, the bill seems to be weighted against the little guy in favour of the big guy, and institutions are wonderful things, we cannot get along without them, but the bigger they are, the more power they have. I would urge you to balance that power, and the Ombudsman is a place to put it. We are willing to support that. The minister outlined that there are substantial cost-sharing advantages to that. I agree with Mr. Sales' question or statement that the real issue is the power to act.

Mr. Praznik: Mr. Chair, I would like to thank Mr. Martin for his work and that of his association. We have had some very interesting discussions at some of those meetings and, as I have indicated to you, I appreciate that evolving or the need to continually look at this act as it evolves, and even if this committee's decision is to remain with an Ombudsman and that process as opposed to a binding-power one, it is certainly one we have acknowledged should be reviewed and continually watched to see if it does function in the way that we believe it will. If it does not, then that is why we provided for the review, and I make that commitment again here at the table tonight.

I appreciate your concern over 30 days, and looking at some of the people who worked on this, I think for the little common citizen 30 days may seem like a long time; for bureaucracy, it seems like a very short period of time. That is what we were attempting to balance, to have enough time that an application would come in and all of the people in the system who might in a worst-case scenario have to see that information to make a decision, that they would have it. So I do not know what a better time period is, but it was one that a lot of thought went into by the administrators.

I appreciate your concern and I thank you for your support and hard efforts. Yes, we will–I noticed in your presentation you look to be involved in the regulation process and, yes, that invitation we extend again tonight, to have the stakeholders involved in that very important process of developing the regulations. Thank you.

Mr. Chairperson: Any other further questions? Seeing none, I thank you for you presentation and your patience here tonight.

Mr. Martin: Thank you.

Mr. Chairperson: Very good. Dr. Ken Brown. I presume you have a presentation for us.

Mr. Ken Brown (Registrar, College of Physicians and Surgeons): I do.

Mr. Chairperson: Great. Thank you. When you are ready, please proceed.

Mr. Brown: Could I also introduce my colleague Dr. Bill Pope? We are both registrars with the College of Physicians and Surgeons and, as such, we are responsible for the administration of The Medical Act, which has been established to ensure that the people of Manitoba have good standards of medical practice to protect them.

We have a lot to do with this issue of confidentiality, privacy. Over 3,000 contacts are made each year with the college by the public concerned either about difficulties in access or problems with respect to confidentiality. We have established a complaints

committee and an investigation process to look into these, so we have many years of experience to draw upon and we are very familiar with the deep feelings that run through the community with respect to this very important issue.

In our submission, we are bringing your attention to one particular clause which we think requires an amendment, which is Clause 23(1), a clause which allows you to release information to the family, kin, those who are familiar with the patient, under certain circumstances. Now, a tenet of the code of ethics is that you cannot release information without the consent of the patient.

* (2350)

This particular clause has a negative option expressed, although it does say that you would have to comply with the standards of the profession. That is item (b); (c) goes on to say that you can release the information unless it was expressly denied by the patient, and we think this is far too liberal a clause to allow, because only those professions that have clauses which would limit the provision of information without the patient's consent would be bound by (b). We think that all parts of the system must be expected to pay attention to those patients who have made it clear, possibly not verbally, but through their actions, that they prefer a certain person not to be involved, and they should not be required to have expressly directed the nonrelease of the information. So we would ask that the following be added as another clause in that section "can be reasonably believed to be acceptable to the individual or his or her representative."

There are also two principles that we would like to bring to your attention, that is a specific amendment that we would like to propose where there are two principles. The one you have already heard about this evening. We also feel strongly that there should be a specific individual named, who has the direct responsibility to the Legislature for the security of the system. This individual should be empowered with binding powers and required to proactively, and this is a very important word, proactively ensure the integrity of the system and to take legal recourse against unauthorized access.

We see this as the main threat to the public is unauthorized access rather than difficulty in obtaining information. In this particular area of concern we think it important that the issue is that the individual would be reviewing the system, and that brings us to our first principle that we find it difficult to determine in reading the legislation to see a system described. We are of the opinion that the legislation should specifically and with explicit language describe the health information system in Manitoba and ensure that it is the responsibility of the government of Manitoba and indeed that it recognizes the threat that can occur through data linkage.

The WHEREAS you will note in the act refers to the electronic age in terms of the beautiful things that can happen if we have the right rules in place in order to ensure its orderly operation. Nowhere in the WHEREASes do we recognize the threat that can be involved in the linkage of databases, and we have grave concern that this is a loophole in the legislation that needs to be blocked. Those two points then and the amendment we offer for your consideration.

One small point. In the powers of the individual we are talking about, we would also like to see the penalty increased from $20,000 to $50,000.

