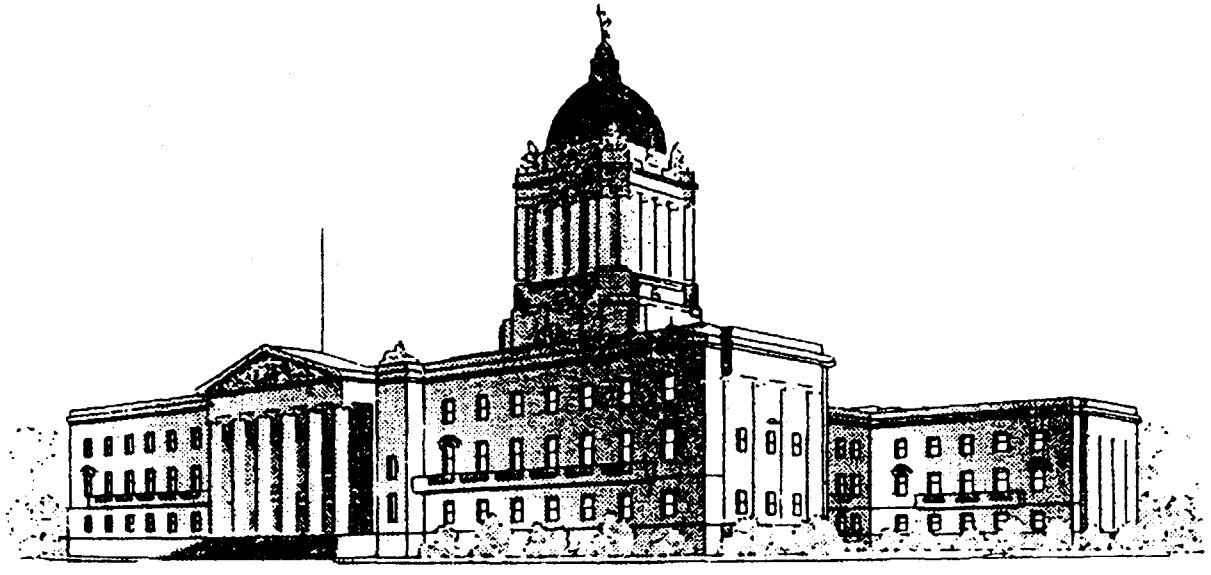
Third Session - Thirty-Sixth Legislature

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

Wednesday, June 25, 1997

TIME – 3:45 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

VICE-CHAIRPERSON – Mr. Gerry McAlpine (Sturgeon Creek)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Derkach, Praznik, Hon. Mrs. Vodrey

Messrs. Chomiak, McAlpine, Ms. McGifford, Messrs. Rocan, Sale, Struthers, Tweed

Substitutions:

Ms. Barrett for Ms. McGifford
Hon. Mr. Gilleshammer for Hon. Mrs. Vodrey
Mr. Helwer for Hon. Mr. Cummings
Mr. Penner for Hon. Mr. Derkach

APPEARING:

Ms. Heather McLaren, Legislative Analyst
Ms. Val Perry, Legislative Counsel

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

Bill 61, The Sustainable Development and Consequential Amendments Act

* * *

Clerk Assistant (Ms. Shabnam Datta): Good afternoon. Would the Standing Committee on Economic Development please come to order. Before the committee can proceed with the business before it, it must elect a Vice-Chairperson.

Mr. Denis Rocan (Gladstone): I move Mr. McAlpine.

Clerk Assistant: Mr. McAlpine has been nominated as Vice-Chair of the Economic Development standing committee. Are there any other nominations? Hearing none, Mr. McAlpine, please take the Chair.

Mr. Vice-Chairperson: Good afternoon. Will the Standing Committee on Economic Development please come to order. This afternoon, the committee will be considering clause by clause Bill 41, Bill 50, Bill 51 and Bill 61.

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

Mr. Vice-Chairperson: Is it the will of the committee that we proceed with Bill 50, The Freedom of Information and Protection of Privacy and Consequential Amendments Act? [agreed]

Does the honourable minister have an opening statement?

Hon. Rosemary Vodrey (Minister of Culture, Heritage and Citizenship): I do have some opening remarks. I am very pleased to be here to present Bill 50, The Freedom of Information and Protection of Privacy and Consequential Amendments Act for committee review.

In developing this new legislation, we took a close look at international trends in information access, the impact of technology and the views of Manitobans. We looked at our own experience. We examined legislation elsewhere and learned from it, and we strove to understand the issues that matter to Manitobans. We have come forward with the bill based on well-understood and internationally accepted information rights to achieve a careful balance of the right to access information and the right to protection of personal privacy.

We have tried to make this legislation as clear as possible, so people can easily understand how it works. We have also recognized the potential impacts of technology on the management of information in order to develop processes and guidelines to support prudent decision making now and in the future.

I would just like to speak briefly about the fundamental principles at the heart of the legislation that we are reviewing. This bill will uphold the basic right to access government information including information about oneself which was the foundation of the earlier FOI Act. The most important changes in this bill are the provisions providing privacy protection for personal information for Manitobans. These provisions are founded upon the long-established and internationally accepted principles of fair information practices, namely that information should be collected for an identified purpose, that individuals consent to the collection, use and disclosure of personal information, that an individual may see and correct personal information and that personal information is managed in a way that is open, accountable and secure. A further important principle is that there must be a mechanism for independent review and appeal of decisions related to personal privacy.

(Mr. Chairperson in the Chair)

We have also based this legislation on Manitoba's experience with its current FOI Act. Manitoba has performed well under this legislation. Ninety percent of inquiries are answered within the time period prescribed, I am informed, and three-quarters of the requests are granted in full or in part with relatively few complaints.

Last year, we distributed a discussion paper widely through public libraries, government offices and the Internet and called for responses from individuals and groups throughout the province. The many thoughtful responses we received told us that Manitobans value privacy and access and expect government to exercise prudent stewardship of their personal information.

We have looked at legislation and experiences in other jurisdictions, especially British Columbia and Alberta, but also Saskatchewan and Ontario and the federal government. We believe that our work, research and analysis have produced a bill that will serve Manitobans well, one that upholds rights of access and protects personal privacy.

I would like to highlight some of the most important features of Bill 50. As I noted, the right of access to information held by public bodies has been upheld and now, in fact, has been extended to apply to the records held by local public bodies, such as municipalities, school divisions and so on. This right of access is qualified by certain exceptions as is the case in all such legislation. Within the new bill, we have clarified certain exceptions so that this legislation can be understood and applied more consistently. We have incorporated some provisions relating to the records of local public bodies, and we have added a provision for people to make a request orally where there is a disability or a language barrier. Within the access provisions of this act, there will be a requirement to notify third parties when access to records is being considered that may unreasonably infringe on their privacy. The act will also provide guidance in determining when access would constitute an infringement of another's privacy.

I noted when we heard presentations at committee that I would be making a number of amendments as a result of a meeting I had with a coalition of groups interested in this bill, and I will just outline the clauses. The explanation has been given on the record.

* (1550)

I am making an amendment to Clause 10(1)(b) to deal with the concern of "the head is of the opinion" and we will be striking out those words. I will also be amending subsection 13(1) where there were some

concerns that the wording was too broad, and I also recognize there was concern expressed that the phrase "relating to government decisions or the formulation of government policy" appeared to create too broad an exception, so we will therefore propose new wording "relating directly" which makes it clear that the record must relate directly to government decisions or policy.

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

I also have at least two other minor amendments to sections of the bill to deal with similar types of concerns where it may appear to be limiting, and I am more than happy to circulate those to members of the committee. I am very pleased that this bill will provide privacy protection for Manitobans. In this bill, we have clearly defined what constitutes personal information and outlined how it may be collected to ensure that privacy is respected. This means that personal information should be collected directly from individuals and that they must be informed of the purposes behind its collection.

In specific circumstances, this new act will permit the collection of personal information through other channels. These circumstances may include assisting law enforcement agencies, enforcing a maintenance order under The Family Maintenance Act, or auditing, monitoring or evaluation of government or other public bodies. However, this legislation will also ensure that personal information may only be used for the purpose for which it was collected or for a consistent purpose, or with the consent of the individual, or as authorized by the legislation. Individuals will have the right to access their personal information and to correct any errors. There is also an onus on public bodies to take reasonable steps to ensure the accuracy of personal information in their possession. In addition, this bill will require that public bodies holding personal information take reasonable security precautions to prevent unauthorized access, use, disclosure or destruction of this data.

Privacy protection must be maintained in our current and future working environments which are increasingly shaped by the rapidly changing world of technology. This legislation recognizes that reality and has built in a privacy assessment review process that will provide a thoughtful assessment of proposals for uses or disclosures not specified in the act. This is a unique aspect of Manitoba's legislation.

The privacy assessment review will be carried out by a committee of officials knowledgeable in privacy and record keeping. Ultimately, responsibility for decision making rests, as it should and as it must, with the elected officials of the public body. This responsibility is fundamental to our democratic tradition, and we recognize that. This process is set up primarily for bulk and volume data requests that contain a lot of personal information about Manitobans. These types of requests could have wide variations and applications that must be looked at carefully. There is an additional accountability under this act and that is that we must tell Manitobans about the uses and disclosures of the types of personal information we hold in trust for them. This will be done in the directory prescribed by the act.

A necessary component of access and privacy legislation is the mechanism for independent review and appeal of decisions. In this legislation, we build on the respected and competent office of the provincial Ombudsman. The Ombudsman will continue to review complaints and to negotiate and/or make recommendations regarding access or third party privacy. The powers of this office will be strengthened to include the power to go to court on matters involving access, to commission research, to conduct audits on access and privacy protection issues and to public special reports and comment freely on any matter.

Each year in the Manitoba Legislature, an annual report will be tabled concerning the work of the Ombudsman's office under this act. My department will also continue to publish an annual report. This act calls for the review of this legislation within five years. This new legislation will provide broader access to information held by public bodies, including for the first time the records of local government bodies, educational bodies and health care bodies. When fully implemented, all Manitobans will benefit from a consistent approach across all of these public bodies, a

consistent approach to handling requests for access, for handling personal information in a way that protects personal privacy and for being open in declaring what information they hold and how personal information is being used.

I believe, Mr. Chair, we have produced a bill that will respect the rights of Manitobans for access to information while safeguarding the right to privacy. With that, that concludes my remarks, and I look forward to the remarks of the member opposite.

Mr. Chairperson: We thank the minister for those comments. Does the critic from the official opposition have an opening statement?

Ms. Diane McGifford (Osborne): Thank you, Mr. Chair. I do have an opening statement. My statement will be very brief, since I have spoken extensively in the House and also spoken extensively both during Question Period and during the presentations the other evening, Monday evening. I want to thank the minister for her statement.

We have several concerns about this particular bill, some of them more pressing than others. I notice that The Freedom of Information Act, the unamended act, was initially proclaimed in 1988, and this government has been very proud of the fact that it proclaimed the act. Yet, Mr. Chair, I submit that the government has been somewhat disrespectful in its implementation of that act. I think this was clear from several of the presentations. Presenters told us of their struggles to obtain information under The Freedom of Information Act. I remember particularly the Manitoba Library Association who made the point that one of the Freedom of Information applications that it had filed was in an attempt to get the presentations of government departments, the responses to the discussion paper that had come out of the Minister of Culture, Heritage and Citizenship's office, and they were denied access to these submissions on Freedom of Information which seems to be quite ironic.

The Ombudsman's 1994 Report, I think, is very famous for its, I suppose, indirect criticism of the government but certainly its questioning of whether this government respected the spirit of the act that it proclaimed in 1988. The CBC and the Free Press are on record as having gone all the way to court in order to obtain information. When I spoke in the House, I detailed many examples of the misuse of the ways in which The Freedom of Information Act was not really honoured. I do not know how many individuals have tried to get information and been denied that information and have simply given up. Some of them have, indeed, gone to the Ombudsman, but most individuals do not have the resources, either emotional or financial, to proceed to court.

So I think while in the 1988 Freedom of Information Act the theory was grand, the practice on the part of this government did not match the theory. Another area of contention, of course, was the legislative review process. The 1988 act was to be reviewed in three years. I think the review did not begin till 1992; some of it continued into 1993. No report has ever come out of it. I believe I was told by the Manitoba Library Association that they tried to get this report and were unsuccessful. So, Mr. Chair, please excuse me and my side of the House if we have little faith in this government's commitment to Freedom of Information, but the facts are on the record and there is not much reason for us to have faith in the government's willingness to respect Freedom of Information.

* (1600)

Now, the second point I want to make is that I disagree with the minister when she talks about the wide-ranging consultation process. I think that this legislation was conceived in secrecy, hatched in mystery, and I do not think we should be surprised that it is surrounded by suspicion. I think that was very clear in the presentations the other evening. For example, I think it was Mr. Vallance-Jones from the Association of Canadian Journalists who told us that he found out quite accidentally that the amendments to this legislation were being considered. He happened to be in the Legislative Library and was looking for something when he stumbled across the discussion paper.

So I know that the minister has said that the discussion paper was widely circulated, but it seems to me that I have heard from person after person, group after group, that indeed the discussion paper was not widely circulated, that they did not know about it. In

fact, the secrecy surrounding this legislation, I think, was the prime reason for the founding of a coalition of citizens groups which quickly formed themselves into a coalition just last week. It was an interesting array of groups. They were all dedicated to trying to do something about this Freedom of Information legislation, and they did indeed succeed. I know they met with the minister, and I think the minister very wisely listened to some of their concerns.

However, the fact remains that there have not been public consultations, and I know I have said before and I will say once more, that in Alberta there was an all-party committee which toured the province. I think it went to 16 different communities, and the committee heard over 200 presentations. These presentations were brought together in a publication, the title of which alludes me at this moment, but this publication was then distributed to many groups who could respond once more. That seems to me to be an open process, not sending out a discussion paper to certain select groups.

Members of the public made it very clear the other night in this very room that they do not feel that they have been consulted, and they asked for delay in the legislation in order that these consultations could take place. My side of the House believes the public should have the opportunity to be consulted on legislation that affects the lives and rights of each and every Manitoban. So, therefore, in order to allow consultations to take place, we in the House did move a six-month delay. We suggested that through this hoist motion that the legislation that had been presented could serve as a white paper or a draft, that public groups could respond to this. The government members denied this suggestion and so no hoist has taken place. Consequently, the public presentations will not take place.

Now, at this time, the minister proclaimed that the reason she could not agree to a delay in public consultations was that she was very concerned about privacy for Manitobans and of course, we, too, are concerned about privacy, but we point out that because of this government's not taking care of privacy concerns for several years, Manitobans have mucked along and we assume they could get along for a few more months and would benefit ultimately by a careful piece of legislation into which they had had specific input, and that is not going to happen. We did suggest to the minister that she proclaim the privacy aspects of the legislation–this was the second solution we gave her for public consultations–proclaim the privacy sections, clauses of the legislation and then have consultations. There are still many major matters to be decided. This was turned down by the minister, too. So, I think, that we presented two very solid alternatives, and I am sorry the minister has not chosen to listen to those.

I have said that the minister, in her wisdom, did meet with a coalition of citizens groups and that she has proposed some amendments. Those amendments we think, by and large, are very good amendments. We will be adding a few other amendments. Some of them are an attempt to fine tune this legislation. Of course, as I am sure the minister expects, we will be moving at least one major amendment and that will relate to the creation of a privacy and information officer. That will require, of course, a series of amendments.

I want to point out to the minister that the other night, nine out of 11 of the presenters on Bill 50, and I think all of the presenters on Bill 51, spoke in favour of a privacy and information commissioner. I wish the minister would listen to those public voices. I want to also point out when I say nine out of 11 presenters spoke in favour that one presenter was not addressing this issue. I am referring, of course, here to Virginia Menzies from City Hall, the city Ombudsman, and her presentation did not really apply to this legislation other than she asked that the City of Winnipeg be exempt from this legislation in the belief that they had very good legislation of their own, thank you very much. There was one other presenter who was not either for or against the privacy commissioner. In his opinion, the legislation was so flawed that he was not even at a position where he could make a decision as to the best way of overseeing this act, so he bowed out on that particular one.

I want to tell the minister that we certainly agree with the principles in forming the act. We certainly agree with the purposes of the act. We do not think that the act has the clout, has the teeth, as one of the presenters said the other night, to work.

