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Bill 31, The Freedom of Information and Protection of Privacy Amendment Act

Good evening. My name is Elizabeth Fleming. I am presenting on Bill 31 on behalf of the Provincial Council of Women of Manitoba. We appreciate the opportunity to speak to this Bill.

The Council is a federation of approximately thirty Manitoba women's - and women and men's - organizations that work through a system of resolutions to develop policy that will improve the quality of life for women, children and families in Manitoba. We are pleased that one of our federates, the Consumers Association of Canada (Manitoba branch), is scheduled to speak to Bill 31 today.

Our interest in freedom of information goes back to 1977 when the National Council of Women of Canada adopted as policy the right of the Canadian public to information concerning the public business.

In 1999, the Council of Women of Manitoba adopted as policy a Freedom of Information resolution. Its main purpose is :

"... to ensure that public bodies maintain a culture of openness with routine disclosure of public information being the rule, ..."

Before the September 1999 provincial election, we worked with other organizations on a Freedom of Information survey of political parties entitled, "Democracy in the New Millennium". I will speak a little later about the response of the New Democratic Party to that survey

In 2002, we worked with others, including Professors Paul Thomas, DeLloyd Guth and Ken Gibbons, on a national access to information conference held at the University of Winnipeg.

In 2004, we participated with the Manitoba Access to Information Network in the statutory review of the Freedom of Information and Protection of Privacy Act (FIPPA) that was chaired by Keri Irvin Ross.

Since 2006, we have participated on a "Right to Know" advisory group organized by the Office of the Ombudsman. As part of "Right to Know Week" in September 2006, we worked with the Canadian Association of Journalists (Manitoba Chapter), Canadian Taxpayers Association of Canada (Manitoba), Consumers' Association of Canada (Manitoba), Manitoba Bar Association, Manitoba Library Association, Winnipeg Press Club and media sponsor, the Winnipeg Free Press, on a political bear-pit session at the

Press Club, “Government Secrecy vs. The Public’s Right to Know – Where do the Political Parties Stand on Access to Information?”

Which brings us to our comments on Bill 39 tonight.

Overall, we find that a number of the amendments in Bill 31 are less about Freedom of Information and more about Restriction of Information. The Council of Women of Manitoba is therefore recommending five amendments that would support rather than restrict the public’s right to know.

Section 2(1)(a) adds “adjudicator” to the list of definitions. This refers to the Information and Privacy Adjudicator proposed under section 58.1.

An adjudicator would have to wait for a green light from the Ombudsman to act. An intermediate layer of bureaucracy would be a waste of the FIPPA applicant and complainant’s time and tax payers’ money. We should follow the lead of Canada and most other provinces and establish a fully independent Information and Privacy Commissioner with the power to order the release of information.

In response to the 1999 survey referred to earlier, Paul Vogt wrote, “On behalf of Gary Doer, I am pleased to submit the NDP’s response to the “Democracy in the New Millennium” election questionnaire submitted by MARL, PCWM and CTF-Manitoba. Thank you for giving us the opportunity to comment on these important issues.”

Question 6.

If your party forms the Government of Manitoba would you amend the FIPPA to allow the Ombudsman [or Commissioner] to order the release of information from a department, board or commission, association or other entity to which the Act applies, as is the case under Alberta, British Columbia, Quebec and Ontario legislation?

Answer: Yes. The main tool in enforcing FOI legislation is the prospect of embarrassing the government. Where a government seems impervious to embarrassment (as has been the case with the Filmon government), a practical and relatively inexpensive enforcement mechanism is the only alternative.

The Council of Women of Manitoba agrees and therefore recommends:

- 1. Instead of an Adjudicator, the government of Manitoba establish the position of an Information and Privacy Commissioner with the power to order the release of information.**

Section 2(1)(e), the repeal of the definition of “public registries” and the repeal of the reference to “public registries” in Schedule C of the FIPPA Regulation 64/98.

If these two proposed amendments are adopted it would mean that about 50 public registries would be dropped in the following government departments:

Agriculture - (1)
Consumer and Corporate Affairs (17)
Family Services (3)
Health (3)
Highways and Transportation (10)
Industry, Trade and Tourism (3)
Labour (6)
Liquor Control Commission (1)
Justice (4)
Rural Development (1)

Public registries are one of the best ways for governments to make routine disclosure of government-held information. We should be expanding public registries not removing them.

The Council of Women of Manitoba therefore recommends:

- 2. Sections 2(1)(e) and Sections 1, definition of “public registry”, and Schedule C of the FIPPA regulation be kept as they are in the current legislation.**

Section 13(1) Public body may disregard certain requests.

The amendments to this section expand the reasons for staff to disregard a FIPPA request(s). The amendments do not define the new types of requests, “frivolous and vexatious” and “repetitious or systematic”, that staff may disregard. What might vex one head of department might be legitimate to another head of department or the ombudsman.

According to one former FIPPA staffer with many years of experience, these restrictions are unnecessary and could be abused by a head of department. Multiple requests across different departments or to the same department for different pieces of information are legitimate ways to apply the FIPPA. Some may illicit a response in a timely fashion while others could be held up and maybe go to the Ombudsman with a complaint. It is unreasonable to have to put in one or a few omnibus request and have to wait until the last piece is processed through the various systems.

The Council of Women of Manitoba therefore recommends:

- 3. The proposed amendments to Section 13(1) be removed**

Section 7(c.1) and 8(C.1) adds to Exceptions – “an organization that represents governmental interests of a group of aboriginal people”

Over the years, aboriginal women on reserve have told us about the difficulties that they have in getting information from their band council. They have had to go to the province for information about gambling revenues and gas bar tax revenues that they felt were unaccounted for. Similarly, aboriginal women might wish to request information from a child and family services agency. These amendments, if passed, would mean that their future requests would be denied. That seems unfair and unconstitutional when it is information that is normally accessible to other Manitobans.

Please note that most band councils do not have provision for access to information requests and the province is the only hope they have of accessing certain information.

Also, there is no definition of “a group of aboriginal people”.

The Council of Women of Manitoba therefore recommends:

- 4. Sections 7(c.1) and 8(c.1) not be enacted until band councils in Manitoba have equivalent access to information provisions for their members.**

Section 10, Cabinet confidences

The Provincial Council of Women of Manitoba commends the Government of Manitoba for reducing the closure period for Cabinet records from 30 years to 20 years. However, other jurisdictions have shorter periods.

The Council of Women of Manitoba therefore recommends:

- 5. Section 10(a) be amended by striking out “30 years” and substituting “10 years .**

This concludes our comments on Bill 37. We hope that this committee will consider our recommendations and work together to support Manitoban’s right to know

Thank you.