Mr. Praznik: Thank you, Dr. Brown and again for the work of the College of Physicians and Surgeons in developing this legislation. We have had the opportunity to meet even after our consultation meeting, and I understand that your first recommendation with respect to a phrase can be reasonably believed to be acceptable to the individual, his or her representative. Since we have met I do not think our legal or drafting people have a difficulty, so it is very likely we will be bringing in an amendment to that effect. On the penalty section I was going to ask you what your recommendation was. When we last spoke, you were going to come back with it, and I take it to mirror the Alberta penalty of $50,000.

Mr. Brown: That is right. We started with 20 and we came up with $50,000.

Mr. Praznik: My last point. And I know we have discussed this around my table and in other meetings at great length, was the concern you flag about greater

systems and the concept, of course, of this bill was to follow information through no matter who has it and apply the same responsibility to trustees. Those who obviously take information illegally are subject to the Criminal Code but obviously there is a bit of a concept issue here, and I can appreciate that, but I just wanted to mention that tonight.

Thank you for your involvement. As I said, on your two main points, that particular amendment, the clarity that you first outlined and the penalty issue, we will hopefully be able to accommodate you. At least, I intend to consider those amendments.

Mr. Chomiak: Yes, thank you for the presentation, Dr. Brown, and I guess I am struck by the presentation. It does raise some issues that have not been canvassed tonight, and I appreciate your bringing them to our attention. We were certainly given the impression in the Legislature that the college was in favour of the legislation. That was the impression that was sort of left with us, so again one of the very significant advantages of this process is that it allows all members of the Legislature to converse with representatives from the public as well as organizations that have significant involvement to actually see what their comments are and to hopefully endeavour to improve the legislation.

Notwithstanding the minister's previous comments, there are obviously still concerns that the college has with respect to this legislation. Your reference to the security system and the one individual or individual we appoint at the Legislature, is that in line with the general recommendations concerning a privacy commissioner, or are we talking about something above and beyond that?

Mr. Brown: By the way, we see the act as a tremendous move forward from where we are now. We have strongly advocated for the act to deal directly with health information rather than being buried into other legislation, and we are appreciative of the fact that that is indeed the way the process has unfolded, and we also appreciate our involvement. However, to deal specifically with your question, we see this officer dealing more with a particular orientation toward inappropriate release of information. We see that the thrust, so it is not simply the power, the binding powers the individual would have, but our understanding is that the Ombudsman tends more to deal with the rights of an individual to obtain the rights to their access to information. We see a particular need to look at the system proactively, monitor the system, to have a clear responsibility to test the security of the system without any complaint being issued. This should be an independently currently concurrent process that would be carried out, and in this respect we are identifying this individual.

Whether that could be done by isolating the power for the Ombudsman, we really do not know, but we do know one thing clearly, that you need that orientation, you need those powers.

Mr. Chairperson: Thank you, Dr. Brown, for your presentation, and for staying as late as you have.

Maureen Hancharyk. Correct me if that is wrong in the pronunciation. A presentation to hand out. Thank you for your patience and your time tonight. Please proceed whenever you are ready.

Ms. Maureen Hancharyk (Manitoba Nurses' Union): Thank you. You were close. It is Maureen Hancharyk. Thank you for the opportunity, and as vice-president of the Manitoba Nurses' Union I am here representing 11,000 unionized nurses in Manitoba.

The Manitoba Nurses' Union supports the introduction of legislative measures to ensure the privacy of and the right of individuals to access personal health information. With the extensive use of electronic methods of data collection and storage in health care, health care consumers have become more concerned than ever about the confidentiality of information they give to health care providers. At the same time, we need improved mechanisms to ensure consumers' access to their own private health information held by physicians, hospitals and other persons defined as trustees in this legislation.

This bill has many of the features necessary to ensure that nurses, as health care providers, continue to enjoy the trust and confidence of our patients. However, there are aspects of the legislation that we feel need to be revised and/or strengthened. Our concerns centre around the enforceability of the guidelines contained in the legislation, the impact of certain loopholes which

would allow health care employers, insurance carriers and licensing bodies access to nurses' personal health information and the extension of the act to apply to the broader private sector, particularly insurance companies.

Section 22 of the bill specifies situations where personal health information can be disclosed by the trustee without the consent or authorization of the individual. This section has some very serious and disturbing ramifications for nurses. We are particularly concerned about the following sections of the legislation:

* (0000)

Section 22(2)(a) puts the onus on the individual to explicitly instruct the trustee against disclosure of their health information to other health care providers. Nurses as health care providers do need to know the personal health information of their patients in order to guarantee their own safety and to provide good care. On the other hand, nurses' personal health information should not be available without prior authorization to health professionals working for their employers, for instance.

The whole of Section (e) gives us cause for alarm. It directly affects the privacy of employees' health information and particularly of the personal health information of health professionals. We would like to receive clarification of the meaning of peer review in subsection (i). The MNU is completely opposed to the unauthorized disclosure of nurses' personal health records to the professional licensing bodies, MARN, MALPN and RPNAM, as is potentially allowed under subsection (iii). Nurses' health information is again exempt from authorization for disclosure under Section (iv) which accepts as a criteria the purpose of risk management assessment. Although the meaning here is unclear, it seems to imply employers' access to employees' or potential employees' health information.