There is one other thing that I want to add in closing my remarks and that is, Mr. Chair, I want officially and on the record to apologize to Ms. Virginia Menzies, the city Ombudsman. Ms. Menzies, in good faith and from a concern for the effect of this legislation on the city and on citizens of Winnipeg, appeared before this committee to make a presentation, and I do not think she was treated very well. I think the member for Minnedosa (Mr. Gilleshammer) took the opportunity to circulate a letter, an action which given the contents of the letter could only be viewed as a deliberate attempt to embarrass the presenter. I do not think that is the way we should treat presenters to this committee.

* (1610)

I think the member for Minnedosa, quite frankly, owes Ms. Menzies an apology, a personal apology, and here I apologize on behalf of my caucus. We really regret that this presenter was treated so rudely and so shabbily, and we want to assure her that not all members of the committee approved of this kind of action. I want to say that I spoke with her personally this morning, and she did say that the wind was knocked right out of her sails, that she was not expecting the response that she received.

In closing, I want to say that I hope she will not judge us all by the behaviour of this particular member, and I hope that incident will not prevent her from making presentation to this committee at a future date. With those few remarks, I close.

Mr. Chairperson: During the consideration of a bill, the preamble, the title and the table of contents are postponed until all other clauses have been considered in their proper order. Shall Clause 1 pass?

Ms. McGifford: I have a question on Clause 1, and that is to do with an educational body. First of all, I read that an educational–I do not need to read it, because we can all read it–but I notice it says that an educational body means the University of Manitoba, and I wonder if the universities of Winnipeg and Brandon are not included here or what the reason for that is.

Mrs. Vodrey: If the member would note (c) which says, and I quote, "a university established under The Universities Establishment Act." It does include the other universities.

Ms. McGifford: I notice too an educational body means any other body designated as an educational body in the regulations, and I wonder why this needs to be done by regulation as opposed to being put right into the act. My side of the House, of course, has been concerned by so much vital information and so many controls being embedded in regulation as opposed to being up front and clear to the public in legislation, and I wonder what the reason for this is.

Mrs. Vodrey: This is to provide some flexibility for any future designations. It would then allow any future designations to be included by regulation as opposed to necessarily amending the act. It is a more timely and flexible mechanism.

Ms. McGifford: Will private schools be covered here?

Mrs. Vodrey: No, private schools are not included within the scope of FIPPA. Private schools are not regulated public bodies. They receive grants from public funds as do many organizations and institutions, including entities such as agencies funded in part by Family Services, example, the Manitoba society for persons with disabilities or the CNIB. Funding has not been used as a criterion for inclusion of an entity under FIPPA because of the wide variety of levels, formulas, and organizations involved.

Mr. Chairperson: Clause 1–pass. Shall Clause 2 pass?

Ms. McGifford: Mr. Chair, I wonder if you could slow things down a little bit.

Mr. Chairperson: Ms. McGifford, after one follows two. Shall Clause 2 pass?

Mr. Dave Chomiak (Kildonan): Is the minister, in light of the presentations made by the various individuals to this committee, confident that in fact the purposes as outlined in this act adequately reflect the concerns expressed by the individuals who made representation?

Mrs. Vodrey: Yes, I have this confidence. If the member has an issue that he would like to bring forward, then I am more than pleased to listen to it.

Mr. Chairperson: Clause 2–pass; Clause 3–pass; Clause 4–pass; Clause 5(1)–pass; Clause 5(2)–pass; Clause 5(3)–pass; Clause 6–pass; Clause 7(1)–pass; Clause 7(2)–pass; Clause 7(3)–pass; Clause 8(1)–pass; Clause 8(2)–pass; Clause 8(3)–pass; Clause 9–pass; Clause 10(1).

Mrs. Vodrey: I would like to make an amendment here to Clause 10(1)(b). During the public hearings the other evening, I said I would be making an amendment here because concern was expressed that the use of the phrase "the head is of the opinion" would be subjective and therefore reduce access to information. This was not our intent, Mr. Chair, therefore I will be proposing an amendment that will strike out those words. With that, I move

THAT clause 10(1)(b) of the Bill be amended by striking out "the head is of the opinion that".

[French version]

Il est proposé d'amender l'alinéa 10(1)b) du projet de loi par suppression de "selon lui,".

Ms. McGifford: I have already said on the record that we appreciated the minister's meeting with the coalition of concerned citizens and we appreciate her amendment; however, we believe that we have a better amendment, one that is more thorough. I do not know whether it is appropriate for me to now read my amendment. No, it is not, I understand. I just want to go on record then as saying that while we recognize the minister's amendment is an improvement on the original, we do have an amendment.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 10(1), with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

Formal Vote

Mr. Chomiak: Yeas and Nays, Mr. Chairperson.

***A COUNT-OUT VOTE** was taken, the result being as follows: Yeas 5, Nays 3.*

* (1620)

Mr. Chairperson: Amendment–pass. Shall the clause as amended pass?

Ms. McGifford: I do have an amendment on Clause 10(1)(b), and the rationale for this amendment is-

Mr. Chairperson: Ah, excuse me, Ms. McGifford. Just give me one second here. I am sorry, Ms. McGifford, would you continue please.

Ms. McGifford: Thank you, Mr. Chair. As I was saying, the rationale behind the amendment to 10(1)(b) was actually supplied to as I think very well by one of the presenters who made the point that electronic records should not be treated any differently than any other records and that this kind of thinking is old fashioned and that we should not–we want modern, state-of-the-art legislation, is the phrase that we have used before.

So while we think removing the phrase "the head is of the opinion that" is somewhat of an improvement, we do not think that this clause should be there at all, so I move then

THAT subsection 10(1) be amended

(a) by striking out "and" at the end of clause (a); and

(b) by striking out clause (b)

[French version]

Il est proposé que le paragraphe 10(1) soit amendé par suppression de l'"alinéa b).

Mr. Chairperson: Debate?

Mrs. Vodrey: We will not be able to accept this amendment on the government side. We believe that the clause as amended by government in fact is what is intended and is in fact reasonable, and I am also informed it also conforms quite closely to the British Columbia legislation which the member has often referenced, so we believe that what is now on the record as amended by government is reasonable and we will not be accepting this amendment.

Formal Vote

Mr. Chomiak: Yeas and Nays.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 4, Nays 6.

Mr. Chairperson: The motion has been defeated. Clause 10(1) as amended–pass.

Point of Order

Mr. Chomiak: Point of order, Mr. Chairperson, just a point of order and clarification from the Chair as to whether or not in fact the numbers in the committee actually warrant the actual voting pattern. I am just looking for clarification, the number of government members on the committee versus the number of opposition members.

Mr. Chairperson: I believe every motion can be asked for a recorded vote on. It is entirely up to the opposition to determine the numbers.

Mr. Chomiak: Yes, Mr. Chairperson, I am just wondering if the number of votes on the committee reflect the number of government members that are actually on the committee.

Mr. Chairperson: Are you asking if the members here–[interjection] Yes, they are.

Mr. Chomiak: Okay.

* * *

Mr. Chairperson: Order, please. Clause 10(1) as amended–pass; Clause 10(2)–pass. Shall Clause 11(1) pass?

Ms. McGifford: I wanted to ask a question with regard to 11(1), because I think that–I believe that the old legislation read: The head of a public body shall respond to a request in writing within 30 days after receiving it. I noticed that the new clause reads: "The head of a public body shall make every reasonable effort to respond." I realize "reasonable" and "reasonable" are words used very frequently in this kind of legislation. It does seem to me that it is a highly connotative as opposed to denotative word, and I wonder how it might work in practice.

Mrs. Vodrey: Mr. Chair, yes, this is a wording change from the FOI act, but it does not excuse public bodies from responding to applicants within the statutory time limit, which has not changed. Every reasonable effort provides a test against which departments can measure their response and a complaint can be made to the Ombudsman about a failure to meet the time limitation.

Mr. Chairperson: Clause 11(1)–pass; Clause 11(2)–pass; Clause 12(1)–pass; Clause 12(2)–pass. Clause 13(1).

Ms. McGifford: Now, I believe the minister has an amendment.

Mr. Chairperson: Sorry.

Mrs. Vodrey: I would like to propose an amendment to Clause 13(1) on behalf of government. In 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." Therefore, on behalf of government, I move

THAT subsection 13(1) of the Bill be struck out and the following substituted:

Repetitive or incomprehensible request
13(1) A head of a public body may refuse to give access to a record or a part of a record if the request is repetitive or incomprehensible or is for information already provided to the applicant or that is publicly available.

[French version]

Il est proposé de remplacer le paragraphe 13(1) du projet de loi par ce qui suit:

Demande répétitive ou incompréhensible
13(1) *Le responsable de l'organisme public peut refuser de donner communication totale ou partielle d'un document si la demande est répétitive ou incompréhensible ou a trait à des renseignements qui ont déjà été fournis à l'auteur de la demande ou qui sont à la disposition du public.*

Ms. McGifford: We appreciate the minister's gesture in moving the amendment. Once again we think that we have an amendment that is superior. I want to point out to the minister that the word "repetitive" bothers me because it seems to imply that to do something once again or to do something repeatedly is inherently wrong. I do not know how this would be interpreted, but it does not seem to me to be the kind of word that I would like to see here. Consequently, I would like to move an amendment, perhaps when the minister is finished with her business. I think it is a friendly amendment.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 13(1) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: No.

Some Honourable Members: Pass.

Voice Vote

Mr. Chairperson: All those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

An Honourable Member: On division.

Mr. Chairperson: On division.

Ms. McGifford: Mr. Chair, then as I said, we, like the minister and like the coalition of concerned citizens, had a problem with the original clause because we had concerns with matters of definition. We felt that the inexactitude of the language could possibly open this clause to abuse. We also wish to bring this clause in line with other jurisdictions and once again, because the language I think used in the original and in the minister's amendment is connotative, open to interpretation, and consequently I would like to move the following amendment

THAT subsection 13(1) be struck out and the following substituted:

Frivolous or vexatious request
13(1) A head of a public body may refuse to give access to a record or a part of a record if the head is of the opinion on reasonable grounds that the request is frivolous, vexatious or relates to information that has already been provided or that is publicly available.

[French version]

Il est proposé que le paragraphe 13(1) soit remplacé par ce qui suit:

Demande frivole ou vexatoire
13(1) *Le responsable de l'organisme public peut refuser de donner communication totale ou partielle d'un document s'il croit, pour des motifs raisonnables, que la demande est frivole, vexatoire ou a trait à des renseignements qui ont déjà été fournis ou qui sont à la disposition du public.*

Mrs. Vodrey: Mr. Chair, though I appreciate the member's effort in bringing this forward as a friendly amendment, I could say that we will not be accepting it

as government. The word "repetitive" has been used to apply to a request for the same information over and over, not many requests or repeated requests by a single person for other kinds of information. We believe that, as it is titled now, it is in fact the most precise, and I would also say to the member that I am informed that both the British Columbia and the Alberta legislation used the words "repetitious," so government will not be accepting that amendment.

Voice Vote

Mr. Chairperson: On the proposed motion of Ms. McGifford to amend Clause 13(1) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: In my opinion, the Nays have it.

An Honourable Member: On division.

* (1630)

Mr. Chairperson: On division.

Clause 13(1) as amended by the minister–pass; Clause 13(2)–pass; Clause 14(1)–pass; Clause 14(2)–pass; Clause 15(1)–pass; Clause 15(2)–pass; Clause 16(1)–pass; Clause 16(2)–pass; Clause 17(1)–pass; Clause 17(2)–pass; Clause 17(3)–pass; Clause 17(4)–pass; Clause 17(5)–pass; Clause 17(6)–pass; Clause 18(1)–pass; Clause 18(2)–pass; Clause 18(3)–pass; Clause 18(4)–pass. Clause 19(1).

Mrs. Vodrey: Mr. Chair, on Clause 19(1), there was some concerns expressed that the phrase "relating to government decisions or the formulation of government policy" creates too broad an exception. So we will therefore propose new wording "relating directly" which makes it clear that the record must relate directly to government decisions or policy. Therefore, on behalf of government, I move

THAT clauses 19(1)(d) and (e) be amended by adding "directly" after "relating".

[French version]

Il est proposé d'amender le paragraphe 19(1):

a) dans l'alinéa d), par substitution, à "relativement", de "ayant directement trait";

b) dans l'alinéa e) de la version anglaise, par adjonction, après "relating", de "directly".

Mr. Chomiak: Very briefly, Mr. Chairperson, while we appreciate the minister has attempted to bring in some kind of attempt to make the bill more palatable, we are of the opinion–and I think it was reflected in presentations made the other night–that if one were to compare information and documentation that is available to the public as a result of this particular bill versus the previous and the pre-existing bill, that this bill far narrows the ability of individuals to receive information and, accordingly, we will be unable to vote in favour of this section of the bill.

Mr. Tim Sale (Crescentwood): Mr. Chairperson, I think I may be the only member here who has actually worked at government in a sort of reasonably senior level. I worked for this minister or worked in the same department as this minister, in any case.

An Honourable Member: Worked together.

Mr. Sale: We worked together, yes. I think that this amendment does not clarify or help anything, because under the principle of parliamentary supremacy and under the principle of ministerial authority, everything that happens in a department is the minister's ultimate responsibility. The minister may not be aware of everything, so whether they are culpable or not if something goes wrong, of course, is another issue, but they are responsible and I do not think any minister of this Crown or any other government would argue that doctrine of ministerial responsibility is very important. So any work that goes on in a department is ultimately for the purpose of administering the regulations and the acts for which that department has a responsibility. Virtually any advice that is given to a minister can be therefore said to relate directly to the role for which the minister has been appointed.

So I understand that the minister was trying to respond to criticisms of the breadth, but I think that she will find, and that government will find, that "relating

directly" covers just about as many sins as the other wording did, and that many bureaucrats and ministers will find it very convenient to say that this request is denied because it relates directly to advice or whatever. So as someone with at least a modest amount of experience in bureaucracy, I do not think this amendment meets the mark at all, Mr. Chairperson.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 19(1), with respect to both the English and French texts, shall the motion pass?

Mrs. Vodrey: Pass.

Mr. Chairperson: It is the opinion of the Chair that the motion passes.

Some Honourable Members: On division.

Mr. Chairperson: On division. Shall Clause 19(1), as amended, pass?

Mrs. Vodrey: Pass.

Mr. Chairperson: It is the opinion of the Chair that the clause is passed.

An Honourable Member: On division.

Mr. Chairperson: On division. Clause 19(1) is accordingly passed. Clause 19(2).

Ms. McGifford: Mr. Chair, I would like to move an amendment to Clause 19(2). I think if I read the amendment, the reason for it might be straightforward but, first of all, I suppose I would like to say that it seems to me that the 30-year time limit here is quite ridiculous. I think the time limit for the release of cabinet records is 20 years in Ontario and federally. I believe it is 10 years in B.C., and the 30 years in Manitoba seems absolutely excessive. I cannot imagine why Manitoba cabinet records have to be kept secret for 30 years. Consequently, I move

THAT clause 19(2)(b) be amended by striking out "30" and substituting "15".

[French version]

Il est proposé d'amender l'alinéa 19(2)b) par substitution, à "30", de "15".

Mrs. Vodrey: Mr. Chair, government will not be able to support that amendment. We have, as I said, in many ways maintained the provisions of the current FOI Act. This is one provision which currently exists in the FOI Act, and it was government's decision to maintain it. So we will not be supporting that amendment.

Mr. Chairperson: On the proposed motion of Ms. McGifford to amend Clause 19(2), with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Yes.

An Honourable Member: No.

Voice Vote

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

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair, the Nays have it.

Ms. McGifford: On division.

Mr. Chairperson: The motion is accordingly defeated on division.

Clause 20(1)–pass; Clause 20(2)–pass; Clause 20(3)–pass; Clause 21(1)–pass; Clause 21(2)–pass; Clause 22(1)–pass; Clause 22(2)–pass. Clause 23(1).

* (1640)

Mrs. Vodrey: Mr. Chair, in Clause 23(1), (f) in particular, it was our intent 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 simply eliminates Clause (f) in the bill as drafted.

Therefore, Mr. Chair, on behalf of government, I move

THAT subsection 23(1) be amended

(a) by adding "or" at the end of clause (e);

(b) by striking out clause (f); and

(c) by relettering clause (g) as clause (f).

[French version]

Il est proposé d'amender le paragraphe 23(1):

a) par suppression de l'alinéa f);

b) par substitution, à la désignation d'alinéa g), de la désignation d'alinéa f).

Ms. McGifford: Well, I think it a very intelligent amendment. I was going to propose the same one myself.

Mr. Chairperson: Shall Clause 23(1) as amended pass?

Ms. McGifford: I do have a question about another matter relating to 23(1) before we pass the entire clause.

