LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Tuesday, 2 July, 1985

ME — 10:00 a.m.

)CATION — Winnipeg, Manitoba

HAIRMAN — Mr. C. Santos (Burrows)

ITENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Bucklaschuk, Penner

Messrs. Fox, Harper, Kovnats, Mercier, Santos, Steen

PPEARING: Mr. E. Szach, Legislative Counsel

ATTERS UNDER DISCUSSION:

Bill 5 - The Freedom of Information Act;
rojet de Loi 5 - Loi sur la Liberté d'accès à l'information

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IR. CHAIRMAN: Committee, please come to order. ast time we had heard all those who are present, and ho were present, to make presentations regarding Bill , The Freedom of Information Act; Loi sur la Liberté 'accès à l'information and we have agreed to proceed nd consider the bill, but before we do, the Honourable ttorney-General.

ON. R. PENNER: Yes, just two observations; one has) do with the way in which, at committee stage, mendments are to be dealt with, given the equirements of the decision of the Supreme Court ith respect to the enacting process in the two official nguages; and although, as I understand the Speaker's uling, it was his view that we could deal with the mendments in the one language only and then have nem translated subsequently. It seems to be preferable here possible, in any event, to deal with them at the ame time in both languages.

I am advised by Mr. Szach that the translation of the mendments which I will be proposing is in fact just bout ready and should be here within a few minutes. ut rather than hold us up, I think we could proceed) go through, and at the time we arrive at those ections where I want to propose some amendments I am sure there might be some others - I am quite repared, Mr. Chairperson, to have them dealt with in he one language, the English language version which s available and has been distributed, and then when he French version comes in we can check them longside, or the proposed amendments will be listributed in a moment.

MR. CHAIRMAN: The Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, just with respect to he Attorney-General's remarks, if he could clarify the process or the advice perhaps of Legislative Counsel because it's certainly much easier for the government, who examine a bill, and in consultation with Legislative Counsel prepare amendments for a committee meeting - and I am not referring just to this bill - and use the Translation Department to have the amendment translated, but it's a lot more difficult I think for members of the opposition who may, as we go through the bill, perhaps discussing various sections of the bill and ascertaining the Attorney-General's view on the bill, they might come to the conclusion that a type of amendment is required but obviously we will not have had the translation done.

So is it the advice from Legislative Counsel that we can proceed in committee with amendments in one language only?

HON. R. PENNER: I must add, I don't have specific advice about that, but it just seems to me that when the Supreme Court used the phrase "enacting process", they weren't attempting to write the specific rules of each Legislature because there are significant variations in the rules, and I would think that it would certainly meet the spirit, and probably the letter of that decision if, prior to the bill being reported for third reading, those amendments agreed to at committee were available in both languages. I would feel quite strong in that opinion that that would be adequate.

MR. CHAIRMAN: So what is the wish of the committee? Shall we proceed page-by-page or clause-by-clause?

HON. R. PENNER: Page-by-page.

MR. CHAIRMAN: Page-by-page. We shall begin with Page 1.

The Member for St. Norbert.

MR. G. MERCIER: In the definition section, "applicant" is defined very broadly. I remember I asked a question of one of the representatives of ACCESS about it who seemed to agree with that proposed definition, but would appear to exclude anyone from any country, etc. I wonder if the Attorney-General could give us his thoughts on why such an open-ended definition was used.

HON. R. PENNER: Well, it didn't appear to us that there was any strong ground for excluding any category of persons. We know if one wants to consider reciprocity, and reciprocity is not unimportant, that Canadians have had full access to records in the United States, under the United States Freedom of Information Legislation, and I would feel that it was the better part of wisdom to allow reciprocity there and, if we were doing that, I just couldn't see any particular ground for excluding any other nationals.

MR. CHAIRMAN: Pages 1 and 2, English and French versions, were each read and passed.

Page 3 - the Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, the ACCESS brief recommended a statement of principles to be incorporated, I think, something similar to what is in the federal act. I don't see any proposed amendment in the Attorney-General's proposed amendments, I wonder if he could indicate if he gave that some consideration and indicate why he would prefer not to do that.

HON. R. PENNER: I must say, quite frankly, that in the relatively brief period of time that has followed from the hearing stage to this stage of committee, there hasn't been an opportunity to think about it particularly, or to prepare something or to present it to our Caucus.

I must say, additionally, that I tend to have a - what's the word, predilection? - against preambles or statement of purposes. I know we have one, for example, in some of our legislation this year, but it used to be Mr. Tallin's view - still is Mr. Tallin's view, and I guess I was influenced by him - that there might be some concern about a statement of principles because it then could be one of the basis for statutory interpretation and you can never be sure in a statement of principles which is rather free flowing and rhetorical, that it didn't in fact cloud rather than clarify the issues.

MR. G. MERCIER: Mr. Chairman, in Section 2(1), the ACCESS brief had recommended that the word "or" at the end of Paragraph 2(1)(a) be changed to "and", can the Attorney General indicate why he doesn't want to proceed to make that amendment?

HON. R. PENNER: I'm sorry the amendment being?

MR. G. MERCIER: "Or" to "and" so that it would read, the person has "the right to examine the record; and to obtain a copy of the record."

HON. R. PENNER: Yes. Some originals cannot be copied because of their very nature - I mean in terms of physically speaking - mechanically cannot be copied and, of course, some records will be excluded, that is, we obviously cannot give people originals. They form part of the records of government. Where possible where a record can be duplicated and there's no problem in providing the record, it is not of the kind that has to be severed or something of that kind, then a record will be made available.

I suppose when we get around to looking at the question of a fee structure, the fee structure in part will be based on duplicating costs to some extent, but we worried about including or using the word "and" which then gives a statutory right to attain a copy in circumstances where it might not be physically possible.

MR. G. MERCIER: If you read the section then, isn't there a problem? "A person who is given access to a record under this Act has, subject to section 7," now that may exclude . . .

HON. R. PENNER: That's the fee section.

MR. G. MERCIER: Yes, the fee section, "the right to examine the record; or to obtain a copy of the record". I would read it that if a person is given access he ha the right either, one, to examine the record or to obtai a copy of the record and the applicant is the one wh decides what he wants. Now if he says I want a cop of the record and the Attorney-General says som copies are not available, is he not given a . . . righ of access to a copy of the record? Or should you hav something in there, if available there, or if possible?

HON. R. PENNER: This section was modelled on th federal section which in itself, of course, is n justification, but we did discuss it with them at lengtl It's intended and is interpreted as giving the governmer or the head of the department the right to choos between alternative methods of making the informatio available to the applicant; that is, to allow the applicar to examine the records which might be a book or journal, and it might be voluminous, or to obtain a cop of the record.

From the applicant's point of view, the fact that ther is that kind of a discretion is helpful because it migl be that sequestered somewhere with a particular journa or book or whatever. He can satisfy himself/ hersel rather quickly with respect to the information he/sh desires. Whereas if it was confined to obtaining a cop of the record, he might have to pay, if there is duplicating fee, a duplicating cost and a fee theret appertaining might have to pay a lot of money for lot of bumf that simply didn't interest them.