Nurses are not only health care providers. They, obviously, sometimes need health care themselves. Nurses can be injured at work, requiring them to access Workers Compensation benefits, or they may need long-term disability benefits for which they are usually insured according to their collective agreement.

In these situations, the disclosure of nurses' personal health information by a trustee takes on additional implications. On average, about 600 nurses report workplace injury to the Workers Compensation Board every year. Several hundred nurses also access long-term disability insurance benefits each year, and for these nurses the confidentiality of their personal health information is very important to their financial security.

MNU assists nurses in accessing Workers Compensation benefits. We are extremely concerned that personal health information not directly relevant to the nurse's work-related injury or disability may be disclosed without the nurse's consent, potentially jeopardizing her right to receive benefits. Similarly, nurses who have need of long-term disability benefits should be confident that insurance carriers will not have unauthorized access to their health information, and that information will only be disclosed which is directly related to their medical condition. Section 22 gives us little confidence that nurses' rights will be protected in either of these scenarios.

Nurses who are members of the MNU are licensed to provide care under statutory power granted to their professional nursing bodies. These bodies are responsible for setting the professional standards by which nurses practise and for investigating for disciplinary purposes those nurses who may fail to abide by the standards set by them. This gives licensing bodies control over nurses' licence to practise, which is, in a sense, control over a nurse's professional career and her future employment.

The legislation in no way prevents the disclosure of the nurse's health records to the licensing body during a disciplinary investigation, and there may be cases when unauthorized access to health information is highly inappropriate, such as when a nurse's health files containing sensitive information may affect the judgment of the licensing body regarding her performance as a nurse.

We add our voice to those of others in the community in calling for a privacy commissioner to ensure that The Personal Health Information Act is adhered to. Even the best piece of legislation possible will not effectively protect the public interest if there is no adequate means of enforcement.

Under the current provisions of the act, enforcement lies predominately in the hands of the provincial Ombudsman. However, Part 4 grants the Ombudsman only very limited powers which he or she can exercise to guarantee the privacy of health information, restricted to making recommendations if a complaint has been received. In the case where an individual has been denied access to his or her personal health information and has made a complaint to the Ombudsman but has still been denied access, it is possible to appeal to the court. For most individuals, however, the time and cost of going to court to access their own health records will be prohibitive. Therefore, we believe the act should put in place a privacy commissioner who would be responsible for overseeing compliance with the act with the power to issue binding orders.

The commissioner should have a quasi-judicial role, including independence from the Legislature. She or he would also have access to sufficient resources to oversee the act and to protect the public interest in the handling of all health information. In its comments to the Health minister on the legislation, the Manitoba Association for Rights and Liberties commented on the need to balance the power and control of the minister over the health information network. If the Health department is to have control over this vast amount of sensitive, personal health information, there must be safeguards against potential abuse. This, again, makes it important that an independent privacy commissioner be put in place.

Our final concern regards the applicability of the legislation to the conduct of insurance carriers. Insurance companies provide health care benefits, including long-term disability coverage, vision and dental coverage and other extended health benefits. Beneficiaries must provide to their private health insurance carriers health information to substantiate their insurance claims. This information ought to be protected and the individuals' right to both privacy and access be guaranteed. Insurance companies may also be in communication with health professionals, and disclosure of personal information may occur inappropriately, given the loopholes for disclosure contained in Part 3 of the legislation. Insurance carriers should comply to the guidelines of this act, and they should be included in the definition of trustee.

In conclusion, we believe that this is an extremely important piece of legislation. We believe that the recommendations and comments we have put forward will, if implemented, make the legislation stronger and better able to protect the interests of nurses as health care providers and of our patients. We would urge the government to respect our concerns on the key issues put forward and amend the legislation.

Mr. Chairperson: Thank you, Ms. Hancharyk.

Mr. Praznik: Thank you for your presentation and involvement in the process. I have some questions of clarification, because obviously when there is some potential amendment we want to understand your position. I am sure some of these are shared by my critic, so perhaps we overlap a little in our questioning.

Firstly, in the early part of your presentation, I understand the concern that you are expressing of nurses who work in a particular facility or organization who also may be patients of that organization at some point, a nurse in a rural hospital who will also be in that rural hospital, the concern about who has access to your records. Currently under the act, as it stands, am employee of that facility would be governed by the same rules as any other citizen using that facility. I guess what I am trying to determine is whether or not your organization is advocating a special lock box, in essence, for employees of health facilities for their information, a stricter mechanism when they actually work in the facility, which obviously has a practical problem with the ability to treat. So if you could perhaps just give us a little more clarity on the position of MNU on that issue.

* (0010)

Ms. Hancharyk: Yes, I guess that is what we are asking. We are saying that in many situations nurses would be, in effect, patients of their own employer and, therefore, the employer should not have access to their own personal health information.