Mr. Chairperson: I would suggest you ask your question now then.

Ms. McGifford: I wanted to ask the minister something because repeatedly during presentations, and the minister could advise me if I am asking her in the wrong place perhaps, but repeatedly during presentations members of the public presenters brought the concern that they felt the new legislation would not give them access to information regarding private consultants and private contracts, which I understand was not forbidden under the old Freedom of Information Act, Clause 39(2)(f), but that this new act does not allow them access to this information. I wonder if the minister could comment.

Mrs. Vodrey: The advice of consultants is being treated in this bill the same as advice from public body employees, so the release of a consultant's report is a discretionary decision in the Manitoba bill, just as it is in similar legislation elsewhere in Canada, and these acts do not distinguish between advice from a consultant or a civil servant when the record is reviewed in the context of an access request.

Ms. McGifford: I would like to ask the minister then, were the citizens who expressed concerns misinformed?

Mrs. Vodrey: If there was a misunderstanding, it would have been if any of the presenters thought that this applied to all consultants' reports. If it applies to consultants' reports which may be, as reports of civil servants would be, in the assistance of developing government policy, then they would not be available. However, if they were reports of a general nature, then they would be available according to the act.

Ms. McGifford: I wonder if the minister could define reports of a general nature.

Mrs. Vodrey: I am not sure that I can give her an exact hypothetical, but as we had a brief discussion, it might be a report on a historical site or some additional information which might be useful.

Ms. McGifford: Another question, I understand that under The Freedom of Information and Protection of Privacy Act that Clause 23(1) will apply to local public bodies.

Mrs. Vodrey: Yes, that is correct.

Ms. McGifford: I wonder how this legislation–and it is not up to the minister to necessarily answer–will affect local public bodies, and I wonder what work her department has done to assist local public bodies in preparing for the legislation.

Mrs. Vodrey: Mr. Chair, as the member knows, this act has a phased-in proclamation, so my department will now be working with public bodies with all other public bodies to assist them in terms of any educational information that they need and any assistance at all as they begin to apply this act. Their proclamation, as I said, is phased in and it is expected to be at a time later than the proclamation for government.

Ms. McGifford: How does the minister think it will work with the City of Winnipeg when the City of Winnipeg, as we understand from the presentation made by Ms. Menzies the other evening, already has an Ombudsman and has its own access-to-information process?

Mrs. Vodrey: I hate to answer a hypothetical with a hypothetical, so I am going to not really say too much on this. I think the important point is that my department will be working with the City of Winnipeg. We have, as the member referenced in her opening remarks, a letter from the deputy mayor on behalf of the City of Winnipeg indicating their support for this legislation and, therefore, I would assume from that their willingness to work through this and then where there is an effect on their Ombudsman that that then will be worked out through the process that will be undertaken with the passage of this bill. Until proclamation, that affects them.

Ms. McGifford: Mr. Chair, I understand that the letter came from the executive of City Hall. I understand too that the letter may not necessarily have been endorsed by all city councillors. I understand that the matter may have been debated this morning at City Council. I wanted to make clear that the letter may not necessarily reflect the opinion of City Council. It was the executive group.

Mrs. Vodrey: Mr. Chair, again I do not want to get into a debate here in the passing of this legislation, but I just would say for the record it came on City of Winnipeg paper, and it said, directed by the Executive Policy Committee to confirm the city's support. So I am operating under that statement of support. However, in applying this bill and preparing for proclamation, there is an acknowledgement that my department will work with these public bodies and that where issues are there to be dealt with then we will certainly provide all the assistance we can to do that.

Mr. Chairperson: Amendment–pass. Clause 23(1) as amended.

Ms. McGifford: I do not have any concerns until 46.

Mr. Chairperson: Clause 23(1) as amended–pass. Clause 23(2).

Mrs. Vodrey: Mr. Chair, I do have an amendment on 23(2)(d). There has been concern that 23(2)(d)(i) could be perceived as a limitation on access to environmental impact assessment. This is not the intent of the clause. In fact, this clause was drafted to ensure that routine testing performed for a fee, for example the testing on well water, were not subject to access because they belong to the individual who asked for the service. However, I understand that this is being understood as restrictive and, for that reason, we are prepared to amend the subclause as shown in the proposed amendment that I will bring forward.

Therefore, Mr. Chair, again on behalf of government, I move

THAT clause 23(2)(d) be amended by striking out everything after "conducted by or for the public body".

[French version]

Il est proposé d'amender l'alinéa 23(2)(d) par suppression de tout le passage qui suit "effectué par ou pour l'organisme public".

* (1650)

Mr. Chairperson: Amendment–pass; Clause as amended–pass. Clauses 23(3) and 24–pass; Clause 25(1)–pass; Clauses 25(2), 25(3) and 26–pass; Clauses 27(1), 27(2) and 28(1)–pass. Clause 28(2).

Mrs. Vodrey: Mr. Chair, I would like to provide an amendment to 28(2). The reasons are the same as those in the amendment that I just made in 23(2)(d). So the amendment that I will be putting forward through 28(2) is, I move on behalf of government

THAT subsection 28(2) be amended by striking out clauses (a) and (b) and substituting "for the purpose of developing methods of testing or for the purpose of testing products for possible purchase".

[French version]

Il est proposé d'amender le paragraphe 28(2) par substitution à tout le passage qui suit "fait", de "dans le but de mettre au point des méthodes d'essais ou de mettre à l'essai des produits en vue d'un achat éventuel".

Mr. Chairperson: On the proposed motion of the minister to amend Clause 28(2), with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: The motion is accordingly passed. Clause 28(2) as amended–pass; Clauses 29 and 30–pass; Clauses 31(1), 31(2) and 32(1)–pass; Clauses 32(2), 33(1) and 33(2)–pass; Clauses 33(3), 33(4) and 33(5)–pass; Clauses 34(1), 34(2), 34(3), 34(4), 34(5)–pass; Clause 35–pass; Clauses 36(1), 36(2)–pass; Clause 37(1)–pass; Clauses 37(2), 37(3), 38 and 39(1)–pass; Clauses 39(2), 39(3), 39(4), 39(5), 39(6) and 41–pass; Clause 42–pass; Clauses 41, 42(1), 42(2), 42(3)–pass; Clauses 43 and 44(1)–pass; Clauses 44(2) and 45–pass; Clause 46(1)–pass. Clause 46(2).

Ms. McGifford: Mr. Chair, I do have a couple of questions about 46(2); 46(2) talks about the use or disclosure of personal information, et cetera, et cetera, and I have a question about Clause (a), and that is, I wonder what the reason would be for linking information databases or matching personal information. I wonder if the minister could give us some general examples of when this might occur and why.

Mrs. Vodrey: Mr. Chair, database linking has become a widely used method of making electronic connections employing personal information, such as names, addresses and dates of birth. In commercial practice, such linkages are made to construct customer profiles for use in marketing research and to provide contacts for telemarketing. Among public sector bodies, database linkages are generally used to enhance program performance and improve client services often among federal, provincial and municipal jurisdictions. Prominent examples in the Manitoba government would include the Better Systems initiative and Integrated Case Management Project which intend to link multiple databases of personal information within the government and with the City of Winnipeg. Because of the high propensity of database linkages for abusing the collection, use and disclosure of personal information, proposals for linkages are to be referred to the Privacy Assessment Review Committee for review and advice.

Ms. McGifford: Well, I agree with the minister that it is important that this kind of transaction be monitored very closely, but I wonder if the minister could be more specific in her examples. When might public bodies link databases, and in what specific circumstances?

Mrs. Vodrey: Mr. Chair, as always in these projections of these electronic connections it is very difficult to–there are just so many hypotheticals, which is why we set the review process into place. In an effort to provide a hypothetical purely, an example may be, for instance, the Child and Youth Secretariat who wants to use programs to benefit families. However, the use and the volume of information, what was required for linkage, would be required to be scrutinized carefully and monitored.

Ms. McGifford: I wanted to ask a question about 46(2)(b), and I wonder what kind of reasons there are for the release of volume or bulk information, and, again, a specific example would be helpful.

Mrs. Vodrey: Mr. Chair, one of the examples there is the request of the War Amps, for instance, for that bulk information, and so we wanted to make sure that we had covered any other kinds of request, that included.

Ms. McGifford: What exactly constitutes volume or bulk information?

Mrs. Vodrey: The bulk or volume disclosure would be information which is on a registry where a person or access was not simply for a single item but was in fact for all items, for instance, the motor vehicle registry.

Ms. McGifford: I know that some of the presenters had problems with 46(2), I think both (a) and (b), but I think particularly (b), because some of the presenters thought that there should be exceptions, I believe, for materials that are normally and currently available to the public. I wonder if the minister could comment on that concern?

I think one of the members used the example of the government phone book, according to this clause, that it would no longer be available.

Mrs. Vodrey: Mr. Chair, the information which is available now will continue to be available, so the normal process will be respected. This area again was an attempt to deal with some of the requests for bulk disclosures which are coming which are very, very difficult to hypothesize and put all into legislation. So this clause is here to deal with some that we have not thought of, are not currently going on, and to provide a mechanism to access them within the act.

Ms. McGifford: So the minister seems to be suggesting then that perhaps the presenters were being, their concerns were misplaced or they were worrying unnecessarily?

* (1700)

Mrs. Vodrey: They may have been. Clause 3(a) protects the ordinary access, which is what the concern appears to be in our discussion today, and that is the difficulty in that. I was saying, it is so very difficult to choose one clause; you need to see the whole act with all of its reference points. So it would be important to point out to people who may have expressed a concern around this clause, to point them to Clause 3(a), which in fact preserves their normal access.

Ms. McGifford: I think the minister just now made a very good point as to why this legislation should be circulated as a white paper, and we should have more public consultation, because clearly there is misunderstanding and that kind of public consultation would provide the opportunity for clarification.

Mrs. Vodrey: This is a very complex piece of legislation. It requires, I believe, people to work with it, to begin to apply it. Mr. Chair, for the reasons that I have stated many times on the record in the House and in committee, it is our government's belief that this legislation should in fact be passed and should be dealt with now, and the people of Manitoba should not be left without the privacy protection that they deserve.

Mr. Chairperson: Clause 46(2)–pass.

Ms. McGifford, moving as we did in the past, moving the blocks of clauses, if you would prefer to give me a heads-up on your next clause--49?. Thank you.

Clauses 46(3), 46(4), 46(5) and 46(6)–pass; Clauses 47(1), 47(2)–pass; Clauses 47(3), 47(4)–pass; Clause 48–pass. Clause 49.

Ms. McGifford: Mr. Chair, I think that we have been quite unequivocal in our belief that the Ombudsman's office is not the proper office to oversee and assume responsibility for this legislation. We believe that privacy information and protection legislation is best left, is best put in the hands of a privacy and information commissioner as will be outlined in an amendment.

I would like to take the opportunity to allow the government to see the wisdom of this method of overseeing the act. The amendment that I want to suggest will not involve any cost, and it can be done without gravely endangering the expeditious passage of privacy, which I know the minister is greatly concerned about. Consequently, Mr. Chair, I would like to move

THAT section 49 be struck out and the following substituted:

Selection process and terms of reference of Commissioner

49 On the coming into force of this Act, the Legislative Assembly shall constitute a special all-party committee for the purpose of this section and, within six months of the coming into force of this Act, the committee shall develop

(a) terms of reference for the office of Information and Privacy Commissioner; and

(b) A selection process for the selection of the Commissioner.

[French version]

Il est proposé de remplacer l'article 49 par ce qui suit:

Processus de sélection du Commissaire et mandat
49 *Dès l'entrée en vigueur de la présente loi, l'Assemblée législative constitue, pour l'application du présent article, un comité spécial représentant tous les partis politiques. Dans les six mois suivant l'entrée en vigueur de la présente loi, le comité établit:*

a) le mandat du Commisssaire à la information et à la protection de la vie privée;

b) le processus de sélection du Commissaire.

Hon. Glen Cummings (Minister of Natural Resources): Well, I think, Mr. Chairman, the argument has been made many times that there is already a structure in place, the authority that we were wanting to put into the Ombudsman's office to deal with these issues. It seems to me it is already recognized as a fair and responsible area managed by competent people who, given appropriate resources, can manage this appropriately, and I fail to see how developing another point of access and another point of vetting the appropriateness of these requests would do anything to enhance this bill or to enhance the service that we are trying to provide to the public. I think there have always been some questions that have raised here by opposition that there is a matter of resources that come into play. I think the minister has adequately reflected that, and I would not recommend passing this amendment.

Mrs. Vodrey: Mr. Chair, I would say that on behalf of government we cannot accept this amendment, that a decision has been made that the Ombudsman is the office that should be entrusted with these expanded duties and that our experience with the Ombudsman in Manitoba has been very good, that the Ombudsman has in fact done a very good job of investigation and negotiation, which is an important part, and that ultimately, as well, this causes the ultimate responsibility to rest as it should with elected people.

So we would not want to accept the amendment, as my colleague the Minister of Health (Mr. Praznik) has said in the past, that as well, this is our passing of the bill with the extended powers and the enhanced powers of the Ombudsman and that we will want to see how this works. There is a review of the bill within five years, and at that point, if it appears that another decision should be made, having had experience with the application and practice of this bill, then it will be reviewed at that time.

Mr. Chair, we believe that, again, the role of the Ombudsman is a proven role in Manitoba. It is one which has been successful in Manitoba. I would want to just stress as well the importance of the role of negotiation in that if negotiation can deal with the issue rather than issuing a binding order, rather than having to move to another level, then I think that is great, and that is a skill which the Ombudsman has.

So, Mr. Chair, on behalf of government we cannot accept this amendment.

Ms. McGifford: Mr. Chair, I want to put on the record that the members of the New Democratic caucus hold the Ombudsman in respect. We were part of an all-party committee that participated in his hiring and the fact that we wish to have the appointment of an information and privacy–pardon me, that we wish at this point to create an all-party committee which would look into the whole business of an information and privacy commissioner casts no aspersions on the wonderful work that the provincial Ombudsman does. It does, however, recognize the limitations on the powers of the Ombudsman and reflects our belief that we need to have legislation with teeth.

Mr. Chairperson: Thank you. It is the opinion of the Chair that the amendment proposed by Ms. McGifford is out of order, because it imposes a charge upon the public Treasury and therefore cannot be considered by the committee.

Ms. McGifford: I do not understand how it imposes a charge since it merely suggests an all-party committee develop terms of reference for the office and a selection process for the selection of the commissioner. I do not know where monies would be expended. [interjection] It does not suggest hiring a commissioner.

Mr. Chairperson: The suggestion that the terms and reference for the office of information and privacy

commissioner suggests the requirement of Treasury funds, so therefore I rule the amendment out of order.

Mr. Sale: I challenge the ruling of the Chair, Mr. Chairperson.

* (1710)

Mr. Chairperson: The ruling of the Chair has been challenged.

Voice Vote

Mr. Chairperson: Shall the ruling of the Chair be sustained? All those in favour, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

* (1710)

Mr. Chairperson: In my opinion, the Yeas have it. The ruling of the Chair is sustained.

Mr. Sale: On division.

Mr. Chairperson: On division.

Clause 49–pass. Clause 50(1).

Ms. McGifford: Mr. Chair, I would like to try again. I think if I provide some more details defining the nature and kind of the commissioner we have in mind, the characteristics as our side of the House envisions it, the members opposite may change their minds. Therefore, I move

THAT the following be added after section 49:

Appointment of Information and Privacy Commissioner
49.1(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor shall appoint as the Information and Privacy Commissioner a person who has been unanimously recommended by a special Committee of the Legislative Assembly for the appointment.

Commissioner is officer
49.1(2) The Commissioner is an officer of the Legislature.

Commissioner's term
49.1(3) Subject to section 49.2, the Commissioner holds office for a term of six years.

Prohibition on reappointment
49.1(4) A person who is appointed under this section is not eligible to be reappointed as Commissioner.

Resignation of Commissioner
49.2(1) The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no speaker or the speaker is absent from Manitoba, by notifying the clerk of the Legislative Assembly.

Removal or suspension of Commissioner
49.2(2) The Lieutenant Governor in Council shall remove the Commissioner from office or suspend the Commissioner for cause or incapacity on the recommendation of 2/3 of the members present in the Legislative Assembly.

Removal or suspension between sittings
49.2(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity.

Acting Commissioner
49.3(1) The Lieutenant Governor in Council may appoint an acting Commissioner if

(a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting;

(b) the Commissioner is suspended when the Legislative Assembly is not sitting;

(c) the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under subsection 49.1(1) before the end of the session; or

(d) the Commissioner is temporarily absent because of illness or for another reason.