MR. G. MERCIER: Mr. Chairman, if you read th section, though, it would imply that a person who ha access has the right to either one, so someone migl examine the record and really, under the wording c this section, the department examines the record an he decides he wants copies of Pages 2 and 3 of a 100 page report. But the department head says, well, you'v had the chance to examine the record, you have soi of chosen your remedy, you don't have the right t have any copies now.

HON. R. PENNER: All I can say, in response, is tha the federal experience has been that they try t accommodate and allow both an examination anc where it is possible, to give copies from a record tha pertain to the request that satisfy the need, rather simpl and inexpensively they will do both.

MR. G. MERCIER: Mr. Chairman, that is not really wha the section says. It depends upon the department' head being accommodating. I would tend to think tha if the word "or" were changed to "and" and then (b said, "to obtain a copy of the record, or part of th record, if possible". You could accommodate clearl in the legislation that an applicant had the right t examine and then, if he wanted a copy of the recor or part of the record, that was his/her right. If it wasn possible, because of the nature of the record, as th Attorney-General indicated earlier, then it is nc possible.

HON. R. PENNER: Let's just think this out a bit, an we may then have a look at it between now and repor stage.

One of the problems that we have to think about i that the information requested by the individual is th

rmation which is information which that individual the right to obtain. If there is a fee he is prepared ɔay whatever that fee is, but it is contained in a ıpendious comprehensive record, a significant part vhich ought not to be seen by the applicant, may tain to other persons or other classes of information. at we're looking for is a way of accommodating the ılicant in the simplest possible way, where the record lf, the original - well clearly, not severable, you're going to take an original and start cutting it at the ding or within its pages. So there is this problem. low what I can say to the Member for St. Norbert hat we're aware of the problems inherent in the rding here. We'll have another look at it, in light of concerns raised, and we'll see if we can come up h something between now and report stage.

t. CHAIRMAN: Page 3, English and French sions—pass.
Page 4 - amendment on section 5.

t. G. MERCIER: I wonder if we can go back to earlier ctions.

)N. R. PENNER: Yes, why don't we take it from the) then and hold the amendment to section 5, and al with sections 2, 3 and 4.

R. G. MERCIER: Section 2(2), again, Mr. Chairman, ere was a suggestion by ACCESS that at the end of ragraph 2(2)(b) the word "or" be changed to "and". ad also raised a concern with respect to paragraph where it says, "permits the applicant to view or hear e record".
I was concerned about obtaining a copy or a cording of that if the person wanted access in those cumstances, because it would be difficult for an plicant to do anything with the information that he s had access to if he or she is unable to make a py or recording of something that was visual or oral. For example, if this involves - it's hypothetically a se of a record produced for visual-oral reception, internal, and this is just hypothetical, an internal m that might for example be something - I'll use mething appropriate to the Attorney-General - to train own Attorneys to get around the Charter of Rights . .

ON. R. PENNER: I knew I should have thought of it.

R. G. MERCIER: . . . and somebody applies for cess and they are shown the film, unless you have copy of the film, I suppose there you might have a anscript, but there might be aspects of it that are sual. Unless you really had a copy of the film it might ot be anything you could do with that information that ou've had access to.

ON. R. PENNER: Again, we discussed this with the ederal people and they simply point out what they onsider to be, and we on reflection thought rightly o, that some enormous technical difficulties with being ompelled in a statutory sense, to provide a copy of film and the expense that would be involved in copying film. I suppose the technology is not blown off when that can be done fairly easily as in a sense it's available now through video taping technology.

MR. G. MERCIER: Well, perhaps, Mr. Chairman, again the Attorney-General might want to examine whether or not he would agree with an amendment to the end of section (c) which would add some words to the effect of "or make a copy or a recording" to permit the applicant to view or hear the record or make a copy or recording of it.

HON. R. PENNER: Yes, we'll check that out with our audio-visual people to see whether, in fact, the way in which various kinds of training films - and there are training films of one kind and another that are made in different departments - lend themselves to fairly easy duplication. We'll take a look at the wording there. We may have to use, if we decide to do something, words which are a bit general like "wherever practicable", but that's a possibility, yes.

MR. G. MERCIER: Section 3, Mr. Chairman, does that access include access to expense accounts within departments?

HON. R. PENNER: The general right of access that is stated in 3, is subject only to the exemptions in the act and, when this issue came up, I could find nothing in the exemptions in the act which, in any general way, prohibited disclosure of expense accounts.

MR. G. MERCIER: Section 4, Mr. Chairman, could the Attorney-General indicate what an "experienced officer" is? "Experienced" is a very general, undefined word to be used in legislation I think.

HON. R. PENNER: In a way, this was written to help the applicant. The more experienced the officer, or employee, the easier it is for the applicant to state things in rather general terms and allow the experienced employee, as opposed to the inexperienced employee, to say, oh yes, I know what it is that you want. That's the reason why those words were put in.

MR. CHAIRMAN: The Member for Concordia.

MR. P. FOX: Mr. Chairman, I move that Section 5, of Bill 5, be struck out in the following sections substituted therefor:

Notice of the right to file complaint.
5 The prescribed form for applications shall contain notification that the applicant has the right to file a complaint with the Ombudsman in the event the department fails to respond to the application in a manner authorized by this Act within 30 days.

HON. R. PENNER: Yes, the reason for this amendment is to respond to some points which were made at the hearing stage of this committee that if, in fact, we leave it simply to individuals across the counter providing this very significant information to an applicant that it might, either not be given through inadvertance, or might not be given clearly enough, and just to

strengthen the right of the applicant - and rights are based on knowledge - this amendment provides that, as an addition to and not in replacement of, the way in which an employee in a department should behave in advising people of their rights. This simply strengthens it by having it in written form in the application itself.

MR. CHAIRMAN: Pass, Page 5? The amendment is passed; the clause itself. Page 4.

MR. G. MERCIER: One more question.

MR. CHAIRMAN: One more.
The Member for St. Norbert.

MR. G. MERCIER: I raised this once already. In section 6(1), it provides for the department to have 30 days to respond to an application for access. Now a number of briefs before the committee had suggested that the period of time should be shorter, I know the Attorney-General has, in his amendments at the end, a proposal that the act be reviewed at the end of three years. That might just be an appropriate time to consider how the act has worked out and how the departments have been able to respond. I would think it would go without saying that the 30-day period, or the other time limitations in the act should not become for the department the minimum amount of time to respond to an application, and that's something that would have to be watched carefully.

If they are able to respond in a week, hopefully they would respond in a week. If it is the Attorney-General's position that all of these time limits are something that should be reviewed at the end of three years after the government has had experience under the legislation, I think we'd be prepared to go along with that.

HON. R. PENNER: Yes, very much so, and the Member for St. Norbert has stated the case well.