Mr. Praznik: I gather then, just to clarify–this is becoming a little clearer for me–what you are saying is the information garnered by the health facility with respect to its employees could not be used for purposes other than treatment of that illness. You could not use

that information, then, for an employee action or some other matter that was unrelated to treatment.

Ms. Hancharyk: Yes, that is what I am saying.

Mr. Praznik: Thank you on that point. The next point is again, I imagine, part of the same concern with respect to applying for disability issues and insurance. Just the way the scheme works of course is Workers Compensation, MPIC or any other body, to have access to your health information, requires your authorization. So that is part of the reason why that issue may not be dealt with specifically in this legislation, other than the case we have just discussed which we may have to clarify with an amendment. Workers Comp, for example, if you made an application, you have to provide the authority to them to see your information as part of your claim. This act would not give them a right to that information specifically.

Mr. Chair, the presenter raised the issue of disclosure of a nurse's personal health records during a disciplinary issue, and I appreciate that concern that the representative raises. My staff advise me that the authority for that to happen rests in the MARN act currently, the Manitoba Association of Registered Nurses act, and it may only be provided if it is related to the disciplinary action. So it is not a particular matter that is dealt with under here. I raise that because if that is a concern, if the current system is of concern to MNU members, then that should probably be raised in the context of the MARN act as opposed to this one. For information of the members of the committee, those are cases, for example, if a drug involvement or drug use was affecting the ability to do the work and that became an issue. So I just flag that because this is not the right statute to deal with that issue. It would be the MARN legislation.

The last issue that I raise is one of the ombudsman versus privacy commissioner, and there is a great deal of debate about that. Both are somewhat different systems. The ombudsmen by their nature attempt to bring parties together when there is an issue in dispute, particularly how you manage information, and attempts to work out a solution with all the players, whereas a privacy commissioner has the power to come in and make an order. One of the reasons we have recommended ombudsmen is so that people administering the system that we can have solutions that are administratively workable, as opposed to orders that may not work administratively. Given that nurses are a very significant part of the health care profession, many who are likely to become practitioners in nurse-managed care, I just ask this question–if Manitoba MNU members have viewed that issue in that light, because if we did have a privacy commissioner, they are likely the ones, could be ones who would have orders issued against them in how they deal with systems without necessarily having an opportunity to work out a reasonable administrative solution to an information problem.

So I just wondered if your position had been considered from that perspective.

Ms. Hancharyk: Well, you have raised many comments. I guess with respect to MARN, we felt that this legislation was not clear, that MARN would not have access to our personal health information. With respect to the Ombudsman, we felt that the Ombudsman did clearly not have enough power. As far as the power to issue binding orders, yes, we believe that the privacy commissioner should issue binding orders. We feel that the privacy commissioner should be independent of the government, should have more resources and should have more power, as opposed to the Ombudsman.

Mr. Chomiak: Mr. Chairperson, just a couple of comments, quasi-questions. There is nothing that would preclude the privacy commissioner from having the power to mediate prior to issuing binding orders, is there, do you think? If we could have the best of all worlds, would we not by having the privacy commissioner have the ability to issue some kind of a compromise solution prior to binding orders? Do you not think that would be reasonable, perhaps?

Ms. Hancharyk: It would be more reasonable than what is currently in place in this legislation, absolutely.

Mr. Chomiak: With all due respect to the minister's questions and comments to you earlier, I could understand why you have concerns with respect to Section 22. For example, Section 22 says, "A trustee may disclose personal health information without the consent of the individual" and, for example, "(o)

authorized or required by an enactment of Manitoba or Canada." That is very broad and very open. Any enactment by the Legislature would require, can authorize the trustee to disclose information, and further under subsection (k), the trustee can release your personal information if it is "required in anticipation of or for use in a civil or quasi-judicial proceeding." Workers Compensation is a quasi-judicial proceeding. There are enough loopholes, I think, and concerns in the act under Section 22 that I think it is significant that you flagged it, and it does require a significant tightening up to deal with some of the issues that have been raised by MNU and by other organizations. So I thank you for that.

Ms. Hancharyk: No comment.

Mr. Chairperson: Thank you very much for your presentation tonight.

Ms. Hancharyk: Thank you.

Mr. Chairperson: We are going to repeat the names that we had moved from the top of the list to the bottom, and I will start with Cynthia Devine. Cynthia Devine. I guess before I call the next name, I will ask the direction from the committee. Does that name drop off the list at this point in time? Is that agreeable? [agreed]

Brian Kelcey. Thank you for staying.

Mr. Brian Kelcey (Manitoba Taxpayers Association): If my watch is correct, I guess it is good morning, Mr. Chair.

Mr. Chairperson: Please proceed.