Term of acting Commissioner
49.3(2) An acting Commissioner holds office until

(a) a person is appointed under subsection 49.1(1);

(b) the suspension of the Commissioner ends;

(c) the Legislative Assembly has sat for 20 days after the date of the acting Commissioner's appointment; or

(d) the Commissioner returns to office after a temporary absence;

whichever is the case and whichever occurs first.

Salary, expenses and benefits of Commissioner
49.4(1) A Commissioner appointed under subsection 49.1(1) or 49.3(1) is entitled

(a) to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the Chief Judge of the Provincial Court of Manitoba; and

(b) to be reimbursed for reasonable travelling and out of pocket expenses personally incurred in performing the duties of the office.

Application of The Civil Service Superannuation Act
49.4(2) The Lieutenant Governor in Council may order that The Civil Service Superannuation Act applies to the Commissioner.

Staff of Commissioner
49.5(1) The Commissioner may appoint, in accordance with The Civil Service Act, employees necessary to enable the Commissioner to perform the duties of the office.

Commissioner may retain consultants and others
49.5(2) The Commissioner may retain any consultants, mediators or other persons and may establish their remuneration and other terms and conditions of their retainers.

Non-application of The Civil Service Act
49.5(3) The Civil Service Act does not apply in respect of a person retained under subsection (2).

Special report
49.5(4) The Commissioner may make a special report to the Legislative Assembly if, in the Commissioner's opinion,

(a) the amounts provided for the office of Commissioner in the estimates; or

(b) the staff resources of the Commissioner;

are inadequate for fulfilling the duties of the office.

General powers of Commissioner
49.6(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations and audits to ensure compliance with any provision of this Act;

(b) make an order described in subsection 66(1.2) whether or not a complaint is made;

(c) inform the public about this Act;

(d) receive comments from the public concerning the administration of this Act;

(e) engage in or commission research into anything affecting the achievement of the purposes of this Act;

(f) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies;

(g) comment on the implications for access to information or for protection of privacy of automated systems for collection, storage, analysis or transfer of information;

(h) comment on the implications for protection of privacy of using or disclosing personal information for record linkage;

(i) authorize the collection of personal information from resources other than the individual the information is about; and

(j) bring to the attention of the head of the public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants.

Commissioner may investigate complaints
49.6(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(a) a duty imposed by this Act or the regulations has not been performed;

(b) an extension of time for responding to a request is not in accordance with section 11;

(c) a fee required under this Act is inappropriate;

(d) a correction of personal information requested under subsection 39(1) has been refused without justification; and

(e) personal information has been collected, used or disclosed by a public body in contravention of Part 3.

Power to authorize a public body to disregard requests
49.7 If the head of a public body asks, the Commissioner may authorize the public body to disregard requests under section 8 that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body.

[French version]

Il est ajouté, après l'article 49, ce qui suit:

Nomination du Commissaire à l'information et à la protection de la vie privée
49.1(1) *À la recommandation de l'Assemblée législative, le lieutenant-gouverneur nomme à titre de Commissaire à l'information et à la protection de la vie privée une personne qui a fait l'objet d'une recommandation unanime d'un comité spécial de l'Assemblée législative.*

Fonctionnaire de l'Assemblée législative
49.1(2) *Le Commissaire est fonctionnaire de l'Assemblée législative.*

Mandat
49.1(3) *Sous réserve de l'article 49.2, la durée du mandat du Commissaire est de six ans.*

Nouveau mandat
49.1(4) *La personne qui est nommée en application du présent article ne peut recevoir un nouveau mandat.*

Démission du Commissaire
49.2(1) *Le Commissaire peut démissionner à tout moment en avisant le président de l'Assemblée législative ou, s'il n'y a pas de président ou que le président soit absent du Manitoba, en avisant le greffier de l'Assemblée législative.*

Destitution ou suspension du Commissaire
49.2(2) *Le lieutenant-gouverneur en conseil destitue le Commissaire ou le suspend pour un motif valable ou pour incapacité sur la recommandation des 2/3 des députés présents à l'Assemblée législative.*

Suspension
49.2(3) *Si l'Assemblée législative ne siège pas, le lieutenant-gouverneur en conseil peut suspendre le Commissaire pour un motif valable ou pour incapacité.*

Commissaire intérimaire
49.3(1) *Le lieutenant-gouverneur en conseil peut nommer un commissaire intérimaire si:*

a) le poste du Commissaire est ou devient vacant lorsque l'Assemblée législative ne siège pas;

b) le Commissaire est suspendu lorsque l'Assemblée législative ne siège pas;

c) le Commissaire est destitué ou suspendu ou si non poste devient vacant lorsque l'Assemblée législative ne siège pas, mais qu'aucune recommandation ne soit faite par l'Assemblée sous le régime du paragraphe 49.1(1) avant la fin de la session;

d) le Commissaire est temporairement absent, notamment pour cause de maladie.

Occupation du poste
49.3(2) *Le commissaire intérimaire occupe son poste jusqu'a celui des événements suivants à se produire le premier:*

a) la nomination d'une personne en application du paragraphe 49.1(1);

b) la fin de la suspension du Commissaire;

c) l'écoulement de 20 jours de séance de l'Assemblée législative après la date de nomination du commissaire intérimaire;

d) le retour du Commissaire à ses fonctions après une absence temporaire.

Traitement, indemnités et avantages du Commissaire
49.4(1) *Le commissaire nommé sous le régime du paragraphe 49.1(1) ou 49.3(1) a le droit:*

a) de se faire verser, sur le Trésor, un traitement égal au traitement versé au juge en chef de la Cour provinciale du Manitoba;

b) d'être remboursé des frais de déplacement et des menus frais raisonnables qu'il a engagés dans l'exercise de ses fonctions.

Application de la Loi sur la pension de la fonction publique
49.4(2) *Le lieutenant-gouverneur en conseil peut décréter l'application au Commissaire de la Loi sur la pension de la fonction publique.*

Personnel
49.5(1) *Le Commissaire peut nommer, en conformité avec la Loi sur la fonction publique, les employés nécessaires pour qu'il puisse exercer ses fonctions.*

Consultants, médiateurs et autres personnes
49.5(2) *Le Commissaire peut retenir les services de personnes, notamment de consultants et de médiateurs, et peut fixer leur rémunération ainsi que les autres conditions de leur mandat.*

Loi sur la fonction publique
49.5(3) *La Loi sur la fonction publique ne s'applique pas aux personnes dont les services sont retenus en vertu du paragraphe (2).*

Rapport spécial
49.5(4) *Le Commissaire peut présenter un rapport spécial à l'Assemblée législative si, à son avis, les crédits qui lui sont affectés dans le budget ou les ressources en personnel dont il dispose ne lui permettent pas d'exercer ses fonctions en raison de leur insuffisance.*

Attributions générales
49.6(1) *En plus des attributions qui lui sont conférées sous le régime de la partie 5 au sujet des révisions, le Commissaire est, de façon générale, chargé de surveiller l'application de la présente loi afin qu'en soient réalisés les objets; il peut:*

a) procéder à des enquêtes et à des vérifications pour garantir l'observation des dispositions de la présente loi;

b) donner un des ordres visés par le paragraphe 66(1.2) même si aucune révision n'est demandée;

c) renseigner le public au sujet de la présente loi;

d) recevoir les commentaires du public au sujet de l'application de la présente loi;

e) procéder à des recherches sur des questions touchant la réalisation des objets de la présente loi ou mandater quelqu'un à cette fin.

f) commenter les répercussions qu'ont sur l'accès aux renseignements ou sur la protection de la vie privée les projets législatifs ou programmes prévus des organismes publics;

g) commenter les répercussions qu'ont sur l'accès aux renseignements ou sur la protection de la vie privée les systèmes automatisés de collecte, de stockage, d'analyse ou de transmission des renseignements;

h) commenter les répercussions qu'a sur l'accès aux renseignements ou sur la protection de la vie privée l'utilisation ou la communication de renseignements personnels en vue du couplage de documents;

i) autoriser la collecte de renseignements personnels auprès d'autres sources que le particulier que les renseignements concernent;

j) porter à la connaissance du responsable d'un organisme public tout manquement aux normes réglementaires concernant l'obligation de prêter assistance aux auteurs de demandes.

Enquête et tentative de règlement
49.6(2) *Sans préjudice du paragraphe (1), le Commissaire peut enquêter et tenter de statuer sur les plaintes portant:*

a) que des obligations prévues par la présente loi ou les règlements n'ont pas été remplies;

b) qu'une prorogation du délai prévu pour répondre à une demande ne respecte pas l'article 11;

c) que des droits exigés sous le régime de la présente loi sont inappropriés;

d) qu'une demande de correction de renseignements personnels présentée en vertu du paragraphe 39(1) a été rejetée sans justification;

e) qu'un organisme public a recueilli, utilisé ou communiqué des renseignements personnels en contravention avec la partie 3.

Autorisation
49.7 *Le Commissaire peut autoriser l'organisme public dont le responsable lui en fait la demande à ne pas tenir compte des demandes qui sont présentées en vertu de l'article 8 et qui, en raison de leur caractère répétitif ou systématique, entraveraient de façon sérieuse le fonctionnement de l'organisme.*

Mr. Chairperson: It is my opinion that the amendment proposed by Ms. McGifford is out of order because it imposes a charge upon the public Treasury and therefore cannot be considered by the committee. Again, I would ask the indulgence of the committee if they want to give me a heads-up on the next number or not. I know there is an amendment coming forward at 70.

Clauses 51, 52, 53(1), 53(2), 54–pass; Clauses 55(1), 55(2), 55(3), 55(4)–pass; Clauses 55(5), 56, 57, 58(1), 58(2), 58(3)–pass; Clauses 59(1), 59(2), 59(3), 59(4), 59(5) and 61–pass; Clauses 62, 63, 61, 62(1), 62(2), 63(1)–pass; Clauses 63(2), 64(1), 64(2), 64(3), 65–pass; Clauses 66(1), 66(2), 66(3), 66(4)–pass; Clauses 66(5), 66(6), 67(1)–pass; Clauses 67(2), 67(3), 67(4), 67(5), 68(1), 68(2) and 68(3)–pass; Clauses 68(4), 69–pass; Clause 70(1)–pass. Clause 70(2).

Mrs. Vodrey: Mr. Chair, there is a difficulty with subsection 70(2) in that it appears to be a defective clause. It deals with situations where access requests involve personal information of a third party. The existing subsection refers to the refusal to give access but not a decision to give access. Those circumstances need to be covered so an amendment is proposed to add the words "give or" before "refuse to give". In both of these circumstances the burden is on the applicant for the information to prove that disclosure would not be an unreasonable invasion of the third party's privacy. This omission is a drafting error, and the amendment would bring FIPP in line with similar legislation elsewhere. Therefore, on behalf of government, I move

THAT subsection 70(2) of the Bill be amended by adding "give or" before "refuse to give".

* (1720)

[French version]

Il est proposé d'amender le paragraphe 70(2) du projet de loi par adjonction, avant "de refuser", de "de donner ou".

Mr. Chairperson: Comment. Seeing none, on the proposed motion of the minister to amend Clause 70(2) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: The motion is accordingly passed. Clause 70(2) as amended–pass; Clauses 70(3) and 71–pass; Clause 72–pass; Clause 73(1)–pass; Clauses 73(2) and 74–pass; Clauses 75(1), 75(2), 75(3)–pass; Clauses 75(4), 75(5), 75(6), 76(1)–pass; Clause 76(2)–pass. Clause 77.

Ms. McGifford: Mr. Chair, I do want to propose an amendment here, and I will just briefly state my reasons for it. Once we see the phrase regulation–and I see in the spreadsheet beside 77 that the regulation will

provide details on the composition and operation of the Privacy Assessment Review Committee. I want to tell the minister that I take the Privacy Assessment Review Committee very seriously, which is why I asked earlier questions on the bulk information and the database, on the database clauses, and I realize that this would also apply to the release of information for research purposes.

However, what I wanted to say is that I do not think that this should be a committee which would become a sinecure for political hacks or failed Tory candidates, or indeed failed New Democrats. I think that it is important, and I know the Minister of Health (Mr. Praznik) would agree with me, that there be informed skilled, neutral and objective people on this committee. I think it is important that the committee be staffed by people who understand the complexity of issues, who are informed, and I think also it would be important to include some citizen advocates. I noticed that Bill 51, the Minister of Health's privacy act, I noticed on the health information privacy committee there will be included public representatives, public representatives will be included, and I believe these public representatives are specifically not to be health professionals.

I do believe that one-quarter of the composition of that committee would be citizen appointments, and that seems to me to be a very good idea–pardon me, not appointed by citizens but would be advocates, and it seems to me to be an excellent idea. So I recognize the need for expertise on the committee, as I am sure the minister does, but also I think it is important that concerned citizens who are advocates be included in the composition of this very important and sensitive committee. I think it is important that this committee be appointed by an all-party committee of the Legislature, and therefore I move

THAT section 77 be struck out and the following substituted:

Privacy Assessment Review Committee
77(1) The Lieutenant Governor in Council shall establish a Privacy Assessment Review Committee for the purposes of section 46 and 47.

Appointment of committee members
77(2) The Lieutenant Governor in Council shall, on the recommendation of the Standing Committee of the Assembly on Privileges and Elections, appoint as many Canadian citizens as the members of the Privacy Assessment Review Committee as the Lieutenant Governor in Council considers appropriate from time to time, and shall appoint from among their number one person as Chairperson.

Meetings of Standing Committee
77(3) The Standing Committee of the Assembly on Privileges and Elections may, for the purposes of performing its functions under this section, meet during session of the Legislature or during recess after prorogation.

[French version]

Il est proposé de remplacer l'article 77 par ce qui suit:

Comité d'évaluation
77(1) *Pour l'application des articles 46 et 47, le lieutenant-gouverneur en conseil constitue un comité d'évaluation.*

Nomination des membres du Comité d'évaluation
77(2) *À la recommandation du Comitè permanent des privilèges et élections, le lieutenant-gouverneur en conseil nomme le nombre de citoyes canadiens qu'il estime indiqué à titre de membres du Comité d'évaluation; il nomme également un président parmi ces membres.*

Réunions du Comité permanent
77(3) *Le Comité permanent des privilèges et élections peut, aux fins de l'exercice des fonctions prévues au présent article, se réunir au cours des sessions de l'Assemblée législative ou au cours des congés qui suivent la prorogation de celle-ci.*

Mrs. Vodrey: Mr. Chair, I had explained this to the member earlier during our briefings, but I am happy to explain it again. This PARC committee will be determined by regulation. However, I have explained to the member that the people who will compose the Privacy Assessment Review Committee will be senior experienced civil servants, which may sort of help her look at the people who will be sitting on this committee. They will be senior civil servants who have expertise in information management, in record

keeping, particularly in the area of electronic records, and so they will in fact be very experienced professional people in this area.

Mr. Chair, there is some difference between Bill 50 and the health bill, Bill 51. The PARC committee will be dealing with information that is held within a public body and will provide advice to the head of the public body on any proposals forwarded for review. It may consider research proposals as well. The health committee, however, will deal only with research proposals, which is, again, different. The research proposals which relate to personal health information, and also in terms of its makeup, it does cover information which is held in private organizations which may be available, for instance, within a private doctor's office. This Bill 50 deals only with public information. With those reasons, we do not support that amendment.

Ms. McGifford: I just wanted to add that it seems to me a committee of this nature should not be staffed merely by bureaucrats, with respect, but that there is room and there should be room for citizen advocates, and I think to believe or behave otherwise is bad public policy.

Mrs. Vodrey: Mr. Chair, we have not closed the door on having a citizen representative at some point, and regulation allows us to do that. However, I can tell the member, at the moment as we begin with the application of this bill, that we will be looking at experienced senior civil servants who are, again, experienced in information management, in record keeping and with some special expertise in electronic records. I did want to clarify that for the member. However, we will not be accepting that amendment.

Mr. Chairperson: On the proposed motion of Ms. McGifford to amend Clause 77 with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: It is the opinion of the Chair that–all those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair the Nays have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

Clause 77–pass. Again, I would ask the indulgence–

Clauses 78, 79–pass; Clauses 80, 81, 82(1), 82(2), 82(3), 82(4)–pass; Clauses 82(5), 82(6), 83(1), 83(2), 84–pass; Clause 85(1).

