

*Archives of Canada*

The Government is seemingly of the opinion that this Bill is uncontroversial and should pass through the legislative process with little or no discussion. However, I have had representations from researchers and university scholars, as well as the Social Science Federation of Canada, indicating major defects which must be addressed. I heard the Minister refer to many groups from whom he heard, including the fact that he heard a few complaints.

I would like to thank Professor Reg Whitaker of the Department of Political Science of York University and read into the record his concerns as mentioned to me in his letter of March 10, 1986. He states:

Dear Ms. Finestone:

It has just come to my attention that Bill C-95, the Archives of Canada Act, which I believe would come before a committee (communications and culture) of which you are a member, contains some very serious implications for Access to Information. I further understand that the Minister responsible, the Hon. Marcel Masse, has indicated that he wishes this bill to be speeded through committee stage on the grounds of its allegedly uncontroversial nature.

In the hope that this will not happen, and that some of the implications of the Bill may at least be given discussion and publicity, I would like to draw to your attention the apparent problems. As a university scholar who has often used the records available in the Public Archives of Canada and who has had some fairly extensive experience in using the Access to Information Act, I find some alarming features in this bill.

Sections 5 and 6 deal with records of government institutions and ministerial records. The general intent of Section 5, that such records should not be destroyed without the consent of the Archives, is highly laudable and is, I believe, supported by scholars who use government records as sources for their work. However, 5(6) stipulates that this does not apply in respect to a record containing information that was received in confidence from the government of a foreign state or an international organization of states or an institution thereof where the government, organization or institution requires the destruction of the record.

● (1340)

I will continue with the letter, Mr. Speaker, at two o'clock.

**Mr. Speaker:** I thank the Hon. Member. It now being 1.42 o'clock, I do now leave the chair until two o'clock p.m.

At 1.42 p.m. the House took recess.

**AFTER RECESS**

The House resumed at 2 p.m.

[*Translation*]

**The Acting Speaker (Mr. Paproski):** When the House adjourned at 1:42, the Hon. Member for Mount Royal (Mrs. Finestone) had the floor.

**Mrs. Finestone:** Mr. Speaker, I shall continue by reading a letter from Professor Reginald Whitaker, from the Political Science Department, Arts Faculty, York University, who wrote to me about certain constraints of the Act which he finds serious and which he hopes will be eliminated through amendments at the committee stage.

[*English*]

Mr. Whitaker states:

Section 6 stipulates the transfer to the care and control of the archivist of government records—with the following exception indicated in 6(4) . . . "any

record that contains information related to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities that was obtained in confidence from the government of a foreign state or an institution thereof, unless the government, organization, or institution consents to the transfer of the record to the Archivist."

The language of these exceptions is very sweeping, especially 6(4). In the case of both clauses, I would particularly note that the reference is to "any record that contains information—obtained in confidence". In other words, this refers not merely to communications from foreign governments or organizations, but internal Canadian government records containing information obtained from foreign sources. The categories of "international affairs", the "defence of Canada" or its allies, and internal security, are, I am sure you appreciate, very broad, or can certainly be made so by a government wishing to withhold information. Moreover, a government department or agency which wished to destroy certain records could ensure this by the simple expedient of recommending to a foreign Government that they require destruction or withhold transfer. In short, what begins as an apparent exercise in entrusting all Government records to the Archivist, ends in creating a loophole which could be misused to undermine the intent of the sections.

The Access to Information Act, which the Archives must itself apply to all government records requested by its users, already stipulates a series of exclusions, including the matter of consent of foreign governments to releasing communication originating from outside Canada. The effect of this bill would be to prevent the Archives ever receiving such documents, and much more besides. In the case of documents disposed of or destroyed, they will then of course be lost forever from the historical record of Canada, thus precluding their eventual release after the passage of years and the consent of foreign governments to the release of documents which may by that stage be of merely historical interest. I am sure you can appreciate the serious consequences from the point of view of scholarship and of the heritage of historical documentation which the Archives are supposed to protect.

I am sure that is not what the Minister intends, knowing his deep interest and appreciation for our culture and history. Mr. Whitaker continues:

There is yet one more exception which can be taken to this legislation. 6(4) exempts the categories of documents listed from the effect of 6(1)(b) and 6(2). The latter indicate that the Governor in Council may make regulations or directions, and prescribe terms and conditions, for the transfer of records to the control of the Archivist. This would appear to mean that in the case of records containing information received from a foreign source which desires destruction of the document, the Governor in Council is prohibited from intervention in the matter.

I do not think that is what the Government, the Cabinet or the Privy Council wants.

In short, an arrangement made between a Government department and a foreign Government would constitute the final word: the Government of Canada thus transfers discretionary power over the disposition of its own records, by statute, to its own bureaucrats and foreign Governments—

I think today was a fine indication of how dangerous that can be.

—and specifically indicates that it cannot intervene under any circumstances. The language here is somewhat confusing, but the implications should be examined at some length.

In closing, I would urge you to raise these concerns at committee stage.

It would be a very dangerous precedent if a bill containing such provisions were to slip through an unsuspecting Parliament under the guise of being uncontroversial. There are already enough loopholes and exclusions to the Access to Information Act; this will only make matters much worse yet for freedom of information in Canada, and could undermine the laudable goal of making the Archives the custodian of the historical record as related to the documents of the government of Canada.