Mr. Kelcey: I have learnt with these presentations not to bring any detailed notes to pass around on the grounds that events may make those obsolete, and I suppose I was correct to do so today, so I apologize to those who may have wanted some written details. I came up here with the expectation that, for the various groups presenting on Bill 50 and raising concerns with them, those various groups, most of them were ahead of me in line and would deal with many of the specific concerns we raised. Some of them are still there, and I will be speaking to those.

In general, I want to say that our organization is very concerned about Bill 50 for two reasons. The first one is primarily a reactive one, that, of course, being concern over new and vague exemptions and changes in access to freedom of information, changes which we felt, and in many cases still feel dramatically reduce Manitobans' right to access information that they own or that is owned on their behalf by government, and exemptions and changes which invite abuse potentially by people at the political level or the bureaucratic level precisely because those exemptions were so vague.

You have heard comments on some of those again from other groups that were here today. To focus on some that are still in the legislation, assuming that the amendments that have been tabled by Ms. Vodrey go through, there are concerns, for instance, with Section 46(2)(b). Again, we raise this, that review of things like assessment information is a legitimate and very important process for dealing with local government issues and issues of property taxation. The language of the legislation as it is currently written creates the potential for abuse or denial of that information even if it is being pursued in a legitimate cause.

* (0020)

Section 19(e) still has a difficult and troublesome phrase in that it deals with documents that are proposed to be brought before cabinet, a very wide exemption which we feel can be applied to a variety of documents.

Peter Sim touched on one that is important to us as well, Section 39(2)(f), the issue of outside consultants. Now here is a case where the government is moving more and more to listen to outside consultants and contract to outside consultants for information and study. In many cases, we think that is a positive move if the information is good or if the government is saving money by doing so, but it is important for the government to remember, as it clearly has not in this legislation, that Section 39(2)(f), which was in the previous legislation and is now gone, that change effectively ensures that outside consulting, documents prepared by outside consultants, are no longer accessible to Manitobans who want to know what information is being gathered by these consultants. Just as it is not the government's money but it is the taxpayers' money, it is also the government's

information in this act but is in fact the taxpayers' information, because the information is being collected at their expense and in their name.

Finally, I hope members on the opposition side, as well as the government, will pay attention to one particular point dealing with the new amendments that have been tabled. We are happy, in general, with those, as they deal with many of the concerns we did raise with Ms. Vodrey this morning, but there is an inconsistency that has been brought in. In the amended Section 13(1), the text is still there if you read: A head of a public body may refuse to give access to a record or part of a record–and I emphasize this point here–if the head is of the opinion that the request is repetitive. Now Ms. Vodrey's amendment to 10(1)(b) I believe eliminates the words "in the opinion," seemingly agreeing with our concern that those words create too wide an exemption. However, that language is left in the text of 13(1). I would suspect that it has been left there in part because we are dealing in undue haste with many of the details of this bill. While I again want to thank Ms. Vodrey for paying attention to many of our concerns, the fact is that inconsistencies like the one I have just raised would not be here if the government had dealt with the second concern coming from our organization or rather anticipated that concern.

Dealing with this legislation was an opportunity, and the government's changes to it turned it into a problem. Where we should have had legislation that was improving what was an adequate Freedom of Information Act, we had legislation on the table which was dramatically creating problems. It is now less dramatic in those changes, thanks to the proposals that have been made, but there are still some serious concerns in there.

What the government had was an opportunity to do some of the proactive things that have been done elsewhere, to reduce, for instance, the ridiculous 30-year exemption on cabinet documents. There are other levels of government in other countries that have things like 30-year rules. Those are generally applying to issues of national security and military security and so forth. I hardly think that the Manitoba government needs to go so far as to have the longest exemption for cabinet documents of any jurisdiction of its kind in the country.

There are opportunities in terms of expanding the potential for electronic access, and instead the government seems to have looked more at electronic media as a merely negative tool to access documentation.

Finally, I first reviewed the British Columbia legislation this morning, my first opportunity to do so, and, frankly, it is outstanding, particularly in another area which still remains a concern for us in terms of exemptions based on cabinet confidences. The exemption based on cabinet confidence should only be there for deliberations of cabinet, a perfectly legitimate exemption, but instead the government is, with creeping amendments, creating the potential that is–expanding a potential that is already there to use the cabinet exemption to deal with a whole range of policy papers and discussions that have nothing to do with the free exchange and debate that must be allowed in cabinet sessions.

So those opportunities were missed in part because the government, in dealing with this legislation, failed to do, for instance, what has been done in Alberta, to look at this as a particularly sensitive, nonpartisan piece of legislation that if touched in the wrong way is likely to create anger amongst organizations from across the partisan spectrum and across the ideological spectrum, as you have seen in the past few days with the ad hoc group that has been dealing with this legislation and raising the specific concerns that I have spoken to tonight.