We anticipate that in line with federal experience there will be sort of a bell-shaped curve to demand; that is, originally it will start out for the first few months until people become more and more familiar with the fact that it has been proclaimed, that it's available and so on. There'll be a gradual and then a quickening climb in demand, would then level off and then come down to sort of a long-term average, at which time we can adjust a lot of things in the act given the way in which departmental personnel are able to deal with demand, the way in which they are trained to deal with the demand, the way in which the ACCESS register develops, the way in which improved record keeping within government, as a whole, develops. But I can say positively and affirmatively that it is the intention, in thinking of the three-year dewrinkling clause, if I can call it that, that time provisions are one of the things certainly which will be looked at.

MR. CHAIRMAN: Page 4, English and French versions—pass.
Page 5 - the Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, section 7 is the section that will allow the Minister to establish fees by regulation. I wonder if the Minister could give us any indication of the thinking of the government or the position of the government with respect to the establishment of fees.

HON. R. PENNER: Again, this is something which has been very carefully considered, both before the drafting of the act and subsequent to the hearing stage of this committee's deliberation. It did not seem possible for us at this stage to use words in the statute itself which in a sense set the parameters of the fees.

The intention of the government is certainly not to set fees in a way which acts as a deterrent and I think that has to scotched immediately. I'm a bit surprised I must say, to note that some commentators have suggested that it's the government's intention to set high fees. I think that impression may have been gained from submissions that were made illustrating some of the costs that have been incurred in certain instances at the federal level.

What those comments did not distinguish was the information which was made available and that is, that at the federal level the average fee is slightly over $11 and that cannot be said to be a deterrent to the average applicant. The individual applicants seeking personal information or seeking to find out what information is contained in government data banks about themselves these applicants outnumber those who are looking for more general governmental information by about 10 to one, and there is a minimum sort of application type fee and a minimum cost to government - comparatively a minimum cost to government - in fulfilling and meeting those requests.

Where you have the more expensive type of searches and cost has to do not so much with individuals looking for information, but organizations, whether they're media organizations or other institutions; and the high costs which are reported are rather anomalous, really they're not the rule. Examples were given of fees in the neighbourhood of $500 or $750 or $2,500 and I have no way of knowing in this instance exactly what was involved in those particular requests.

But I think it has to be stressed that those are not the norm by any stretch of the imagination, and government is not looking - I can say that now for the record - at cost recovery because the federal experience - and I think our experience will not be nearly so rich - the federal experience seems to suggest that the average cost to government fulfilling a need, meeting an application, is something in the neighbourhood of - what was it - $1,700.00?

So you have, on the one hand, a cost to government of $1,700, it is suggested, per application; and an average cost recovery of $11, so even the feds are by no means using the fee structure to recover costs or as a barrier. What I can say categorically for the record at this stage in response to the question is certainly this government is not at all looking at the fee structure as a cost recovery mechanism. That cannot be the case by the very nature of the mechanism that we're setting in place. If you did put a cost recovery fee structure in place that certainly would act as a barrier and we are not about to launch upon the waters a freedom of information bill and then find ways of stonewalling genuine applications for information.

MR. G. MERCIER: Mr. Chairman, I appreciate the response of the Attorney-General. The latest

overnment of Canada Bulletin on The Access to formation Act and Privacy Act indicates the cost to lministering both acts for a full fiscal year will probably e close to $10 million. Has the Attorney-General or s department given any study as to what they ticipate the cost of administration of this act will be? know it's difficult to predict.

ON. R. PENNER: It is our hope that by the time we et around to the detailed work on the Estimates for scal '86-87, although we know that there will be costs curred in this year, and I don't know as of this date hat the proclamation date will be, but looking to a ll year's cost, by that time we must have a much ghter handle on what costs will likely be.

To that end, we have set up an interdepartmental ommittee with representatives from the Department f the Attorney-General and from the Department of ulture and Heritage where the record-keeping system f government is housed. One of the positive spinoffs f this legislation has caused us to look something of hard gaze at the record-keeping system the overnment has, to realize that it needs a lot of nprovement - although there has been steady nprovement over the last number of years, and to ccelerate that improvement to accelerate the indexing, accelerate the movement of files from department the intermediary stage to storage, to finally the rchival stage. All of this is being put in place, work actually going to begin on the ACCESS register, and t that time we will have something of a handle on osts.

Some of our officials will be going down to Ottawa meet with federal officials to look at the systems hat have developed over the year since the federal ct has been proclaimed and in force - I think it's three ears now the federal act has been in force, four years; will soon be three years - and to learn from that. ut, as of this day, in terms of a cost, I can't say.

I would expect that if the federal experience is that hey are currently running at about $10 million in the ederal system, that one might loosely prorate that and xpect that our cost will be well under a million. I would xpect somewhere in the range of $250,000 to $500,000 ould be a ballpark figure, but I don't want to be ommitted to that, nor is this a statement based on n actual experience or calculation.

IR. G. MERCIER: One other question on this section, Ir. Chairman, with respect to members of the egislature and fees for access to information, is the ttorney-General giving any consideration to treating nembers of the Legislature any differently in the fee tructure than anyone else who applies?

I suggest that it may very well be that members of he Legislature could very well be requesting a ignificant amount of information.

HON. R. PENNER: Of course, members of the egislature have another mechanism, and that is hrough an Order for Return. In fact, as we have had ccasion to complain from time to time, mind you in he most gentle of manner, and governments before s have, that some of the requests for Orders for Return, Return for Papers, have been inordinately expensive nd time consuming.

There was a time in the first couple of years of this government when the opposition wanted to get every flight record and we found out that that involved boxes and boxes of material which ultimately was obtained and tabled at no cost to the member.

Now I wouldn't want the opposition, now or subsequently, to give up that free service which they presently have.

MR. G. MERCIER: Mr. Chairman, I could go along with that if there were a 30-day time limit for a response to an Order for Return.

HON. R. PENNER: For 30 days you have to pay.

MR. G. MERCIER: With respect to section 8, Mr. Chairman, there was a concern expressed, I think by ACCESS, just with respect to the 30-day period but, by MARL, with respect to a suggestion that a change should be made that a department head must give notice within the 30 days.

Now my reading of this, and my understanding of it I think leads me to the conclusion that it shouldn't be changed because it's there in the event that, inadvertently perhaps, a request for information doesn't get looked after or responded to, for whatever circumstances, but then this at least establishes a date so that the applicant can use the further procedures under the act. If it wasn't there, if you simply said the department head must respond without a time limit, then there is no remedy if there is no response. So I think this is there to give the applicant a remedy in case there is no response.

HON. R. PENNER: Precisely and, as the member may know - the amendments are before him - we are proposing to strengthen that as well by ensuring that the Ombudsman, faced with that situation, can request and must obtain the reasons for the failure to give the information in time.

Let me, just while I am speaking, note for the record that the French version of the amendments that have been circulated are now available and have been distributed to the committee members, and were available at the time that we passed the first motion, the first amendment.

I would just ask, through you, Mr. Chairperson, that if any member has a concern with respect to the translation, the French version of an amendment to section 5, that that should be stated for the record now.