* (1730)

Mrs. Vodrey: Mr. Chair, I have an amendment to make here dealing with the dollar amount that is able to be imposed as a fine, and in discussion with my colleague the Minister of Health (Mr. Praznik) and in an effort to keep both bills consistent, I would like to propose the amendment on behalf of government. I move

THAT subsection 85(1) be amended by striking out "$20,000." in that part of the subsection following clause (d) and substituting "$50,000."

[French version]

Il est proposé d'amender le paragraphe 85(1) par substitution, à "20 000 $", de "50 000 $".

Mr. Chairperson: Discussion? On the proposed motion of the minister to amend Clause 85(1) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clause 85(1) as amended–pass; Clauses 85(2), 86(1), 86(2)–pass; Clause 87–pass; Clauses 88, 89, 90 and 91–pass; Clauses 92, 93, 94, 95, 96–pass; Clause 97–pass. Clause 98.

Ms. McGifford: Mr. Chair, I want to move an amendment to this particular clause. I know that the old Freedom of Information Act required a review in three years. It seemed to me that there was merit in the three-year review period, and there would be merit in a three-year review period, given the importance of this act. Given the importance of what this act hopes to achieve and accomplish, I think three years would be a very good period in which to review the act. I might add at this time I hope that the government will accept that amendment, and I hope that they will consequently honour the three years as was not done in the past. Therefore, I move

THAT section 98 be amended by striking out "five" and substituting "three".

[French version]

Il est proposé que l'article 98 soit amendé par substitution, à "cinq" de "trois".

Mrs. Vodrey: Mr. Chair, as I have explained to the member, the proclamation of this bill is a phased-in proclamation. Therefore, there will be a period, and government hopes to proclaim this by the end of 1997 or the first day of 1998 or close to that time following a period to educate all departments, and then we will be spending time with other public bodies to assist them. As a result of that, their proclamation will come perhaps at the end of 1998 or perhaps in 1999. Therefore, the three-year time period would be too soon to measure the effect of the bill because of the staggered proclamation or phased-in proclamation. So we will not be accepting this amendment.

Mr. Chairperson: On the proposed motion of Ms. McGifford to amend Clause 98 with respect to both the English and French texts, shall the motion pass?

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Nays have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

Clause 98–pass; Clause 99–pass; Clause 100–pass; Clauses 101(1), 101(2) and 101(3)–pass; table of contents–pass; preamble–pass, title–pass. Shall the bill as amended be reported?

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

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

Mr. Chairperson: Moving on to the next bill, is there any particular order the committee would like to review these bills? Bill 41? If I could have just again I think the co-operation that we showed, whether you want to show me the list or give me the clause numbers or if you want to proceed clause by clause, whatever is convenient.

Hon. Darren Praznik (Minister of Health): Mr. Chair, a recess to use the bathroom for any of the committee members here?

Mr. Chairperson: Is it the will of the committee to take a five-minute break?

Some Honourable Members: No. [interjection]

Mr. Chairperson: Order, please.

Committee Substitution

Mr. Tim Sale (Crescentwood): Mr. Chairperson, with leave, I would move that the honourable member for Wellington (Ms. Barrett) replace the honourable member for Osborne (Ms. McGifford) as a member of the Standing Committee on Economic Development, effective June 25, 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: Is there leave? [agreed]

* * *

Mr. Chairperson: Clause 3–pass. Clause 4.

Mr. Praznik: Mr. Chair, I have an amendment to make. With the indulgence of the committee, this particular amendment arises–[interjection] Yes, I want to add a 4.1. After? Okay.

Mr. Chairperson: Clause 4–pass.

Mr. Praznik: Mr. Chair, with the indulgence of the committee, the presentation from the Interfaith group made a recommendation to us with respect to this particular provision, and I would like to move–and I point out now that this particular amendment, I am advised, is out of scope but could be entertained with the approval of the committee. So I would move, if there is a willingness to see this dealt with,

THAT the following be added after section 4 of the Bill:

4.1 Section 17 is amended

(a) by repealing clause (a); and

(b) in clause (c), by adding ", and carry out his or her functions in accordance with this Act and the regulations" at the end of the clause.

[French version]

Il est proposé d'ajouter, après l'article 4 du projet de loi, ce qui suit:

4.1 L'article 17 est modifié:

a) par abrogation de l'alinéa a);

b) dans l'alinéa c), par adjonction, à la fin, de ", et exercent leurs fonctions en conformité avec la présente loi et les règlements".

I believe this was one of the recommendations they made just to make the roles and responsibilities of the director somewhat clearer, that they had a comfort level with this. If this is not acceptable to the opposition, I do not have a problem with just withdrawing it, but I ask for leave if they are prepared to have it dealt with. If not, I will just simply withdraw it.

* (1740)

Mr. Chairperson: It is the opinion of the Chair that it is definitely out of scope. I would ask for leave of the committee to bring it forward.

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, can you advise us to why you believe it is out of scope?

Mr. Chairperson: It is because it speaks to amend the act and not the bill.

Mr. Chomiak: Mr. Chairperson, I am of the view that I am prepared to–I think we are prepared to entertain this amendment, but this is one of those issues where I would like some time to review the ramifications. In principle we are in favour, but I would want some time to review the particular amendments.

Mr. Praznik: Mr. Chair, I appreciate that. I will withdraw that amendment then, and if the member for Kildonan and his colleagues so advise me before third reading I believe this can be–or on report stage it can be added, and I think there is one other that they recommended that is also out of scope, and it arises from their review of the existing bill and the recommendation we included. I will provide him, have our staff provide the member for Kildonan with both

copies, and if they are in agreement I have no problem with moving it at that stage.

Mr. Chairperson: So be. Clause 5–pass; Clauses 6, 7 and 8(1)–pardon me, shall Clause 7 pass?

Mr. Praznik: Mr. Chair, I have an amendment for Clause 7. I would actually like to delete this. I think this again arises from the Interfaith, their concerns about the word "encumber." We spent a great deal of time the other night with our solicitors and Mr. Wehrle looking at their concerns, and it was felt that the best way to, quite frankly, deal with this will be in the agreement. So we are just going to move this out. So I would move

THAT section 7 of the bill be struck out.

[French version]

Il est proposé de supprimer l'article 7 du projet de loi.

Mr. Chairperson: In order to remove an entire clause, the vote will be against the clause to actually remove the clause from the bill. Shall Clause 7 pass?

Some Honourable Members: No.

Mr. Chairperson: Okay. So Clause 7 is defeated. Clause 8(1)–pass; Clause 8(2)–

Mr. Praznik: Mr. Chair, I believe this is also another amendment with respect to this issue of encumbrance, and since we have removed Clause 7, I would move

THAT the proposed subsection 28(2), as set out in subsection 8(2) of the Bill, be amended by striking out ", encumber or" and substituting "or otherwise".

[French version]

Il est proposé d'amender le paragraphe 28(2), énoncé au paragraphe 8(2) du projet de loi, par substitution, à "vendre, de louer ou de disposer de l'établissement ou des biens réels connexes ou de grever de sûretés l'établissement ou les biens réels connexes", de "vendre ou de louer l'établissement ou les biens réels connexes ou d'en disposer autrement".

Mr. Chairperson: Discussion?

Mr. Chomiak: Mr. Chairperson, so we are taking out "encumber" and submitting "or otherwise," and legal counsel is of the opinion generally that "or otherwise" would not include "encumber."

Mr. Praznik: Yes, Mr. Chair, I believe this was the original wording of the clause, and, again, with discussions between Mr. Wehrle from Interfaith and our own solicitors, it was just felt it was better to deal with this concern that public money be encumbered by a facility through our agreements with them rather than in statute, and so this basically removes the word "encumber" and returns us to the original wording.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 8(2) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clause 8(2) as amended–pass; Clause 9–

Mr. Praznik: Mr. Chair, this was a cross-reference error. I believe I provided the member for Kildonan a copy of this on the opening night of committee. So I would move

THAT the proposed clause 46(3)(a), as set out in section 9 of the Bill, be amended by striking out "section 35" and substituting "section 35.1".

Il est proposé que l'alinéa 46(3)a), énoncé à l'article 9 du projet de loi, soit amendé par substitution, à "article 35", de "article 35.1"

This is purely a cross-referencing error in the draft.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 9 with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clause 9 as amended–pass.

Mr. Praznik: Mr. Chair, this is the other amendment that is out of scope that I flag for the member for Kildonan. I believe that this issue arises by the concern

of the Interfaith Association that in the original Bill 49, it provided that where a health corporation transferred its assets to a regional health authority that they were required to dissolve. There are potentially some instances that concern the Interfaith Association, depending on how those religious organizations structure their affairs, that may not require an organization to change. There are some tax implications as well with Revenue Canada for those organizations. They have been treated to date as mergers.

So there are a number of issues. In discussion with the Interfaith group, it was felt that this would best be dealt with by giving the minister the ability to approve or not approve the dissolution.

So this amendment is out of scope, because it was not dealt with in this bill which is amending Bill 49. That is why it is out of scope. Again, if members would like a chance to review it, we will provide members with a copy of it and deal with it in report stage.

Mr. Chairperson: It is the ruling of the Chair that the amendment is out of scope and therefore cannot be considered. [interjection] Okay, thank you.

Clause 10(1)–pass; Clause 10(2)–pass; Clause 10(3)–pass; Clause 10(4)–pass; Clause 11(1)–pass; Clause 11(2)–pass. Clause 11(3).

Mr. Praznik: Mr. Chair, again this is another amendment that comes out of our presentations the other night. It deals with the powers of the minister in appointing an official administrator to act in the place of an RHA should an RHA find itself in difficulty and have to have an administrator appointed. I believe the concern here was that 11(3)–the concern expressed by the Interfaith organization, that the power of interim managers for their own facilities, should this clause be implemented, was somewhat too broad, that it could overturn certain by-laws, for example by-laws that prohibit certain medical procedures from being performed in a facility that would be contrary to the religious base of that facility.

Because we have, I believe, already amended, or we have agreed to amend the provision with respect to facilities, or we will be proposing this, we also felt it was important to make the same amendment with respect to the appointment of an administrator for our regional health authority. So this parallels the amendment that I will bring in shortly. So I would move, Mr. Chair that–well, I do not move it. I would just indicate that we will be voting this section down. Right. So we do not have to strike it down, we will just be voting against this particular section.

* (1750)

Mr. Chairperson: To eliminate a section, we have to vote against it. Shall 11(3) pass?

Some Honourable Members: No.

Mr. Chairperson: Clause 11(3) is defeated. Clause 11(4)–pass; Clause 11(5)–pass; Clause 12–pass. Clause 13.

Mr. Praznik: Mr. Chair, I believe we do have to make this particular amendment. This is the removal of 56.1(5). I refer my critic to the bottom of page 8. This will eliminate this particular provision where the concern of the association was that the power of the interim manager by this provision would be sufficiently broad to overturn those by-laws, and we have agreed with that, that that concern may be there.

So I would move

THAT subsection 56.1(5), as set out in section 13 of the Bill, be struck out.

Il est proposé de supprimer le paragraphe 56.1(5) énoncé à l'article 13 du projet de loi.

Mr. Chairperson: On the proposed motion of the minister to amend Clause 13 with respect to both the English and French texts, shall the motion pass?

An Honourable Member: Pass.

Mr. Chairperson: Clause as amended–pass; Clause 14–pass; Clause 15–pass; Clause 16–pass; Clause 17(1)–pass; Clause 17(2)–pass; Clause 17(3)–pass; Clause 18(1)–pass; Clause 18(2)–pass; Clause 18(3)–pass; Clause 18(4)–pass; Clause 18(5)–pass; Clause

19(1)–pass; Clause 19(2)–pass; Clause 19(3)–pass; Clause 19(4)–pass; Clause 19(5)–pass. Clause 19(6).

Mr. Praznik: Mr. Chair, this is the last motion arising out of the presentation by the Interfaith group and it again deals with the word "encumber." So that I would move

THAT subsection 19(6) of the Bill be struck out and the following substituted:

19(6) Clause 70(1)(b) is amended by adding "which has the responsibility to provide the hospital services, personal care services or other health services that were last provided by the hospital, personal care home or other health facility" after "that health region".

[French version]

Il est proposé de remplacer le paragraphe 19(6) due projet de loi par ce qui suit:

19(6) Le paragraphe 70(1) est modifé par substitution, à l'alinéa b), de ce qui suit :

b) soit, dans le cas d'un hôpital, d'un foyer ou d'un établissement situé dans une région sanitaire, de l'office régional de la santé qui est chargé de la région sanitaire en cause et qui a la compétence en matière des derniers soins hospitaliers, des derniers services de soins personnels ou des autres derniers services de santé dispensés par l'hôpital, le foyer ou l'établissement, selon le cas.

Mr. Sale: Mr. Chairperson, I am sure this is reasonable. I am just not clear what the change was, and I am also not clear what happens if there are changes in services. It sounds like we are saying nothing could ever change here. I am sure that is not the intent, but this came quickly and I am trying to understand it.

Mr. Praznik: I believe what this does is, it requires, by removing the word "encumber" and by making the change in the other part of the section–I understand what it does is now it takes the responsibility to obtain the approval for those changes to be with the regional health authority that is responsible for the delivery of services. In other words, if a regional health authority is purchasing services from that facility and that facility wishes to change its function or wishes to expand and otherwise physically change that facility, they require the approval of the regional health authority. Obviously, that becomes rather important in operating the regional system. So, in the case of Winnipeg, for example, a hospital who wants to make a significant change in their structure and function, will require the approval of the regional health authority in order to do that.

If members would like to consult with our counsel who drafted this intimate detail of this point, we may just wait a moment here, Mr. Chair, and I will let our solicitor point it out to them. I must admit as well, it is rather a complex change given all of the sections, and it may be hard to follow on the surface.

Mr. Chairperson: Clause 19(6) as amended–pass. Clauses 21, 22, 23.

Mr. Chomiak: Yes, I have an amendment at 23, and I will not go into a long–

Mr. Chairperson: Mr. Chomiak, I am sorry, I am doing 20(1).

Mr. Chomiak: Oh, sorry. Pass.

Mr. Chairperson: Clauses 20(1), 22, 23, 24–pass; Clause 21–pass; Clauses 22(1), 22(2), 22(3), 22(4), 22(5)–pass; Clauses 22(6), 22(7)–pass. Clause 23(1).

Mr. Chomiak: Mr. Chairperson, we have already put on the record, both myself and the member for Crescentwood, our difficulties with this section. Accordingly, I move

THAT section 23 of the Bill be amended by striking out subsections (2) and (3).

[French version]

Il est proposé que l'article 23 soit amendé par suppression des paragraphes (2) et (3).

Mr. Praznik: Mr. Chair, let me just say I can very much appreciate the positions of the member for Crescentwood and for Kildonan with respect to these

amendments because they are in fact there, and I have stated our intention not to proclaim them unless we have suitable agreements worked out with the City of Winnipeg.

Just for the purposes of the record, the reason why they were included at this time is as we were preparing this bill and working though the details, it was recognized that in some of these issues, ambulance being one–and I would point out as well that there has been a significant discussion going on with the city over a number of years in amalgamating and exchanging services for various services that we both provide, the city in the inner core and the province in the suburbs, and to effect some administrative efficiencies and service efficiencies, we have had those discussions. So these provisions are here for the purpose of giving effect to those, if we are able to conclude agreements.

In the case of ambulance, as I have already said, we may find with the Winnipeg Hospital Authority that the ambulance service is best housed with the city in the fire department. Those are decisions that will come in the future. The reason these provisions are here is should we reach those agreements, come to the conclusion that these services will be transferred from the city with the agreement of the city, that this allows us to give them legal effect without having to return to the Legislature, which may be a significant delay depending on timing.

I can appreciate the argument wholeheartedly that perhaps we should have those agreements before we come forward with them. So I wanted to note that comment, and I understand fully why members opposite are moving this. This was done more for administrative efficiency. The discussions we have had internally with my colleagues, particularly the Minister of Urban Affairs (Mr. Reimer) is he would like to have this done in one bill. So we will not be accepting this motion, but I wanted to say I can understand the motivation for it and respect that argument.

* (1800)

Mr. Chairperson: Just for the record to show, because it is in subsections, I would ask that 23(1) pass? Clause 23 is accordingly passed.

Now we will move to the amendment. On the proposed motion of Mr. Chomiak to amend Clauses 23(2) and 23(3) with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Nays have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

Clause 23(2)–pass. Shall Clauses 23(3), 23(4) and 23(5) pass?

An Honourable Member: Pass.

An Honourable Member: No.

Mr. Chairperson: On division, the clauses are accordingly passed.