So, as a closing point on this, I do hope that, as Ms. Vodrey demonstrated earlier, members on the government side are willing to look at the specific concerns we have raised, in part because they are very reasonable and they merely help to protect freedom of access, and changes to them in no way would change the government's intent in bringing forward the legislation or at least its stated intent. While looking at that, I hope the government would also take away the lesson for this legislation that if it ever has opportunities like this with key sensitive pieces of legislation like this, let us see the text well in advance, because while there were consultation processes and while there is some discussion as to whether or not that was a good enough consultation process in terms of putting together the draft, the problems we had

specifically with this bill from the Taxpayers Association side particularly related to the wording of sections. That is exactly the kind of thing we cannot talk to you about and be proactive about unless we have seen the actual text that you are dealing with.

I would hope in that regard that whatever the differences between the government and the opposition are in terms of the rules, that you would resolve them so that in future for legislation like this we would automatically see a system like what was in place last year, so that we would have a great deal of time to look over these things and deal with possibilities of proactive amendment in a much more constructive way than we have had to with this particular piece of legislation in the past few days. We have been constructive. Unfortunately, time has made us less constructive, because people panic when you are dealing with short legislative sessions. That is why, if there is any harsh concern from our organization and any harsh tone on this, that we are so willing to be particularly condemnatory as far as the government's proposed changes to this bill. Thank you.

Mr. Chairperson: Thank you, Mr. Kelcey. Questions?

Ms. Diane McGifford (Osborne): Thank you, Mr. Chair and Mr. Kelcey. Thank you very much for staying into the early morning. I wanted to make some remarks and then ask a couple of questions.

You talked at the end about not really having the time to prepare your submission because of the squeeze on the legislative session. I did want to point out that it is a four-month session, so it has not been particularly short. I think the problem was more the time at which the legislation was introduced. Certainly, I can speak for my side of the House and say we are certainly very open to a split session, which would give groups such as yours and others the opportunity to review legislation at leisure through the summer and therefore make a very intelligent and well-researched presentation, not to say that yours was not intelligent. It certainly was.

I wanted to tell you–you wondered about the opposition and whether they would be putting forth amendments. We will be putting forth amendments on 13(1), 14(2)(b). I thank you and others for bringing my attention to the old 39(2)(f), and I will certainly be bringing that to the minister's attention. I will also be proposing amendments with regard to that long exemption and agree with your comments on it.

I wanted to ask your opinion on two things. Could you comment on the consultation process, and could you also comment on the privacy commissioner versus the ombudsman issue of which we have heard so much this evening?

Mr. Kelcey: On the consultation issue, the best way of answering the question is to say that I know very little about the consultation process that took place. That either tells you that I was asleep at the wheel, or the government was not advertising the process well enough. One way or the other, I think that we have now gone through a process that the government sees as legitimate and many of the major players do not see as legitimate. I am often wary of people arguing that there was not enough consultation, and what they are really trying to say is that they do not like the bill.

What comes clear to me about what has transpired over the past 72 odd hours is that we have demonstrated that by coming to the government with some specific suggestions, the government, well, the minister at least has had an opportunity to look and says, well, yes, these actually deal with, they match our intent and at the same time clarify the intent on our part. If that kind of thing can happen a few hours before the bill hits the hearing, then certainly it could have been done much more constructively in a more open consultation process with less bitterness.

* (0030)

So this is a case where the issue is not one of, groups are just saying the bill is bad and we want more consultation to delay it. We are suggesting that delays would be good, because we could give you an outstanding piece of legislation to pass in a few months time, and you could walk away with great legislation and all of the kudos for it, instead of walking away with all of the criticism for things that really could have been dealt with through frank discussion.

On the privacy commissioner issue and the issue with the ombudsman, I have been asked this repeatedly, and I have to say that while I am sympathetic to the question of a privacy commissioner and the arguments for one, our foremost priority I think as an organization is to strip away a lot of the legislative headaches and exemptions that are in the legislation and so forth first because, as I commented to the minister this morning, you can have new powers for the ombudsman, you can have new powers for a privacy commissioner, but if they are operating under a restrictive legislative framework that offers a lot of exemptions, it does not matter a damn how powerful they are to resolve disputes, because those disputes may never make it that far.

It is important to look at the enforcement issue, but I would rather have less to enforce. People keep speaking of the balance between privacy and freedom of access. I think balance is a bad word in that respect because it implies this evenness, when I think there are really only three exemptions you should be looking at–again, cabinet deliberations, private or personal information and information which, if it is collected in the form that is requested, would be so onerous a burden on government that it is really an impossible request to meet.

Other than those exemptions, we do not really see the need for many others because, again, it is the public's information, so with so few exemptions I am not sure you would need a privacy commissioner to police things, but, obviously, governments are so good at using exemptions that exist right now that, again, we are sympathetic to the need for more enforcement.

Ms. McGifford: Then vis-a-vis the privacy commissioner versus the Ombudsman, I gather you are saying at this point you really cannot give an opinion or choose not to because you would prefer to correct many other things in the legislation before making a decision with regard to that concern.