MR. CHAIRMAN: It's now on the record. For the record, I have initialled the amendment in French.

HON. R. PENNER: How did you do that? Okay, pass Page 5?

MR. CHAIRMAN: Pages 5 to 7, English and French versions, were each read and passed.

Page 8 - the Member for Concordia.

MR. P. FOX: I move

THAT section 13 of Bill 5 be struck out and the following section substituted therefor:

Information filed by applicant.
13(1) An applicant given access to a record which discloses information about himself or herself is entitled to submit to the department which has custody or control of the record
(a) a written objection respecting any error or omission of fact which the applicant alleges is contained in the record; and
(b) a written objection to, or explanation or interpretation of, any opinion which has been expressed by a third party about the applicant and which is contained in the record.

Information becomes part of record.
13(2) As of the date of its submission, any objection, explanation or interpretation submitted under subsection (1) becomes part of the record and shall not be destroyed, altered or removed therefrom.

Correction of factual error.
13(3) Where the head of the department which has custody or control of a record referred to in subsection (1) is satisfied that the record contains an error or omission of fact, the head shall cause the record to be corrected.

HON. R. PENNER: This proposed amendment responds to suggestions made by a number of those who made suggestions at the hearing stage. We realized that section 13 as it was originally worded, did not sufficiently distinguish between questions of fact and questions of opinion and that while differences of opinion are not the kind of differences which can be readily dealt with or adjudicated, we ought not to involve government in the enormous and probably unsatisfactory exercise of having some adjudicative mechanism for distinguishing between one opinion and another; that could not be said with respect to errors of fact; that in many instances errors of fact could be shown by an applicant quite clearly by the submission of some record, date of birth, address, previous employment, things of that kind, and in those instances it was insufficient to simply allow the applicant to place in the file the alternative explanation with respect of fact.

So while we will preserve the right of an applicant to hang in the file and it must stay in the file, an alternative statement of opinion, that with respect to those facts which are demonstrably wrong upon production of some evidence, then the errors of fact should be corrected in the file and the errors of fact removed from the file. That's the purport of this proposed amendment.

MR. G. MERCIER: Mr. Chairman, I raised this issue when I spoke on second reading of the bill, two questions come to mind. What if you have a record and on the basis of certain facts which may be correct, the report comes to a conclusion or an opinion about a person which may very well be entirely wrong, that would not be covered by this section?

Secondly, what happens in the event that the head of a department for some reason refuses to correct a record, what avenue of appeal from that decision does a person have? Perhaps the Attorney-General might, in fact, be able to refer to the federal act.

I'm not sure what the federal act does with respe to those instances, perhaps it doesn't deal with the but it seems to me that there will very well be situatio where opinions are formed by departments abo individuals that are wrong and there is no way in whic this can be corrected.

Secondly, you might have a head of a departme who, for some wrong reason, refuses to correct a reco and there's no appeal from the decision of the hea of the department.

HON. R. PENNER: It was our thought in considerin that, that the applicant would have the normal recours to the Ombudsman under the provisions of Th Ombudsman's Act and that we ought to see whethe this deals with that kind of bureaucratic stonewallin if it should arise.

MR. G. MERCIER: What about an appeal?

HON. R. PENNER: Have an appeal from th Ombudsman?

MR. G. MERCIER: You're referring to a wrong opinio that might be . . .

HON. R. PENNER: No, I'm referring to the hypothetic used by you, that is, where the person or the applica comes and says, those facts are wrong, and h produces some evidence and the official in a particul department says, well, I'm not going to change th facts in the record for whatever reason. Then th applicant does have the right, under the provisions The Ombudsman's Act, to go to the Ombudsman an complain of that kind of bureaucratic mishandling the matter.

MR. G. MERCIER: And you would apply the same, take the same position in the event that there is a opinion expressed about an individual in a report th might be . . .

HON. R. PENNER: I'm not sure how to . . .

MR. CHAIRMAN: It's difficult to settle a difference opinion.

HON. R. PENNER: But let's take the hypothetical use by the Member for St. Norbert which does pose difficulty - I suppose it would be rare but it's certain possible - and that is that the opinion appears to b based on facts, which are now shown not to be fact All right, let's if I can just extend that hypothetical little bit.

The opinion writer, say a social worker says, in m view this person seems to have an unstable lifestyl they've lived in 22 different places in the last thre years and it turns out, in fact, that they haven't move at all in that period of time or whatever, is it enoug to have the record corrected to show that those fact pertain to some other John Doe and not to thi particular person, and the opinion based as it was o these errors of fact, is a wrong opinion. What do yo about that?

The problem is getting into the more common kin of problem where the differences of opinion are no

based on errors of fact and can you write a statutory provision that distinguishes between differences of opinion based on errors of fact and differences of opinion which are simply differences of opinion? Now I'd like to think about that a bit further and I must say we haven't been able to devise an appeal mechanism to deal with the kind of hypothetical suggested by the member. It certainly can be thought about further. It may be something that we can look at during the de-wrinkling period.

MR. CHAIRMAN: Page 8 - the Member for Concordia.

MR. P. FOX: Motion:

THAT section 14 of Bill 5 be amended by adding thereto, immediately after the word "may" in the last line thereof, the words "in person or through counsel".

MR. CHAIRMAN: Amendment - the Attorney-General.

HON. R. PENNER: This just makes explicit what I would have thought was implicit, but it was raised and for greater certainty, we're making it clear that the complaint can be filed in person or by counsel.

MR. G. MERCIER: Mr. Chairman, this would appear to establish a monopoly for lawyers again. Why wouldn't you simply say, "in person or by someone on his behalf". I would have almost left it alone frankly, because I think it's almost implied that someone may either personally or certainly through his or her own lawyer, file a complaint, but there may very well be instances where there will be people other than lawyers who could do it on behalf of the individual.

HON. R. PENNER: The point is well taken and perhaps rather than leave it alone, what we'll do is withdraw the amendment now because it's a question of wording and translation and come in at report stage with the wording suggested by the member, "in person or by someone on that person's behalf".

MR. CHAIRMAN: Amendment withdrawn. Page 8 as amended - the Member for St. Norbert.

MR. G. MERCIER: Just one final question related to section 15(2), Mr. Chairman, I raise the concerns expressed by the ACCESS brief with respect to the role of the Ombudsman who suggested that this section and other sections in the act be redefined to more clearly define the role and purpose of the Ombudsman and I wonder if the Attorney-General could just respond to that concern.

HON. R. PENNER: I must say I'm not quite clear on the nature of the criticism of the section. The Ombudsman is given wide powers, first of all, to investigate any matter referred to in 15(1) and any matter, of course, is very wide. But the Ombudsman may, in addition, initiate a complaint.

I wonder if the Member for St. Norbert could restate the point that he has.