Committee Substitution

Mr. Denis Rocan (Gladstone): Mr. Chair, I want to do this before six o'clock. Can I have leave of the committee to make a committee change?

Some Honourable Members: Leave.

Mr. Chairperson: Leave.

Mr. Rocan: I would like to move by leave that the honourable member for Minnedosa (Mr. Gilleshammer)

replace the honourable member for Fort Garry (Mrs. Vodrey) as a member of the Standing Committee on Economic Development effective June 25, '97 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: Agreed? [agreed]

* * *

Mr. Chairperson: Clause 24(1)–pass. Clause 24(2)–pass.

Mr. Praznik: Mr. Chair, I would move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

[French version]

Il est proposé que le conseiller législatif soit autorisé à modifier les numéros d'article et les renvois internes de façon à donner effet aux amendements adoptés par le Comité.

Mr. Chairperson: It has been moved to change all section numbers and internal references. Is it an amendment?

An Honourable Member: No, it is just a motion.

Mr. Chairperson: Shall the motion pass? [agreed]

Preamble–pass; title–pass. Shall the bill as amended be reported?

An Honourable Member: Agreed.

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill as amended, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

We are now moving on to Bill 51.

Mr. Praznik: Mr. Chair, I apologize to members of the committee. I have just learned that a former physician from my constituency in Pinawa who moved down to Oklahoma to conduct practice–I had not spoken to him for a number of years. He called me the other day; we played a little telephone tag. I just learned that he has been shot and killed in his office in Oklahoma by a drug addict who came in and killed him. I just learned this, as well, so I apologize for this. If we could just take five minutes.

An Honourable Member: Do you want to do 61?

Mr. Praznik: Yes, why do you not proceed and just give me a moment. Thank you.

Mr. Chairperson: I appreciate the minister's concerns, and we will certainly bring Bill 61 forward.

Bill 61–The Sustainable Development and Consequential Amendments Act

Mr. Chairperson: Order, please. We are here this evening to consider Bill 61, and I would ask the minister if he has an opening statement.

Hon. Glen Cummings (Minister of Natural Resources): No.

Mr. Chairperson: Thank you for the brief statement. Does the official opposition critic have an opening statement?

Mr. Stan Struthers (Dauphin): No.

Mr. Chairperson: Thank you. As always, during the consideration of a bill, the preamble, table of contents and the title are postponed until all other clauses have

been considered in their proper order. Again, with the co-operation of the committee, I have been advised as to where amendments will come forward, so I will move forward in block.

Clause 1–pass; Clause 2–pass; Clauses 3(1), 3(2), 4(1) and 4(2)–pass; Clauses 4(3) and 4(4)–pass; Clauses 4(5), 4(6), 4(7), 4(8), 4(9), 4(10), 4(11) and 4(12)–pass; Clause 5–pass; Clauses 6(1), 6(2), 6(3), 6(4)–pass. Clause 7.

Mr. Struthers: Mr. Chairperson, I have an amendment that I am proposing to Clause 7. It is really putting into the act what the minister has already committed to in a letter that he has put together dealing with some of the more controversial issues that were flagged by a lot of groups who went through the white paper on sustainable development that this government put forth back in August of 1996. It deals with many of the more controversial items that presenters also flagged the other day here at public hearings.

* (1810)

The worry of groups that have approached me, and I believe also have approached the minister, is that many of the items that were of concern to groups from the white paper will be brought forward by this government at some later date without having the Legislature have its proper input and have its say and have the discussion and the debate that people think is necessary for issues that are as important as the concerns that were brought forward after the white paper was released.

In terms of this amendment, I want to make it clear that I very much appreciate the letter that the current Natural Resources minister has written to me. In the letter the minister quite properly–[interjection] Unless I can change your mind.

An Honourable Member: There is that chance. There is always that.

Mr. Struthers: Yes, that is good.

In the letter the minister quite properly undertakes to bring to the Legislature, either through a companion bill or an amendment to Bill 61, those issues in Part 7 of the white paper that were offensive to many groups. So I am hopeful that the minister is willing to put within Bill 61 what he was willing to put in the letter, which I appreciated receiving from him. It has also been stated publicly by both the Natural Resources minister and the Premier (Mr. Filmon) that extensive consultation will take place in a public way with many of the groups concerned with this legislation well before the next step of sustainable development is brought forth, and that too has already been built into this act in certain other clauses. So I am hopeful that the minister will consent to this clause being added into Bill 61. I move

THAT the following be added after clause 7(1)(b):

(c) require that all aspects of sustainable development strategy be contained within a statute to be brought before the legislature following widespread public consultations, which statute shall include, but not be limited to, provisions regarding the following:

(i) all development licensing activities, including pre-licensing,

(ii) alterations or modifications to a development or licence,

(iii) issuance or refusal of a licence,

(iv) sustainability or environmental impact statements,

(v) public hearings and dispute resolutions,

(vi) local authority review and decision making,

(vii) appeal of local authority decisions,

(viii) licensing appeals,

(ix) enforcement of licences, permits, regulations or orders,

(x) the role of the Clean Environment Commission, or the establishment of a new Commission.

[French version]

Il est proposé d'ajouter, après l'alinéa 7(1)b), ce qui suit:

c) exige que tous les éléments de la stratégie de développement durable soient intégrés à une loi devant être déposée devant l'Assemblée législative à la suite de consultations, à grande échelle, du public, laquelle loi comprendra des dispositions visant notamment ce qui suit:

(i) toutes les activités concernant l'octroi des permis à l'égard de développements, y compris les activités préalables à l'octroi des permis,

(ii) les changments ou les modifications apportés aux développements ou aux permis,

(iii) la délivrance ou le refus des permis,

(iv) les déclarations concernant la durabilité ou l'impact sur l'environnement,

(v) les audiences publiques et le règlement des différends,

(vi) la révision de l'administration locale et la prise de décisions,

(vii) les appels des décisions de l'administration locale,

(viii) les appels d'octroi de permis,

(ix) le respect des permis, des licences, des règlements ou des ordonnances,

(x) le rôle de la Commission de protection de l'environnement ou la création d'une nouvelle commission.

Mr. Struthers: Mr. Chair, as the minister can see, those are the parts of Section 7 that did generate a lot of concern coming out of the white paper when it was presented in August of '96, and I think this amendment would go a long way in assuring those groups that any decisions made in respect of these areas will be dealt with through the Legislature. I think that would provide the kind of assurance that members of the opposition and other groups need in respect of these important decisions.

Mr. Cummings: My comments will be brief. I appreciate the issue that the member for Dauphin is raising, but I do not think that anything that could be introduced under regulation that he is concerned about would be considered lawful at any rate; and secondly, there is absolutely, as I said on the record before, no intention to attempt through any other means to introduce the type of regulatory or positive actions that he is suggesting in this amendment. I understand this amendment may not be in scope. I do not wish to offend the intent behind it, but I am recommending that we do not adopt it.

Mr. Chairperson: It is the opinion of the Chair that the amendment proposed by Mr. Struthers is out of order. It is beyond the scope of the bill and therefore cannot be considered by the committee.

Mr. Struthers: Mr. Chair, could you explain exactly why it is out of scope?

Mr. Chairperson: It has been brought to my attention that items (i) through (x) are issues that are not contained within the bill. Therefore, it is out of scope of that bill.

Clauses 7(1), 7(2), 7(3) and 7(4)–pass; Clauses 8(1), 8(2), 8(3), 8(4)–pass; Clauses 9(1), 9(2), 10(1) and 10(2)–pass; Clauses 10(3), 10(4)–pass; Clauses 11(1), 11(2), and 12(1)–pass; Clauses 12(2), 12(3), 13–pass. Clause 14.

Mr. Cummings: Mr. Chairman, I move

THAT clause 14(c) be struck out and the following substituted:

(c) establish procurement goals in support of the established provincial goals, and prepare an action plan to meet its established goals;

Il est proposé que l'alinéa 14c) soit remplacé par ce qui suit:

c) adoptent des objectifs d'approvisionnement visant à atteindre les objectifs provinciaux et préparent un plan d'action visant à atteindre ses propres objectifs;

Mr. Chairperson: Discussion? It is on the proposed motion of the minister to amend Clause 14 with respect

to both the English and French texts. Shall the motion pass?

An Honourable Member: Yes.

Mr. Chairperson: Clause 14 as amended–pass; Clauses 15 and 16(1)–pass; Clauses 16(2) and 16(3)–pass; Clauses 17(1), 17(2), 17(3) and 17(4)–pass; Clauses 17(5) and 17(6)–pass; Clause 18–pass. Clause 19.

Mr. Struthers: Mr. Chair, Section 18 caused me a great deal of concern when I read through Bill 61 right at the outset. I want to begin by thanking the minister and his staff for taking the time to go through this particular part of the bill with me, at least on two occasions, and thank him for the time spent doing that.

I do, however, want to be sure that anything that the government does in the area of sustainable development in the future receives as much attention as we can possibly garner for decisions that are made. I am concerned, as other groups are, that the debate and the discussion that takes place does take place in open and in public and preferably in the Legislature. What I would like to be able to do is make it so that the regulations that the government puts forth in the area of sustainable development go through the process of gazetting and make sure that the public has a chance to know exactly what it is that the government is putting forth in the area of sustainable development through regulation. So I move

* (1820)

THAT section 19 of the bill be struck out and the following substituted:

Regulations Act applies
19 The Regulations Act applies to any order made by Cabinet or a minister under this Act establishing or revising the Sustainable Development Strategy, sustainability indicators, code of practice or financial management and procurement guidelines.

[French version]

Il est proposé de remplacer l'article 19 du projet de loi par ce qui suit:

Application de la Loi sur les textes réglementaires
19 *La loi sur les textes réglementaires s'applique aux décrets et aux arrêtés que prennent le Cabinet ou les ministres sous le régime de la présente loi pour adopter ou réviser la stratégie de développement durable, les indicateurs, le code de pratique ou les directives de gestion financière et d'approvisionnement.*

Mr. Struthers: Again, Mr. Chair, I think the minister can see these deal with areas that were quite controversial when the draft paper was put forward. There are areas that not only we in the opposition have spoken about and against and debated on, but other groups around the province. Groups that were here the other night presenting touched on these sections of The Sustainable Development Act, and indeed, well before the bill was ever announced in the Legislature, there were many groups throughout the course of the last year or so who have become concerned with sustainable development and this act who want to make sure that the whole process is as open as we can get it. I think that the amendment that I introduced here today will go a way in making sure that the public can get a good look at the regulations that this government has put forward or will put forward having to do with sustainable development.

Mr. Cummings: Mr. Chairman, I would only point out that there are at least three other places in the bill where public consultation is required so that there is ample opportunity for the public to understand what is taking place, and I am advised that this is probably adding an unnecessary administrative responsibility. Certainly, given what I said earlier, plus other commitments about any future implications for the areas that potentially could come from the white paper Part 7 coming forward and legislation, I think this is redundant, and I would recommend against it.

Mr. Chairperson: On the proposed motion of Mr. Struthers to amend Clause 19 with respect to both the English and French texts, shall the motion pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the motion, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Nays have it.

An Honourable Member: On division.

Mr. Chairperson: The motion is defeated on division.

Clause 19–pass; Clause 20–pass; Clauses 21(1), 21(2), 21(3), 21(4), 22 and 23–pass; Schedule A–pass; Schedule B–pass; table of contents–pass; preamble–pass; title–pass. Shall the bill be reported as amended?

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill as amended, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay. It is the opinion of the Chair that the Yeas have it.

An Honourable Member: On division.

Mr. Chairperson: On division.

Bill 51–The Personal Health Information Act

Mr. Chairperson: We are now going to consider Bill 51, The Personal Health Information Act.

The honourable minister, with his opening statement.

Hon. Darren Praznik (Minister of Health): Thank you, Mr. Chair. I think I have put on the record all the comments about the bill that I want to do. All I wanted to do is alert my critic and members of the committee that I have four amendments to propose. One is clarification with respect to disclosure for investigation of or enforcement under other statutes. One is with respect to–actually, it is a recommendation from the College of Physicians and Surgeons with respect to disclosure to a family about patient's health care. It was a wording clarification they expect, and I think the member is aware of it. We also notice that the words "sell health information" were excluded from offence or penalty, and we would like to add that as an oversight. We are prepared, as members know, to accept the recommendation to increase the penalty level to $50,000. So I have amendments for each of those areas.

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, my remarks will also be brief with respect to the bill, because we have debated this bill. I wanted to put a few opening remarks on the record. First, I want to commence by thanking the minister. I believe most of those amendments we will be in favour of subject to a specific view. I also want to thank legal counsel for the yeoman service in terms of amendments we will be bringing forward, for assisting us on a very complex issue and for the hard work that they provided throughout these hearings but also specifically on this bill for the specific amendments that we have brought forward–for their assistance.

I should say at the onset that we agree with the provisions of the bill dealing with provision of providing for individuals access to their personal health records and the like, and you will note that we have had private members' bills before the Chamber for the past few years advocating this. So, in general, we do agree with those provisions, and we accept that.

Our problem with the bill is basically twofold. Firstly, we are concerned about the SmartHealth project, and we do not believe that the going forward of the SmartHealth project at this time necessitates having to go forward with this bill at this time. Secondly, we have grave concerns that this bill, in fact, is not on the cutting edge of bills in this area. The lack of a privacy commissioner, the lack of a lock-box provision and some of the other concerns, the confusion about whether or not information can or cannot be released, which has not been clarified for us, all cause grave concerns with regard to this bill and will necessitate, even though we agree with the principle, with some of the provisions of the bill, and though we agree a personal health information act is necessary–for those

above-noted reasons we will not be in support of this bill.

Mr. Chairperson: Thank you, Mr. Chomiak.

Committee Substitution

Mr. Edward Helwer (Gimli): Mr. Chairman, do I have leave to make a committee change?

An Honourable Member: Leave.

Mr. Chairperson: Leave.

* (1830)

Mr. Helwer: I move, with leave of the committee, that the honourable member for Gimli replace the honourable member for Ste. Rose (Mr. Cummings) as a member of the Standing Committee on Economic Development effective June 25, 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: Agreed? [agreed]

* * *

Mr. Chairperson: As always–also, I thank the member for his opening comments–the preamble, table of contents, title are postponed until all other clauses have been considered in their proper order. Shall Clause 1(1)–

Mr. Chomiak: Mr. Chairperson, we have amendments to this clause. They are extensive amendments, and they are also similar to amendments, I believe, that were introduced by my colleague the member for Osborne (Ms. McGifford) during consideration of debate on the previous bill, that is, The Freedom of Information Act, dealing with the provision of a privacy and information commissioner with respect to that act.

Insofar as the amendments are fairly lengthy, I am seeking your ruling whether or not this amendment is in scope at this point, if you can advise whether or not it is in scope, Mr. Chairperson.

Mr. Chairperson: It is the opinion of the Chair, Mr. Chomiak, based on a perusal of your amendment, that it would be out of order because it imposes a charge upon the public Treasury.

Mr. Chomiak: Mr. Chairperson, do I have leave of the committee to introduce the amendments that are out of scope?

Mr. Chairperson: Does Mr. Chomiak have leave to bring forward amendments that are out of scope?

Some Honourable Members: No.

Mr. Chairperson: No? No, you do not, Mr. Chomiak.

Mr. Chomiak: Mr. Chairperson, it is unfortunate. You know our position with respect to a privacy commissioner. We believe that the bill would be tenable and would be greatly improved by that provision, and it is unfortunate. I do have a question for the minister with respect to this subsection, and I would like clarification because the issue came up during presentation as concerns health services agency, and I wonder if–

An Honourable Member: Which subsection?

Mr. Chomiak: It is under the definitions section under health services agency, and there is some confusion as to the application of this bill to agencies like insurance companies and the like, firstly, and secondly, as it relates to private health care providers. I wonder if the minister might clarify those two issues.

Mr. Praznik: I appreciate this question very much from the member, because having the opportunity to put this on the record is most important. With respect to health services agencies, as the definition indicates, it means any organization that provides health care, such as community or home-based health care pursuant to an agreement with another trustee. So that would be any provider, private care provider, the We Cares, private home care provider, those who are doing our program now would be included in this.

In fact, one of the reasons we had a separate health care bill from the general privacy bill was because the general privacy bill deals only with information held in

the public realm in government, whereas the health bill does go into the private sector. Doctors' offices, for example, are private sector offices, private agencies providing health care, Victorian Order of Nurses, these are private agencies. So this bill extends into this area. We did not go, however, as far as some have suggested perhaps we should have into the insurance sector or the contractual private sector where people are contracting outside of the public health care system for insurance and other services in those realms.