Mr. Kelcey: That is fairly accurate. The point is that a lot of people are looking at a privacy commissioner as the solution to all sorts of problems, and I think whether or not a privacy commissioner or the new powers for the Ombudsman, whether or not those are solutions depends an awful lot on what kind of problems you are trying to solve. The problems we are most alarmed by right now is that you have a lot of exemptions in the current legislation and even more exemptions in the proposed new legislation that would allow for department heads or politicians or whoever to prevent something from ever reaching that level, because it would take so much time and hassle that the enforcement mechanism would not really be appropriate.

If it is going to be productive and you are going to have a lot exemptions, yes, we see the need.

Mr. Praznik: Just one brief comment on that point for Mr. Kelcey's information. When we considered these options, one of the concerns that we had in a small province like Manitoba having officers of the Legislative Assembly, where you set up an office to do a great deal of work–you have to hire a person to fill that office; they hire staff to support them–it was our thinking that if, in fact, the work of the privacy commissioner was not all that great, that there was not a huge amount of work to be done, that it would be very difficult to combine that office with another or reduce it once you had created it.

So our thinking was, for both bills, the health bill and the general bill, that if we could put that function of supervising the legislation into an existing office, staff that office accordingly, then we could see over a period of years whether or not there was enough work to actually justify creating an additional officer of the Legislative Assembly with a commensurate salary.

My experience in government has been we have a number of officers in the Legislative Assembly whose workloads are not sufficient to justify a full-time position in a province this small. I share with him, I know when we created the Autopac appeal commission, and when we brought in the no-fault auto insurance, we hired full-time commissioners thinking it would be a similar situation to Workers Compensation, which in the space of a year, I do not know, had a half-dozen or so appeals, so a minimal number of appeals, so we did not want to be in that position of creating an office that may not have the workload to justify the salary.

I know there is some concern expressed about staffing the Ombudsman's office, but the member would also be aware that that requires, whether it be this or it be another office, the involvement of the Legislative Assembly Management Commission which takes some all-party involvement.

Mr. Chairperson: Mr. Kelcey, any final comment?

Mr. Kelcey: A couple of comments to that. Yes, I agree with the minister in the sense that you do not want to be creating offices where there is no work at public expense. That said, that is exactly the point I had raised, is that we feel that if you have more exemptions, that is going to create more chaos, more work, with less result. If you need more enforcement, we would agree that a privacy commissioner would be useful. Our ideal is to have a situation where government just provides the information instead of hassling everybody for it, and there is less need for enforcement. I think it is a pretty simple ideal to strive for, and nobody seems to be striving for it today.

That is why I want to close by raising an issue that is related to Mr. Praznik's comments, and that is, again, this morning, one of the positions communicated to us by government was that in a number of cases where there were vague clauses or vague exemptions, we were arguing back and forth, and frequently we found ourselves arguing about, well, when this gets to court this is how it is going to be interpreted. Again, I would hope that in the next few days, while you still have time to deal with this legislation, we would stop focusing on the enforcement issues for the moment and arguing about different models of enforcement and look at just what it is you are enforcing first.

I realize the enforcement issue is important, but all of those problems of enforcement are drawn from the nature of the legislation that is there. If you have legislation which is almost designed as some of the sections which Mrs. Vodrey has amended seem to be, it is almost designed to end up in court in six months time. You do not have freedom of information legislation; you have legislation which is designed to create a bureaucratic process, so people can get bogged down in asking for information.

Get rid of those processes. If the system is working, you will not need a privacy commissioner because Manitoba's government information will be accessible, and that will be the ultimate test of whether this legislation is actually doing what the government says it will be.

Mr. Chairperson: Thank you, Mr. Kelcey, for your presentation and your patience here tonight.

I would now call Glen Murray. Glen Murray. He is not here so his name will be removed from the list. Robert Andrew Drummond. He is not here. His name will be removed from the list.

Mr. Sale: Mr. Chairperson, we have received a presentation from Mr. Drummond. Were you just going to–

Mr. Chairperson: I was just going to announce it. I just have a written submission. Copies have been made for committee members and are being distributed. I ask, is it the will of the committee to have the submission appear in the back of the committee transcript prepared for today's meeting? [agreed]

The hour now being–

Mr. Praznik: Yes, Mr. Chair, I believe the understanding was, this committee would be called for 3 p.m. tomorrow afternoon to deal with clause-by-clause consideration, so I gather that is our understanding with which we adjourn. It has been a long night, and I think committee should rise.

Mr. Chairperson: That has been announced in the House, and I am sure everybody will be informed. The hour now being 12:35 a.m., June 24, committee rise.

COMMITTEE ROSE AT: 12:39 a.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 50

First of all, I would like to thank the members of the committee for allowing me the opportunity to present

my views on the amendments to the FOI act as contained in Bill 50.

Speaking to this committee is a bit of an exception from my usual role since, as assistant to the Independent Liberal Members Caucus, I usually have a lot to say about government bills, but I also usually get someone else to say it for me. Tonight, however, I get to put my words on the record first-hand because of the serious nature of the Bill 50 that is before this committee.