MR. G. MERCIR: Mr. Chairman, the brief referred to the fact that this section permits the Ombudsman to initiate complaints in these circumstances, but section 30(4) bars the Ombudsman from going to court with his complaint. It seems a weakness of the bill to deny the Ombudsman recourse to the court on a complaint he initiates. If he is not to have access to the court there should be some specific alternate mechanism to deal with the outcome of his investigation.

HON. R. PENNER: I'm sorry, I grasp the point now.

We were quite concerned in the drafting of this act with particular reference to the role of the Ombudsman, to try to preserve that role and not to involve the Ombudsman in court proceedings. It seems to me, I think, probably the Member for St. Norbert would agree, that the Ombudsman is most effective when the Ombudsman is not involved as a litigant in any way, but that the Ombudsman, through all of the powers that are given in The Ombudsman's Act, or any additional legislation, such as this, is able through the instrumentality of public statements, via reports tabled in the House, things of that kind, to have great powers, and those powers ought not to be weakened by, if I can borrow the old cliché, having the Ombudsman descend to the floor of the arena where his eyes will be clouded by the dust of battle. I really feel that we ought to try it this way before involving the Ombudsman in court proceedings.

MR. CHAIRMAN: Page 8, as amended, English and French versions—pass.

Page 9 - the Member for Concordia.

MR. P. FOX: I move

THAT Bill 5 be further amended by adding thereto, immediately after section 17 thereof, the following section:

Reasons for Refusal.

17.1(1) — Where a complaint relates to a presumed refusal of access under section 8 or subsection 11(4), the Ombudsman shall, immediately upon beginning the investigation, request the head of the department involved in the complaint to give the applicant written notice of the reasons for the refusal to give access.

Contents of Notice.

17.1(2) — Forthwith upon receiving the request for the Ombudsman under subsection (1), the head shall send to the applicant a written notice stating

(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;

(b) in the case of the record which does exist and which can be located, the specific provision of this Act upon which the refusal to give access is based.

HON. R. PENNER: Yes, this is the amendment I referred to a bit earlier, and just deals with those instances which might arise where the response is not given within the 30 days or such shorter time as may eventually be the case.

MR. G. MERCIER: What happens, Mr. Chairman, if upon receipt of that request from the Ombudsman,

and it is an instance where for some reason the request for information has been inadvertently overlooked and the head of the department decides to supply the information? It seems, under the wording used, that the head of the department must, in those circumstances, refuse the request. Is there not an alternative or other provisions of the act which would allow the head of the department in that instance to comply with the request?

HON. R. PENNER: If the member will look at Section 28, it seems to me that probably deals with the point that he has just made.

MR. CHAIRMAN: Page 9, as amended, English and French versions—pass.

The Member for St. Norbert.

MR. G. MERCIER: Section 18, Mr. Chairman, the brief from MARL, raised what appeared to me to be a valid concern about solicitor-client privilege. This section says, "No person shall withhold any record or refuse to furnish any information." I think what probably happened is, in the drafting of the act, you meant to refer only to information from employees of the government, but is there not a possibility that with such a wide section that the Ombudsman might go to a lawyer and request information that could not be divulged because of the solicitor-client privilege?

HON. R. PENNER: I think my response would be based on two considerations. One is that the section has to be read in the context of the act where, in the normal course, a person of course would be a person in a government department, Crown agency, commission, something of that sort. But, in any event, I remember this kind of issue coming up in a different context, and I'll just mention that context to draw the analogy. This was the director of Research under The Combines Investigation Act and Shell in which the possibility was discussed of solicitors being used to shelter corporate records which really ought to be available to the Director of Research under The Combines Investigation Act, that if a corporation wanted to, and it wasn't suggested that Shell did in this case, but if a corporation wanted to protect its records that ought to be looked at by government, it would simply file those records with its solicitor. It was held that an in-house solicitor was just as much the subject of solicitor-client privilege as a retained solicitor outside. So here, I think this is probably wisest to leave it the way it is so that, in fact, the outside the solicitor - and the government does retain some outside solicitors - doesn't become directly or indirectly, advertently or inadvertently a way of insulating documents from scrutiny.

MR. CHAIRMAN: Page 9, as amended, English and French versions—pass.

Page 10 - the Member for Concordia.

MR. P. FOX: I move

THAT section 23 of Bill 5 be amended

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

(b) by adding thereto, immediately after clause (a) thereof, the following clause:

(a.1) no report made by the Ombudsman under subsection 25(1) or 27(1), and no notification given by the Ombudsman under subsection 29(2), is admissible in a court or in any other proceeding; and.

HON. R. PENNER: This is in line with some remarks I just made a few moments ago about ensuring that the Ombudsman isn't inadvertently made a party to a court action. The applicant, of course, will still have the report of the Ombudsman, and may use it to the extent that any of it is admissible under the normal rules of evidence.

In any event, it should be emphasized here that the onus is on the government where a case is before the court to show that the record, with respect to which there has been a refusal, comes within one of the exemptions in the act.

MR. CHAIRMAN: Page 10, as amended . . .

HON. R. PENNER: Do you want to pass the amendment first?

MR. CHAIRMAN: The amendment first, English and French versions—pass; Page 10, as amended, English and French versions—pass; Pages 11 to 15, English and French versions, were each read and passed.

Page 16 - the Member for Concordia.

MR. P. FOX: I move

THAT subsection 39(2) of Bill 5 be amended by striking out the words and figure "Subsection (1) does" in the 1st line thereof and substituting therefor the words and figures "Clauses (1)(a) and (b) do".

HON. R. PENNER: This is an affirmative response to requests made by some of those making submissions at the earlier stage of the committee that evaluations be - oh, I'm sorry - just a minute. I am a little previous. 39(2) of Bill 5 - what are we doing here?

Oh yes, this was just to ensure what we thought was set out in the act, namely, that we didn't want draft legislation accessed. We thought that would be a breach of the normal parliamentary procedures and rules where legislation that becomes public is made available in the House in the first instance, other than in those circumstances where an exposure draft is circulated or a general outline of intended legislation is circulated already in a public way. But where you are at that stage of the enacting process where a Minister, looking at an amendment to a particular statute, wants to get some technical advice, has a consultant looking at the existing legislation, co-ordinate legislation, parallel legislation, and giving technical advice to government as to these particular areas, it didn't seem right that should be available. So that's what the first motion is all about.

MR. CHAIRMAN: Amendment, English and French versions—pass.

The Member for Concordia.

MR. P. FOX: I move

THAT section 39 of Bill 5 be further amended by adding thereto, immediately after Subsection (2) thereof, the following subsection:
Meaning of "report".
39(2.1) The term "report" in clause (2)(f) includes an evaluation of any departmental program of a non-commercial nature, but does not include an appraisal of the performance of any specific officer or employee of a department who is or was involved in administering a program.

HON. R. PENNER: As I started to point out a bit earlier, this comes from the ACCESS brief which suggested that program evaluation should be included. We think that's right, and wanted to make sure in drafting that it was program evaluation as such that did become available.