I will be very straightforward with the member. The reason we did not move into that area is that is a very significant move for this legislation, and at this particular time we felt there was an urgency to move forward with this bill. That is an area that may be considered at some time in the future, and I would even suggest, given so many changes that are going on with technology systems, that when the review of this act is conducted that be an area that be considered. I appreciate the comments of himself and others who suggested it is an area to be considered. I am not in disagreement with that, but at this time it was the government's decision only to move into the private area to the extent that it was health care being delivered through our public health care system where we are funding it in essence and services are being provided through that vehicle.

Mr. Chomiak: Would it be correct to state that something like the Kinsmen Reh-Fit Centre, for example, by virtue of the definition under health care, under the preceding definition in this section, would be included under the provisions of this act?

Mr. Praznik: It is my understanding, on the advice of our legal counsel, our drafting counsel, that that would in fact be the case, and that was their intention in drafting these provisions.

Mr. Chomiak: The question of insurance companies, and to prevent going too far down this road and getting into argumentive aspects of it, information held by Blue Cross, for example, on employees and their health-related information, the minister is saying that that information would not come under the protection or provisions of this act.

Mr. Praznik: Mr. Chair, generally, information kept for insurance purposes would be excluded. They would not, however, be allowed to access or use the personal health identification number provided in this act because they would not be a trustee. So that is one of the trade-offs.

The other two comments I make, Mr. Chair, is in the case of insurance companies, and I appreciate the argument of it is not an equal relationship in contract, but in essence there is a contractual relationship that exists, and there is a fair body of common law on the use of information, et cetera, in that contractual relationship. So I am not saying today that necessarily it is as strong as many would perhaps like it, but there is a history here. There has not been identified to date to be a problem that we have been petitioned to correct. But it is an area–I would agree with many of our presenters–that we are going to have to watch closely, and I would suggest is probably very open for consideration in the years ahead. The difficulty with this bill is it is a major move into an area. This bill was contemplated to govern, really, our health care system, our public health care system. It was designed around that, and when you move this act into sort of the contractual insurance area, it requires a greater scope, more thought, I think, on how the stat system works and, quite frankly, would have taken a very, very large amount of work to be able to extend the bill, I think, appropriately into that area. So, although we are not precluding that possibility, it was not just administratively possible to move that extension and be able to have a bill before this House. Our real objective was to cover our public health care system.

So I do not want to disagree with the member in his concern; I think it is one that is worthy of attention. We were not able to accomplish that with this bill, but it is something that we may want to look at in future legislative sessions. I understand Alberta as well approached it in the same way with their act, in their proposed legislation, probably for very much the same reason. The structure and operation of it is somewhat different from our publicly-funded health care system, so the bill would be really covering two areas, would need a great deal more work. So we concentrated on what was important at this time in bringing this bill, and I certainly would not want to leave on the record any impression that we are precluded from looking at that next year or at another point in the future.

* (1840)

Mr. Chomiak: Yes, Mr. Chairperson, along another avenue, should Dr. X be providing a health care service such as eye surgery outside of the system, presumably under the health professional section or the health care facility section, he would probably or she would probably fall under the auspices of this act. Is that a correct observation?

Mr. Praznik: I thank the member for this question, a very important one. The answer is yes, they would be covered.

Mr. Chairperson: Clause 1(1)– pass; Clauses 1(2), 2–pass; Clauses 3, 4(1), 4(2), 4(3)–pass; Clauses 5(1), 5(2), 5(3), 6(1), 6(2), 6(3)–pass; Clauses 7(1), 7(2), 7(3), 8(1), 8(2)–pass; Clauses 9, 10, 11(1)–pass; Clauses 11(2), 12(1), 12(2), 12(3)–pass; Clauses 12(4), 12(5), 12(6)–pass; Clauses 13(1), 13(2), 14(1), 14(2)–pass. Clause 15(1).

Mr. Chomiak: Mr. Chairperson, I think 15(1) is a relatively significant provision in the act, providing for advising individuals that information is being collected for a particular purpose. I am not certain how this provision will be complied with and how we can ensure that through the process and through the collection of information that the individuals will be informed as to the purpose of the collection of the information. Let me just cite an example.

If, for example, a health care provider, say any kind of a primary care provider is collecting information about an individual's health, that information goes on line. Is the individual going to be informed that this information is going on line and being collected and for what purpose? It is just not clear to me, and I wonder if the minister might explain that.

Mr. Praznik: Mr. Chair, I believe the member's question is about Section 15(1)? I believe the purpose of this section is to make very clear that when–the member looks for an example–you go into a health provider's office, be it a doctor's office or it might be in a nursing clinic and they are collecting information about you, they have an obligation to inform you why they are collecting that information, even it if is general information; they are preparing a file for you, but they have to tell you what they are collecting it for and the purpose.

This is interesting because, although that happens now, sometimes in practice there is no obligation for that to happen, so we are now asking health care providers when they are collecting personal health information to inform people why they are collecting it, for what purpose, and if that information is taken by an employee, say, for example, a receptionist in a doctor's office, they are under that same obligation to ensure that people are informed of the purpose.

Mr. Chomiak: Mr. Chairperson, of course, of one extent a trustee is a very broad category, and that includes information collected by the provincial government. Can there be cross-utilization of that information? For example, if the provincial government says, as it does, that you have to provide your income tax form with respect to collecting Pharmacare, will that information only stay within the realm of the Pharmacare Program or, as I believe, in the rest of the act that information can be used otherwise. It can be used otherwise I believe for other provincial programs and, if that is in fact the case, then parts of this aspect of this bill are not as effective, because the initial request for the information is being used for one purpose, but it may be used down the road for some other purpose.

Mr. Praznik: Mr. Chair, in the example cited by the member for Kildonan about income tax information, that is not personal health information. That is personal information. That will be governed by Bill 50 and the rules that apply to it. We have very, very strict rules here. In fact, as we contemplated this act, we wanted to make sure that information for health purposes was really not available for other purposes. So that is very, very restrictive, probably more so than general information under Bill 50.

Mr. Chomiak: Mr. Chairperson, I thank the minister for that explanation. Does that therefore mean that a trustee who collects personal information–with the exception of Subsection 15(2), leaving that aside for a second–that information about diagnosis or about personal health care of any kind will remain only utilized for the specific purpose unless the individual is informed otherwise. Let me cite an example. You

have a blood test, and the blood test says that only certain–you have a blood test for certain purposes. That blood test information cannot be passed on for any other kinds of tests?

Mr. Praznik: I would reference the member to Section 21. It lists the purposes for which information can be provided. So unless one can fit it within that section, that information–and the reason I do not answer specifically is because there may be some purpose. I am trying to look at the provision if information put the individual at risk and they had to be contacted because of an infectious illness or something to that effect.

Mr. Chomiak: I understand that, and I understand–it is the question of notification to the individual when the initial information is received. I mean, there is a difference between the collection of the information and the purpose versus the notice provisions, because this section says they must, at the time or as soon as practical afterwards, notify them that the information is being utilized for some other purpose or for some related purpose.

Mr. Praznik: If I follow the member correctly, we know that under the section there is a responsibility to provide notice for the purpose of which information is collected. I believe there is some regulatory power to set that out, and the member's question is if that information is going to be used for another purpose as defined in the act in Section 21, is there a notification of that member. I believe that is provided for in the regulatory powers, so it is our intention to require that by regulation. I would refer the member to Section 66(1)(d). There is provision to make regulations requiring trustees to provide notice to individuals. It is our intention, in having worked with the stakeholders committee, that the particular rules around that would be dealt with by regulation, so I have no problem committing to that here today.

Mr. Chomiak: Can the minister indicate which subsection he just referred to?

Mr. Praznik: Yes, Section 66(1)(d). If the member would like, I have no problem if the member would like a couple of moments with our drafting people, because it is a fairly complicated scheme and the member may just have a couple of questions that–satisfy their information.

Mr. Tim Sale (Crescentwood): It is the same area, I am sure, that our member is concerned about. Under 21(d) it appears that the idea here is evaluation research. Am I–this is not the section we are on?

Mr. Chairperson: We are on 15(1), making reference to.

Mr. Sale: It is the question of collection and the–

Mr. Chairperson: Sure. No, ask the question, sure.

* (1850)

Mr. Sale: I have no problem waiting, but the issue is the question of the purpose. Under 21 where all the purposes are elucidated, there is a great long list of them. But there seems to be some confusion between 21(d) and 24, a question of where legitimate research takes place and what constitutes research. So that is also a question in this whole section, and if it could be considered at the same time, maybe we can clarify all of those issues, because I think they are very, very important. They are not just important for patients, I might say, they are important for institutions and providers as well, because they need to know where they stand in regard to when and when they may not disclose.

The second issue, if I can also ask the minister to consider it, is at what level is the disclosure. When you disclose for the purposes of delivering, monitoring or evaluating, are you disclosing individual records, or are you disclosing data that is aggregated or anonymous for the purpose of this function? Do you see what I mean, that there is the potential here for confusing the individual record level, as well as the issue of aggregate records that can be very legitimately used for research purposes but need not ever disclose the individual record.

Mr. Praznik: If the committee will allow, I would like our legal counsel, Heather McLaren, to answer this specific question. She has been responsible for drafting this act. She has lived, slept, breathed and eaten this

act over the last number of months, and she will give a much clearer answer than I possibly can.

Mr. Chairperson: Leave of the committee. [agreed]

Ms. Heather McLaren (Legislative Analyst): I think, Mr. Chair, we will go back to basics. The act is divided into purposes for which personal health information can be used by the trustee, that is, the internal use by the trustee, which is dealt with in Section 21. Section 22 deals with the disclosure of personal health information by a trustee to someone outside of the trustee's organization. So the reference in Section 21(d) is where the trustee is using personal health information for internal research and evaluation purposes. Section 24 of the bill deals with disclosure to outside bodies conducting research.

Mr. Sale: Mr. Chairperson, with respect, there is nothing that says that in the drafting. The trustee is a public body or a health care facility and the information is used (1) to deliver, monitor, evaluate, et cetera. If it said "of that institution or body," then I would understand what you are saying, but this simply says "a program." Well, a program would be home care. A program is Pharmacare. A program is the AIDS program. A program is the oncology program across the province. I hear what you are saying, but the words in the act do not say what you said. They do not restrict the research to that facility or that office or that institution.

Mr. Praznik: Mr. Chair, given that–again, this is a very complicated bill. Ms. Val Perry was also legislative drafting. I would ask if the committee could give leave for–they tell me that is covered, that the concern is met. Given the complexity of how sections interrelate, I would appreciate if they could respond to the member directly.

Mr. Chairperson: Is there leave? [agreed]

Ms. Val Perry (Legislative Counsel): Mr. Chair, the structure of the bill is to deal with use in Section 21, and we mean by that internal use. The structure of this bill is the same as in The Freedom of Information Act; (d) relates to research and planning relating to those trustees' functions.

Mr. Sale: Mr. Chair, I am having trouble hearing the explanation. Maybe the person come a little closer to the mike.

Ms. Perry: Okay. The purpose of Section 21 is to deal with internal use by the trustee of that information, so that Clause (d) relates to research by that trustee.

Mr. Sale: That is the explanation that was given previously as well. The problem is there are no words in this section that indicate that the purpose of the section is internal use within a particular trustee, whether that trustee is a health clinic, a hospital, a personal care home or a doctor. There is nothing here that says it is internal, and I just would say to Ms. Perry again that there are programs, which is the word that is used in (d)(i), and certainly in research and planning there are many, many situations in which several multiple clinics or a whole program would be evaluated using data from various trustees. There is nothing in your drafting here–and I am not blaming you. I mean this is a complex issue. There is simply nothing here that indicates the intent that you have put on the record. I accept the intent.

Ms. Perry: I wonder if it would help then if we added the words "of that trustee" in (d)(i) and (d)(ii), "by or of the trustee," so that (d)(i) would read: to deliver, monitor or evaluate a program that relates to the provision of health care or payment for health care by that trustee.

Mr. Chomiak: That would work.

Mr. Praznik: Mr. Chair, then we will have that amendment prepared with agreement on the place to move it.

Mr. Chairperson: Is there agreement on that?

An Honourable Member: Sure.

Mr. Chairperson: Okay.

Committee Substitution

Mr. Helwer: I wonder if I could have leave to make another committee change.

Mr. Chairperson: Leave? [agreed]

Mr. Helwer: I move, with leave of the committee, that the honourable member for Emerson (Mr. Penner), replace the honourable member for Roblin-Russell (Mr. Derkach) as a member of the Standing Committee on Economic Development effective June 25, with the understanding that the same substitution will be moved in the House to be properly recorded in the official recordings of this House. [agreed]

Mr. Chairperson: Clause 15(1)–pass; Clause 15(2)–pass; Clause 16–pass; Clauses 17(1), 17(2), 17(3), 17(4) and 17(5)–pass; Clauses 18(1), 18(2)–pass; Clauses 18(3), 19, 20(1), 20(2), 20(3)–pass.

Clause 21, while we are getting the amendment on it, is there agreement to move on?

Some Honourable Members: Yes.

Mr. Chairperson: We can pass it and then come back to the amendment, I guess, to keep the sequence in order, if there is agreement.

An Honourable Member: Sure.

Mr. Chairperson: Okay. Clause 21–pass.

Mr. Chomiak: Mr. Chairperson, Section 21(f) is a fairly broad, broad category, and it indicates the use of the information as authorized by an enactment of Manitoba. Am I correct in understanding that any provincial legislation could take precedence and utilize the personal health information of an individual based on this subsection? Is that a correct observation?

* (1900)

Mr. Praznik: Mr. Chair, the statute would have to specifically, I am advised, authorize the disclosure of that information under this act. It could not happen inadvertently, so it would have to be a specific disclosure. If the member would just grant me a moment. I think if we read the section in its entirety, what we are talking about is the trustee being able to use that information on the list of things. Perhaps it is my misunderstanding but if a statue of Manitoba or Canada specifically authorizes the trustee to use that information for a purpose, specifically for a purpose that that statute contemplates and identifies it specifically, that not withstanding this act, a trustee may use that information for that purpose, so the Legislature or Parliament of Canada, in essence, would have to contemplate doing that.

Now the interesting thing when I looked to my staff is they could not come up with an example for that use of that situation, and we are not aware of one now. They, in putting this together, felt very strongly that there may be at some point in time a provision, and it would be a tidier way of, in essence, dealing with this issue in that statute as opposed to a consequential amendment to this one.

Mr. Chomiak: I thank the minister for that explanation. I do not doubt the comments of legal counsel, except how do we conclude that, because if one looks at the–we know that this act prevails over other acts of the Legislature with the exception of The Mental Health Act.

Mr. Praznik: Mr. Chair, I share some of the same concerns of the member. I am just reminded that the reason why an enactment of Manitoba or Canada is referenced is there may be some requirements under the Young Offenders Act or The Statistics Act that may require that information to be used for a purpose under it by the trustee, and that was the concern that was flagged by our drafters. So, again, part of that balancing. So the acts that gave some concern that are federal are with respect to statistics and young offenders. It is also pointed out to me that the Manitoba Adolescent Treatment Centre operates under the authority of the Young Offenders Act, so while people are in the care and control of Young Offenders, there may be a requirement to use personal health information in the treatment of those individuals or their care. I gather that is the kind of link that they wanted to keep open.

So the concern, although I note it on the other side administratively–our people who worked on this were of the view that there–and the concern was expressed I think by those who administer those facilities that if we did not provide for this, we may be in a situation that young people in that case in our care and control, that

they may be disadvantaged in terms of health information being available for their care.

That is the argument that was put to us in drafting this bill.

Mr. Chomiak: I understand that argument. Maybe I am going down the wrong road and I do not want to–if I look under Section 4(2) that deals with conflict with another act, is that the section that will give me comfort with respect to the earlier comments of the minister? Just so I understand it correctly, that if there is another act that requires–if there is another requirement for information, that information can only be released if the other provincial enactment or other federal enactment provides stricter confidentiality protection than is existing in this act.

Is that where we get comfort, and the comments of the minister, is that where I take the legal–[interjection]

Mr. Praznik: Yes, Mr. Chair, that is correct. In fact, even refined more. It would only be a provincial statute that would have that ability to specifically opt out.

Mr. Chairperson: Clause 21–[interjection] Yes, we can pass it and come back to it.

Mr. Praznik: Mr. Chair, could we just defer passage of Clause 21 until that amendment is translated into French?

Mr. Chairperson: Okay. We will continue on.