I have two specific reasons that I am appearing before you.

First, I believe that access to government information is in the best interests of the public, who in fact own that information, and, second, since I use the Freedom of Information as a research tool, I have some specific observations on the nature of the bill before this committee.

The Liberal caucus has a tradition in this regard. A number of years ago Sherry Wiebe, then the director of Liberal caucus research, also made a presentation regarding the FOI act. Well, many things have changed since 1993, not to mention the fortunes of the Liberal Party, but I regret to say that the observations Ms. Wiebe made are still relevant, and instead of going forward, with the passage of Bill 50 this government has in fact taken a step backwards.

The proposed changes to The Freedom of Information Act as represented by Bill 50 will significantly limit the ability of the public and "opposition parties" to gain access to what should be considered public information, not government information.

With limited resources the Liberal caucus makes extensive use of the FOI system. It is a valuable process that offers a glimpse of how government works or does not work. My job after all is to research material that can be used in Question Period. Without access to information about how this government operates, opposition parties will be forced to operate on rumour and innuendo, two qualities which the government has greatly denounced in Question Period.

The current legislation has problems, but it was an acceptable compromise between the public's right to know and the government's obligation to protect sensitive information. I should also add that I do not find the protection of personal information in any way in conflict with the need to maintain the public's right to access of information. If there is a conflict, it is because this government has chosen to make one by including amendments to the right of personal privacy with changes to the access of information legislation in the same bill.

I have no doubt that the reasoning behind such a move is not based on the interests of protecting privacy but this government's attempts at clamping down on the FOI act.

In the last year, the Liberal caucus has filed 53 requests for information on everything ranging from why a quarter-million dollars in public money was spent on a legislative fountain that did not work to how much government ministers spend on meals and transportation during the year.

Out of those requests, about 30 percent have been denied in one way or another and only three have resulted in an appeal. I still have one appeal regarding the drug betaseron outstanding. The average response time is about 28 days, even if the department responds by telling me they do not have any information.

To give you an example of what sort of FOI I file, I have even a recent FOI request on the Minister of Health, the Honourable Darren Praznik, who claimed $1,519.37 in expenses since he was appointed Minister of Health for the last year. Like the minister's expense account, it is not important information, but it adds up.

The current legislation had what my predecessor Sherry Wiebe called Mack truck clauses, so named because these exemptions to the release of information were so broad you could drive a semi through them. My particular favourite is Section 43, where information is denied because that information is contrary to the economic interests of Manitobans, whatever that means. It is obviously intended to be catchall refusal, since it is my experience that when a government department seeks to find a reason to deny access to information they usually include three reasons

just in case the Ombudsman rules the other two out of order.

The proposed Bill 50 goes one step further. The Mack truck clauses are now large enough to drive a locomotive through.

Starting from 11(1) Time limit for responding, under the current legislation a government department has 30 days to reply to a request for information and exemptions to the 30-day limit clearly spelled out. The new amendments now only call for the department to make "every reasonable effort" to respond to a request in 30 days.

The committee should not be surprised to find that, according to the Department of Finance, vacation time and sick leave were considered a reasonable excuse not to fulfill an FOI request in 30 days. I also have a letter from the Ombudsman's office indicating that such reasonable excuses are not covered under the current FOI act. With the new bill I am sure that these excuses will not be considered valid. This section should be amended by removing the word "reasonable."

Section 13(1) Repetitive or abusive request: It seems now that a department head will be allowed to deny a request if, in their opinion, that request is repetitive or abusive. Even with the proposed amendments, I find this section repulsive. I wonder how long it will be before I am declared an enemy of the state since my name is on most of the 53 requests sent in by the Liberal caucus. Having read the Ombudsman's report, I was not aware that abuse of the FOI system was a problem at all. It seems, however, this is a perfect excuse not to give a person information–because he asked for it before. If this is a problem, then the Ombudsman's office should make this recommendation, not the individual department.

32(1) Information that will be available to the public: Section 32, Information that will be available to the public is also an interesting section. Under this section it appears that information that will be made public in 90 days will be refused access under The Freedom of Information Act. And if that information is not made available, then your 30-day FOI request will then be started. What the act does not say is that at the end of 30 days the department could then request another extension or refuse your request. It seems that is very open ended.

In general, the amendments offered in Bill 50 are vague and open to arbitrary interpretation. For the FOI act to be effective it must set specific goals and issue reasons to release information.

Under the guise of protecting personal information, this government has chosen to weaken a system that can empower members of the public when they are faced by a government that will not answer their questions. Bill 50 gives the government every opportunity to refuse access to information but no compelling reason to release any information.

If Bill 50 passes in its present form, it will significantly make getting information about this government harder to get than it already is. If this is the goal of the government with modifications to The Freedom of Information Act, they have achieved it.

Thank you.

Robert Andrew Drummond.