I think it's important for all government departments to evaluate their programs from time to time and, in doing so, to make such evaluations available to the public. They ought not to be simply for the purposes of government but ought to, however, exclude those instances where you have, in the course of an evaluation or you have as a separate kind of an evaluation, an evaluation of the performance of individuals which forms part of their own personnel record, goes into such things as promotion and increments and things of that kind. There are procedures for that in The Civil Service Act and in the union agreements. We think we ought to confine that kind of personal information to its own specific area.

We also thought that the program evaluations which ought to be available and accessed are precisely that, and not the kind of things that you get where you have, in a sense, a commercial appraisal of the performance and viability of a Crown enterprise, which is important for government to have in assessing what to do with respect to the enterprise but may, in terms of the competitive position of the enterprise or the ability of the government to sell the enterprise or whatever, accessing it in the same way that you would a program evaluation would not be helpful.

MR. G. MERCIER: Mr. Chairman, this section refers obviously to clause (2)(f) which indicates that the exemptions do not apply to a report prepared by a consultant who is essentially not an officer or an employee or a member of the staff of the Minister.

Does "consultant" therefore include anyone from outside of government who is requested to prepare a report?

HON. R. PENNER: Yes.

MR. G. MERCIER: So that the word "consultant" is not restrictive in any way to only a certain category of outside people who prepare reports for government?

HON. R. PENNER: It was not our intention to restrict it in that way.

MR. G. MERCIER: Mr. Chairman, to use an example, the Department of Labour retained Marva Smith to do a report on labour legislation. By virtue of this section, certainly during the time that she was outside of government, I believe she is now on staff or perhaps on contract, we could have access to that report.

HON. R. PENNER: Yes, as long as the person is not within the category of officer or employee of a department, and a person who is retained strictly on contract and not as a term employee, I suppose is in the category of consultant rather than employee.

MR. G. MERCIER: This would apply to anybody who is on contract with the government?

HON. R. PENNER: In my view it would.

MR. G. MERCIER: Let me play the devil's advocate, switching my hat from opposition member to government member.

There are instances where a department may have the expertise but may be very involved in other work and unable to perform the work that has been requested to be done by an outside consultant, to advise the government on a particular policy or legislation. If the government had had someone within the department available to do the work they requested Marva Smith to do, you would not be able to have access to that report by virtue of this legislation, if it was done internally rather than externally.

I'm just raising the question. Sometimes this simple distinction, because it was done by someone outside the government rather than someone within the government, might not necessarily be the right approach if, in fact, that person is doing research and advising the government on the formulation of policy.

I'd be glad to have a look at Marva Smith's report. In fact, I can't wait to have the legislation passed to apply for a copy of the report. But it may not be the report . . .

HON. R. PENNER: There are no surprises in it.

MR. CHAIRMAN: Is the Member for St. Norbert suggesting that the distinction should be in the nature of the report, rather than who makes it?

MR. G. MERCIER: Yes, Mr. Chairman. I'm thinking that to make the decision based on whether the person is an employee of the government or an outside consultant may be too simple a distinction to make, but to use your words, Mr. Chairman, the nature of the report may be what is the basis upon which the decision should be made. I don't know whether this follows the Federal Act or not.

HON. R. PENNER: No, it does in part, but not on the whole. We struggled with this. In fact, the whole act has taken some time in drafting because the more you get into it, the more you realize how many grey areas there are of the kind mentioned by the Member for St. Norbert.

What we were thinking about is the following: No. 1, that when, and in a sense, the taxpayers' money is being used to hire some consultant to give a technical opinion or some kind of an opinion of that kind for government, then it ought to be available to the

taxpayers in the general course of things. We want to start out with that premise, and I think everybody would agree.

The only difference with the Civil Service is this - and that is a pretty important difference - I think the civil servants should be in a position, particularly when they are at that level of employment where they are in fact giving opinions to the Minister with respect to any given area, whether it is environmental or safety or health, or some program, to feel that they can be perfectly frank and forthcoming and that somehow or another they are not going to become inadvertently the subject of political wrangling.

I think if civil servants thought that anything they wrote as a report for a Minister about a particular program would, within 30 days, become public, that the nature of the reports written for government would be so circumspect as to be relatively useless or not as useful as they would be if the civil servant writing the report would be able to do so without being involved in political battle.

So we started out thinking about the distinction between the persons giving the report, doing the consulting if you will, rather than the nature of the report. Because once you've got into the nature of the report, first of all, much of that is covered by other of the exemptions in the act where we do look at categories of information rather than categories of informants.

MR. G. MERCIER: Mr. Chairman, generally the difficulty I have with the exemptions will be in the manner in which they are applied by the Civil Service, and I use an example.

In the Department of Labour Estimates, the departmental report clearly indicated that the Research and Planning Branch of that department did an analysis of the conference board report. I've been concerned for some time with their prediction with respect to job creation and the job creation record in Manitoba the last 12 to 15 months. Now I asked the Minister for a copy of that analysis, and he wouldn't give that to me in the Estimates.

Now, supposedly, the departmental report indicated there was a factual analysis of the Conference Board of Canada forecast - and obviously it exists within the department - but as an example, all the branch will have to do, or the employee will have to do, is add a note to that factual analysis that they are forwarding that to the Minister for policy consideration and that factual analysis cannot be obtained under this act. Really, there is information like that in which, to use the Attorney-General's words, the taxpayers' money is being spent and is information that really should be available to the taxpayer, because I was unable to obtain from the Minister of Labour that report, or any forecast with respect to long-term unemployment in Manitoba, I was unable to obtain that information from the Minister of Employment Services and Security. Would the Attorney-General not acknowledge that there is a danger in this act of civil servants attaching, to any analysis or any report or any information that they gather, that it is to be used in the formulation of policy and, therefore, all of the factual analyses that are done throughout government will be exempt?

HON. R. PENNER: No. I think we've got the appropriate means in the act of dealing with that possibility. First of all, 39(2)(c) as a limitation on the exemption speak of "the results of scientific or technical researc undertaken in connection with the formulation of policy proposal." That should be read together wit section 12(1), the severability clause. "Notwithstandin any other provision of this Act, where a departmen receives an application for access to a record whic contains exempt information, the head of th department shall give access to all the information i the record which is not exempt and which ca reasonably be severed from the exempt information.

So I think that, in fact, where you had an analysi of a Conference Board of Canada report on th economy of Canada and of the provinces, and th Research Branch of the Department of Labour did technical analysis of how the figures from that repo can be extrapolated and applied to Manitoba and ough to be sort of looked at in conjunction with other dat that ought to be available and can be made available

MR. CHAIRMAN: Amendment, English and Frenc versions—pass; Page 16, as amended, English an French versions—pass.

Page 17 - the Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, on section 40(1 "The head of a department may refuse to give acces to any record the disclosure of which . . . "etc. It relate mainly to law enforcement and legal proceedings. suggested to the Minister at the last committee meetin that he give some consideration to changing the wor "may" to "shall", because I find it difficult to believ that any information should be disclosed which woul be covered by (a), (b), (c) or (d).