Clause 22(1)–pass; Clause 22(2)–pass; Clause 22(3)–pass. Clause 23(1).

Mr. Praznik: Mr. Chair, I have an amendment. This was a wording change that was recommended by the college which they thought was more workable in day-to-day practice.

I would therefore move

THAT subsection 23(1) be amended by striking out everything after "if" and substituting the following:

(a) the disclosure is about health care currently being provided;

(b) the disclosure is made in accordance with good medical or other professional practice; and

(c) the trustee reasonably believes the disclosure to be acceptable to the individual or his or her representative.

[French version]

Il est proposé d'amender le paragraphe 23(1) par substitution, au passage qui suit "étroits,", de ce qui suit:

si:

a) la communication a trait aux soins de santé qui lui sont fournis à ce moment-là;

b) la communication est effectuée en conformité avec des pratiques professionnelles - notamment des pratiques médicales - saines;

c) le dépositaire croit pour des motifs raisonnables que la communication est acceptable pour le particulier ou son représentant.

This particular wording was suggested to us by the college, as opposed to the current wording which under Clause (c) currently reads: is not contrary to the express request of the individual or his or her representative. Currently, the practitioner would not be able to make the request, only if there was an express request made by that individual or their representative.

This would, for example, allow the doctor, the physician or the trustee to have a little bit more latitude, not in making a disclosure but in not making a disclosure. I know one example that was flagged with us, for example, by the college is a case where a family physician is treating an individual; he knows that they are separated from their spouse, and they may be living with another person. It has been a longstanding relationship over a number of years, and the physician would recognize that the personal information with respect to the client may not be divulged to the ex-spouse who may now want to be involved in this process, given the relationship.

So it is somewhat of a reversal here, I gather, but the college viewed this as being a strengthening of the

physician's ability not to disclose information where the physician thought this would really be contrary to the express wishes of the client. The current reading requires the client to actually make the declaration. So it strengthens the provision.

Mr. Chairperson: Amendment–pass. Clause 23(1) as amended–pass. Clause 23(2) and 23(3).

Mr. Chomiak: Mr. Chairperson, with 23(2) we are therefore indicating that an individual must express the desire not to have their condition disclosed, otherwise the exception does not apply. Is that correct?

Mr. Praznik: That is correct.

Mr. Chomiak: Does "express" imply oral or written?

Mr. Praznik: It is either.

Mr. Chairperson: Clause 23(2), 23(3)–pass; Clause 24(1), 24(2), 24(3)–pass; Clause 24(4), 24(5)–pass; Clause 25(1), 25(2), 25(3), 25(4), 25(5)–pass. Clause 26(1), 26(2).

Mr. Chomiak: I do not have an amendment to this section, but if I did have an amendment, I certainly believe we would probably ask that the section be amended to exclude 26(2)(c) so as not to permit for disclosure by virtue of regulations.

There is a difficulty with the expansion of information and the utilization. We all know the story about SIN numbers and how they were supposed to be limited, and permitting it to be expanded by regulation is a problem.

I do not have an amendment here, and likely my amendment would be defeated, but I wanted to go on the record as saying that we do not approve of that. Well, I guess we can vote against it.

Mr. Chairperson: Clause 26(1)–pass. Shall Clause 26(2) pass?

Some Honourable Members: Pass.

* (1910)

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of passing Clause 26(2), please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

* * *

Mr. Chairperson: Clause 27(1) and 27(2).

Mr. Chomiak: Mr. Chairperson, is the government convinced that this prohibition will only limit the sale of health information to those two exceptions exclusively as identified under 27(1)(a) and (b) and keeping in mind the exception for pharmacies because this is a fundamental issue.

Mr. Praznik: I would agree wholeheartedly with the member for Kildonan it is a fundamental issue. I think he recognizes there has to be some ability when one is selling a practice, a clinic or a business that the records are part of that concerned transfer. That is all we are in fact allowing for. If, by some chance someday this were to be interpreted otherwise by a court, then we would certainly want to amend that and change it to restrict it to our original intent. So that is the best guarantee I can give him today, but I think we share the same objective here.

Mr. Chomiak: If there was a health care agency providing a type of service and they were selling their agency as a going concern to a new upstart agency that was not a trustee, that could not be–

Mr. Praznik: A good question. The answer is a simple one in essence under this regime, they would have to become a trustee. So, for example, if one was a young pharmacist who is not a trustee today, is purchasing a pharmacy, they in essence would become a trustee and assuming the purchase of the pharmacy, be governed by the regime. The beauty of this regime is that the protection of the information is with the trustee. Information may move amongst trustees, but the same rules apply. So I think the member appreciates that issue, but someone could not buy that particular facility and have that information without being a trustee.

Mr. Sale: I just think this is also, as the other member of our caucus has stated, really critical. I have wondered in reading this act how this applies to pharmacies where the pharmacy itself is owned by Safeway or Shoppers Drug Mart and there are no pharmacists who are owners. In fact the control of the data is not in the hands of pharmacists, it is in the hands of Shoppers Drug Mart or Safeway. I suspect that they have already thought of this, but maybe the minister could tell us what the thought was.

Mr. Praznik: An excellent question. In the case the member is talking about, to have a pharmacy in essence under The Pharmaceutical Act, you have to have a pharmacist, so the pharmacist is the trustee. If that pharmacy is being sold or does not have a pharmacist to be the trustee, then they are no longer a pharmacy, in which case they are into wind-up provisions and the respective regulations which under The Pharmaceutical Act will require that the personal health information be properly stored and housed with the trustee. Whatever has to be done, I guess would be similar to the wind-up of a legal practice to some degree. So the information is protected. It would not just now be the property of Safeway or SuperValu or Shoppers or some other organization. The beauty of the scheme is that personal health information will always have a trustee even if it is a trustee in wind-up who has responsibility for destroying or permanently storing that information.

Mr. Sale: I am sure that the minister has purchased drugs at drugstores. When you purchase a drug at Shoppers Drug Mart, you are in their wonderful computer system, and they advertise it heavily. Certainly that system is not in the control of a pharmacist, it is in control of the corporation. When you go to Safeway, the skew that is on the drug is scanned into the computer at Safeway. If you want to profile any individual shopper, not collectively, but when I have purchased a drug at a Safeway store, the skew goes through the cash register into my personal profile. I buy Bee Hive golden corn syrup and get a prescription for some obscure disease. That is scanned into their computer. So, I flag this because I do not think that we have thought of the degree to which personal health information has already escaped into broad, general databases. I think that the minister may have an answer to this, but I would really be interested to know whether he can give absolute assurances that there are not customer profiles, including the drug purchases of the customers, in the hands of major corporations that are not bound by this act.

Mr. Praznik: First of all, whether it be a major corporation or just an individual really is not the point. Is it bound–does someone else have information that they can use? Now I am advised by our people who put this together investigating The Pharmaceutical Act, on any prescription drugs that require prescription, even if the pharmacy is part of a larger chain store or larger operation or even an independently owned one, under that act they require that information to be paid for separately, the information is kept separately, and the confidentiality under The Pharmaceutical Act governs as well, so that has already been contemplated.

Now, if one buys a nonprescription drug or a regular product, we cannot control that. The other part about how useful that information is that does not necessarily mean that the person who purchases it is the consumer of it so, as consumer information, it is probably of limited value. The real concern is not–and this act is not intended to protect people from having their general shopping habits known. It is designed to protect personal health information. I guess if people buy various nonprescription products we really cannot control that because they can buy them anywhere, but anything that is prescribed that is already governed by The Pharmaceutical Act, et cetera, I think is protected.

If the member would like to have a better sense of that scheme, I would certainly have our staff available to go through the detail with him, if that is what he requires for a comfort level.

* (1920)

Mr. Chairperson: Clause 27(1)–pass; Clause 27(2)–pass. Clause 28.

Mr. Chomiak: I have a series of amendments at this point. I guess I am looking to the Chair for a viewpoint as to whether or not these amendments are within scope.

Mr. Chairperson: It is the opinion of the Chair that the amendment proposed is out of order, because it imposes a charge upon the public Treasury and therefore it cannot be considered by committee.

Mr. Chomiak: It is a similar amendment that was introduced by my colleague for Osborne with respect to The Freedom of Information Act. Can the Chair give me guidance as to how the establishment of a committee to develop terms of reference for the office of health information privacy commissioner and a selection process for selection of the commissioner imposes a charge on the province?

Mr. Chairperson: The terminology where the selection process for the selection of the commissioner indicates that there would be an office set up, thus carrying the additional costs, which makes it a financial or a Treasury–

Mr. Chomiak: Regrettably, I challenge your ruling.

Voice Vote

Mr. Chairperson: The ruling of the Chair has been challenged, and I shall ask, shall the ruling of the Chair be sustained? All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is my opinion that the Yeas have it. The ruling of the Chair is sustained.

Mr. Chomiak: On division.

Mr. Chairperson: On division. Shall Clause 28 pass?

Mr. Chomiak: Given this setback in committee, Mr. Chairperson, I want to thank Legislative Counsel for extensively drafting a whole series of amendments. It is very appreciated, but there is not much use in submitting the rest of the amendments concerning the office of the privacy commissioner, but I just wanted to go on the record as indicating, we did have extensive amendments. I do want to thank–and I thought the Leg. Counsel did a very creative job of helping us to try to bring this within scope, and we did do our best.

Mr. Praznik: Mr. Chair, I would just reiterate my offer that over the next few years, as we get this bill in operation, if in fact the workload or the requirements of that job demonstrate a need for a separate office or for a separate office with the title of privacy commissioner or for additional powers, that we on this side are not adverse to considering that.

So I do not say this frivolously. The member should keep his amendments housed. Perhaps we can share them at some point in the future. I certainly acknowledge the position of the New Democratic Party today that that is their advice to us, and if time proves them right I will be one of the first to acknowledge it and move such amendment myself. I thank them for their comments.

Mr. Chairperson: Within this section, something that struck us was the limited ability of the Ombudsman to only comment. I wonder if I might get a brief explanation as to why the Ombudsman in this section and indeed the other act, The Freedom of Information Act, have only been limited to the ability to comment, because I think it would be in all our interest to provide them with a broader ability to reflect on this legislation and its implications.

Mr. Praznik: These provisions are exactly the same I understand as those in Bill 50. We wanted to make sure that they mirrored one another, and I think they are very similar to the current powers or description of powers of the Ombudsman for the current powers of the Ombudsman, so we were mirroring to some degree existing wordings.

Mr. Sale: Just a brief comment on this, it is really striking that under Section 29, which we have not passed yet, and the following sections, the Ombudsman

has quite a bit of power here, has the power of a commissioner under The Evidence Act, can force production of records, can enter premises, can search databases.

For all intents and purposes, the Ombudsman has the power to do many of the things we would want a commissioner to do under the act, but he cannot do anything. All he can do is report and can comment and can–and so it is strange that the powers given are stronger than the capability given. It is striking when you read the amount of force the Ombudsman can bring to bear on the Ombudsman's activities, but the weakness with which the Ombudsman can actually do anything as a result of these activities, which are the activities of a commissioner under The Evidence Act.

Mr. Praznik: Mr. Chair, I appreciate the comment of the member, but I think the thing to keep in mind is that it may seem the power to comment is not a very strong one, but I would suggest it is an extremely strong power because of the weight of the Ombudsman's office, the power to investigate, the power to expose, what they have found is very great, and when the Ombudsman is going to make comment, as the bill indicates, it is going to reveal issues, problems that have to be resolved and I think, by their nature, force resolution.

They also, by the nature of an Ombudsman's work, mean that the Ombudsman will bring the parties together that are required to resolve the issue and work out a solution that not only solves the problem in real terms, in theoretical terms, but also in a practical, administrative way.

The real challenge over the next few years which we all will be watching is whether or not this particular array of powers and the power to comment are sufficient to deal with the problems that actually arise. If they are not, we on this side will be the first to recommend changes. If they are, then I am sure we have a system that works.

So that is really the issue. We know that there is a track record here, and we want to see if it will work in this particular case, but I respect the difference of opinion, and to be honest to both sides in this argument, time will tell, and we on this side are not so rigid that we are not prepared to change if that is required.

Mr. Chairperson: Clause 28–pass; Clauses 29(1), 29(2), 29(3), 29(4), 29(5) and 30–pass; page 28–pass; Clauses 34(3) through 36–pass; Clause 37(1) through 37(3)–pass; Clauses 38 through 39(2) pass; Clauses 39(3) through 41(1)–pass; Clauses 41(2) through 43(2) pass; Clauses 43(3) through 47(2) pass; Clauses 47(3) through 48(2)–pass; Clauses 48(3) through 49(1)–pass; Clauses 49(2) through 51–pass; Clauses 52 through 56–pass; Clauses 57 through 59(2) pass; Clauses 59(3) to 61(2)–pass; Clauses 62 to 63(2)–pass. Clauses 63(3).

Mr. Praznik: Mr. Chair, I would like to move an amendment here. I think it was an oversight in drafting, and I would therefore move

THAT Clause 63(3)(a) of the bill be amended by striking out "or discloses" and substituting ", sells or discloses".

[French version]

Il est proposé d'amender l'alinéa 63(3)(a) par substitution, à "ou communique", de "vend our communique".

I think, Mr. Chair, what this does is also makes it an offence–to ensure that there is an offence here–for selling information.

Mr. Chairperson: Discussion? Amendment–pass. Clause 63 as amended–pass. Clause 63(4) through 63(6)–pass. Clause 64(1).

Mr. Praznik: Mr. Chair, this is to raise the penalty as was recommended by many of our presenters and I think is consistent. We have raised the penalty in Bill 50.

So I would move

THAT subsection 64(1) and (2) be amended by striking out "$20,000." and substituting "$50,000."

[French version]

Il est proposé d'amender les paragraphes 64(1) et (2) par substitution, à "20 000$", de "50 000 $".

Mr. Chairperson: Amendment–pass. Clause 64(1) as amended–pass; Clause 64(2) as amended–pass. Clauses 65(1) through 66(1)–pass; Clause 66(2)–pass; Clauses 67, 68 and 69–pass.

As previously agreed upon, is there leave to revert back to Clause 21? [agreed]

Mr. Praznik: As we have discussed, Mr. Chair, I would move

That Clause 21(d) of the bill be amended by adding "by the trustee" after "payment for health care" in subclause (i) and (ii).

[French version]

Il est proposé d'amender l'alinéa 21d) par adjonction, après "paiement de soins de santé", dans les sous-alinéas (i) et (ii), de "par le dépositaire en question".

Mr. Chairperson: On the proposed motion of the minister to amend Clause 21 with respect to both the English and French texts, shall the motion pass?

An Honourable Member: Pass.

Mr. Chairperson: Shall the Clause–I am sorry.

Mr. Sale: First of all, I thank counsel for doing the amendment, and I also want to put on the record that their indication to me was that the term "use" has a connotation in other jurisdictions which means use internally and that was why they drafted it this way. The reason that I raise the question is that it is always possible that a court here may not feel the same way about the term "use" but their counsel would obviously be much more valuable than mine in that regard.

I still have a concern about (d)(ii). What this would now read is: The trustee as a public body or a health care facility, and that personal health information is used by the trustee for research and planning that relates to the provision of health care or payment for health care. That means then that the research and planning–I am trying to envision a situation where a trustee would use information for research and planning in regard to provision of payment. Research and planning sounds very much to me like the government's need to do this. So, again, I am having some difficulty with the disclosure issue here, because here we are talking about the individual level disclosure. That is my concern.

Mr. Praznik: Mr. Chair, first of all, I know facilities do–particularly large ones–research and planning as part of their operation but with the committee's consent, I would like our legal draft people to respond to Mr. Sale because, again, there are a lot of issues, how they intertwine. I think they can give him the comfort level he is seeking.

Mr. Chairperson: Is there leave? [agreed]

Ms. McLaren: Mr. Chairman, facilities use research and planning internally on an ongoing basis. It is not just Manitoba Health that engages in that kind of activity. They may, for example, want to assess the infection rate in certain surgical procedures internally which requires that they use information in charts in the hospital without the patient's consent to look at did they contract an infection while they were in or did they not.

Mr. Chairperson: Clause 21 as amended–pass; table of contents–pass; preamble–pass, title–pass. Shall the bill be reported as amended?

Voice Vote

Mr. Chairperson: All those in favour of reporting the bill as amended, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: It is the opinion of the Chair that the Yeas have it.

Mr. Chomiak: On division.

Mr. Chairperson: On division.

That is it, ladies and gentlemen. Thank you for your co-operation. Committee rise.

COMMITTEE ROSE AT: 7:35 p.m.