HON. R. PENNER: The general scheme of the act i that we use the word "may" with respect to informatio which is our own information; and "shall" where it' other people's information. So we feel that we hav to, as a matter of obligation, protect information whic is received by us in confidence from other levels c government. For example, section 45(1), "Informatio obtained in confidence. Subject to subsection (2), th head of a department shall refuse to give access t any record . . . "and then if you'll note (c), that come from "a municipal or regional government".

Let's just take that. So if information comes to th Department of the Attorney-General in confidence fror the Winnipeg Police Department, then there is no "may about it; it's a "shall", and it has to be treated as matter of confidence and cannot be disclosed. Bu where there is information generated within our ow system, then the discretion is there with governmen but we think that the exemptions that are set out i 40(1) are pretty clear and pretty persuasive. I just can see the head of a department who would voluntaril disclose information which would be injurious to th enforcement of an act, nor to the conduct of a investigation that would facilitate the commission c an offence, etc.; that would violate solicitor-clien privilege; or would be injurious to the conduct of existin or anticipated legal proceedings.

The member may well say, as he has in fact, tha well yeah, you're right, who would do that? Then wh don't you put "shall"? I've explained that this is withi

the scheme of the act and that there may be the borderline areas where it's not at all clear that the information is injurious, would facilitate the commission of an offence, would violated solicitor-client privilege or etc. We retain an element of discretion there, but that's more in keeping with the scheme of the act than it is in anticipation that, indeed, any of this information would, in fact, be given out.

MR. G. MERCIER: Mr. Chairman, in section 38, with respect to Cabinet confidences, the wording there is "shall", not "may".

HON. R. PENNER: Yes, that's our information. The reason for that is that every succeeding Cabinet, in a way, has notionally access to the confidences of the previous Cabinet. We don't think that changes in government should change access to this kind of information.

But, if you look at 38(2)(b), then the Cabinet which is in power, then that is ". . . the Cabinet for which, or in respect of which, the record has been prepared . . . "may disclose it.

MR. G. MERCIER: Well, Mr. Chairman, just for the record, I frankly, with respect to the law enforcement and legal proceedings, would see no harm in changing the "may" to "shall". It would certainly, I think, allay any fears that any police officials may have in Manitoba.

As the Attorney-General knows, I forwarded a copy to Chief Stephen of the City of Winnipeg Police Department and this was his concern, that the word "may" could probably be changed to "shall". I, frankly, don't see what harm could be done by it.

HON. R. PENNER: I will certainly take those views under consideration but I do want to, on the record, assure the present Chief of the Winnipeg Police Department and, through him, the department that, in our strong view, section 45(1)(c) certainly protects any information which may be supplied by the Winnipeg Police Department to the government and, in particular, to the Department of the Attorney-General.

MR. CHAIRMAN: Page 17, English and French versions—pass.

Page 18 - the Member for Concordia.

MR. P. FOX: I move

THAT clause 41(2)(a) of Bill 5 be amended by striking out the word "the" in the 2nd last line thereof and substituting therefor the word "a".

MR. CHAIRMAN: Amendment, English and French versions—pass; Page 18, as amended, English and French versions—pass; Pages 19 to 22 inclusive, English and French versions, were each read and passed.

Page 23 - the Member for Concordia.

MR. P. FOX: I move

THAT section 48 of Bill 5 be struck out and the following section substituted therefor:

Third party reports.

48(1) Subject to subsection (2), the head of a department may refuse to give access to any record which was made prior to the coming into force of this section and which discloses a report prepared, or an opinion expressed, about the applicant by a third party, including a third party who is or was an officer or employee of a department or a member of the staff of a minister.

Right of access preserved.

48(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the third party consents to access being given.

Excerpted summary.

48(3) Where the head refuses to give access to a record under subsection (1), the head may provide the applicant with an excerpted summary of the report or opinion of the third party.

Preparation of summary.

48(4) Where an excerpted summary is provided under subsection (3), it shall be prepared by the third party, if the third party is available and willing to do so, but otherwise it shall be prepared as directed by the head.

HON. R. PENNER: I have two observations I should point out to the Member for St. Norbert, to whom I delivered some drafts of proposals for amendment before the weekend. There is a difference in this section from the text provided and that is substantially, I think, contained in 48(3) and 48(4).

In any event, what we are seeking to do here is to respond to criticisms which have been made of section 48(1), the so-called sunrise clause. We wanted to make it clear that the sunrise clause, first of all, only pertains to the third party opinions.

Insofar as a personal record contains matters of fact and other material of that kind, which is not the opinion of a third party as prepared, a professional opinion, the opinion of a social worker, the opinion of a psychologist, of a psychiatrist or a doctor, whether employed by government or not, those opinions are in one class. But facts relating to the individual are available to the individual, no matter how far back in time those facts go. Then you will recall the amendment that we made allowing individuals to attempt to correct errors of fact. That's been dealt with.

Now it occurred to us, as well, that we ought to provide a mechanism for allowing those reports to be made available in two ways. We already did allow those reports to be made available with the consent of the third party, but we had a submission from the MMA which suggested that a technique that they are familiar with be considered, namely, it may be that the report, as originally written, contains a lot of material which, for whatever reason, the writer of the report feels ought not to be disclosed to the applicant. You can, so that the applicant at least has a general notion of what was being said about the applicant by the psychiatrist, the psychologist, the social worker or the doctor, provide that person with an excerpted summary of the report.

We felt that, in suggesting this amendment as it is now being moved by the Member for Concordia and I am supporting it, we ought to make sure that the excerpted summary is not simply something done by some official in the department who takes the report

and gives the official's version of the report. That would not be helpful and, in fact, could be positively harmful and would not be acceptable to the various practising professions.

So what we're stipulating in 48(4) is that "Where an excerpted summary is prepared by the third party who actually made the report, where the third party is available and willing to do so, but otherwise it shall be prepared as directed by the head.

So these are the reasons behind the proposed amendment.

MR. G. MERCIER: Could the Attorney-General indicate what is anticipated would be excerpted from the record?

MR. CHAIRMAN: What would be excerpted from the record?

HON. R. PENNER: What would be excerpted would be part of the diagnosis, or that part of the diagnosis, perhaps the whole diagnosis, but set forth perhaps in terms that are much more clear, available and meaningful to the lay person, than a technical report filed with the particular department or institution.

The Member for St. Norbert in the practice of law has, I'm sure, almost on a weekly basis as I did when I was in the practice of law, seen medical reports, psychiatrist reports and social work reports. Some of them are written in a . . .

A MEMBER: In untactful language.

HON. R. PENNER: Well, not only untactful, but sometimes a very opaque or incomprehensible language. It should be possible for the professional, and we would hope that they're willing, we expect they would be willing, for purposes of making that report available to an applicant, to put it in the Queen's English.

MR. G. MERCIER: Well, Mr. Chairman, I think the concern will be more than that, more than just that the information that comes forward will be in clear English, but the concern will be, what opinions and what conclusions did they come to that they are refusing to tell me about, and that I think is a very legitimate concern.

HON. R. PENNER: There is nothing in the proposal here which prohibits the third party from first of all consenting to release the whole of his or her original report; or if not willing to do that, coming in the excerpted summary to the same conclusion that that person came to in the original.

Look, we realize that in the best of all possible worlds, total access is a desirable goal. There are clearly restrictions, some of which are easier to understand than others. When you receive information, confidence from another government, people will understand that it should not be accessed, things of that kind.

Here the department is directly concerned, the line departments, Health and Community Services in particular said, "Look, we have been dealing for years with professionals who have provided us with reports at our request in order that we may better deliver our programs and respond to the needs of individuals." They've done so with those reports being in confidence We don't feel that we have the right through subsequent statute to violate that confidence, that' not the way things ought to be done.

In fact, we are quite concerned that the reports upo which the functioning of certain government program depend might be adversely affected by accessing th files generally, but at least we'll be in a position no where professionals writing reports for government i going into the files of individuals which might b accessed will know that what is written is available.

MR. CHAIRMAN: Amendment, English and Frenc versions—pass. Page 23 as amended, English an French versions—pass; Page 24, English and Frenc versions—pass.

Page 25 - the Member for Concordia.

MR. P. FOX: I move, that clause 50(c) of Bill 5 b amended by adding thereto, immediately after the wor "department" therein, the words "including a referenc to any internal indexes used by the department t manage its records".

HON. R. PENNER: Here again, we're responding to suggestion made during the course of the hearing fro ACCESS or MARL, I think from ACCESS, that th availability of information would be enhanced i departmental filing indexes could be made available and we think that's right and are proposing thi amendment.

MR. CHAIRMAN: Amendment, English and Frenc versions—pass; Page 25 as amended, English an French versions—pass.

Pages 26 and 27 - the Member for Concordia.

MR. P. FOX: I move, that Bill 5 be further amende by adding thereto, immediately after section 55 thereo the following section:

Review by committee.

55.1. Within 3 years after the coming into force of this section, such committee of the assembly as the assembly may designate or establish for the purpose shall undertake a comprehensive review of the operation of this Act and shall, within 1 year after the review is undertaken or within such further time as the assembly may allow, submit to the assembly a report on the operation of this Act, including any amendments to the Act which the committee recommends.

HON. R. PENNER: Here again, responding to som suggestions made at the hearing before this committe and bringing this, I think if not exactly more or les into line with a similar provision in federal legislatio and I think we recognize, everyone recognizes, tha there are a lot of unknowns at this stage. It may b that we have erred somewhat on the side of cautio and we want to make sure that there's a mechanis built in so that the experience which the governmen will have will allow it, but in a consentual way, by usin the legislative committee mechanism, to amend the ac in light of the experience.

MR. CHAIRMAN: Amendment, English and Frenc versions—pass; Page 26, as amended, English an French versions—pass.

Page 27 - the Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, with respect to Section 58, what recourse does an individual have in the event that he or she obtains access to information, maybe personal information that was obviously negligently prepared and by virtue of which that individual has suffered a loss. Does that person have a right of action against the government for the negligence of its employees?

HON. R. PENNER: That is not precluded by Section 58. That course of action is preserved.

MR. CHAIRMAN: Pages 27 and 28, English and French versions—pass.

Page 29 - the Member for Concordia.

MR. P. FOX: I move:

THAT section 65 of Bill 5 be amended by adding thereto, immediately after Clause (d) thereof, the following clause:

(e) The Securities Act.

HON. R. PENNER: After the bill was drafted and circulated to the departments in its nearly final form, I received extensive representations from the head of the Securities Commission and Council for the Securities Commission pointing out that the Securities Commission operates as part of a network, not only of national, but North American commissions, each one of whom is dedicated to protecting the interests of investors. In order to do so, they exchange analyses which are prepared with respect to prospectuses that have been filed and which contain a lot of confidential information about the filer, the history of the filer, problems that the particular Securities Commission may have about the filer. Our Securities people were very much concerned that, unless there was an exemption of the Commission, that its part of what is a fundamentally important network would be seriously compromised. After careful consideration, I agreed with the representation.

Manitoba is not a primary locus for the filing of a prospectus. In Canada, the major centre for the filing of a prospectus for a securities issue is Toronto. The next most important one in many ways is in Edmonton. We rely very much on getting that information.

MR. CHAIRMAN: Amendment, English and French versions—pass; Page 29, as amended, English and French versions—pass.

Page 30 - the Member for St. Norbert.

MR. G. MERCIER: Mr. Chairman, with respect to Section 68, when would the Attorney-General contemplate proclaiming the act?

HON. R. PENNER: I suppose it's kind of obvious to say, as soon as possible, but that then begs the question, well when is that. We have, as I indicated a bit earlier, established an interdepartmental committee which is, in fact, an outgrowth of work that Mr. Szach, in particular, has done working with every department and with the Archives people. We feel that there is a little way to go. I wouldn't anticipate proclamation within the next matter of weeks. I would think that it's more likely to be a matter of a few months, toward the end of the year when I think we ought to be in position to proclaim.

We've made a lot of progress, but we want to make sure that we've not only prepared the ACCESS guide; we've prepared the forms; we've prepared the regulations, but we've prepared the departments.

MR. G. MERCIER: Just one other question, Mr. Chairman. The federal Freedom of Information Act was passed in conjunction with The Privacy Act. As the Attorney-General is well aware, I think the experience under the federal legislation is that the ACCESS applications under The Privacy Act are at least 10 times the number under The Freedom of Information Act. Now there are really sections in here that deal with privacy, but is the Attorney-General considering any further amendments to privacy legislation which would attempt to control the collection of personal information data and strengthen the record-keeping, etc., similar to the federal legislation?

HON. R. PENNER: This is a matter of particular interest to me. I have had occasion in the last year to look at some of the legislation, West German legislation, French, some Scandinavian legislation that deals, in addition to the general questions of privacy which are addressed to some extent in this act and separately in the federal act, with the whole new set of problems created by the collection of data in data banks. I'm not, by any means, ready at this stage to predict when a proposal for legislation will come forward, but I do want to assure the member that is being very seriously and actively contemplated.

MR. CHAIRMAN: Page 30 - the Member for Concordia.

MR. P. FOX: I move:

THAT Legislative Counsel be authorized to renumber the provisions of Bill 5 in order to

(a)eliminate decimal points; and

(b)take into account provisions which have been struck out.

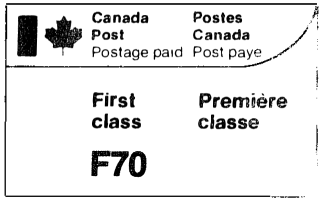
MR. CHAIRMAN: Motion—pass; Preamble—pass; Title—pass; Bill be reported—pass, English and French versions.

Pleasure of the committee?

HON. R. PENNER: Rise.

MR. CHAIRMAN: Committee rise.

COMMITTEE ROSE AT: 12:00 p.m.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