affairs' that events of pre-1984 were of historical interest only. Gummow J, however, expressed the view that the mere circumstance that an event was a past event did not mean it could not be in respect of present business affairs.

Gummow J would have allowed the appeal and remitted the case to the Tribunal.

Sweeney J

Sweeney J, after discussing briefly the differing constructions placed on s.45 by Jenkinson and Gummow J, preferred that adopted by Jenkinson J. He noted that s.45 laid down a test to be applied by officers who, however expert they might be in customs matters, could hardly have been expected by the legislature to have the necessary legal learning to determine the complex and difficult matters which were involved in forming a judgment as to whether the disclosure of a particular document would be actionable under the general law.

LEGISLATIVE DEVELOPMENTS

VICTORIA

On 13 October 1987 the Victorian Government passed the *Freedom of Information (Exempt Offices) Regulations* 1987 (No. 266). The following day the *Public Service (Unauthorised Disclosure) Regulations 1987* (No. 275) came into operation. Both regulations significantly affect access rights under the *FoI Act*.

The *Freedom of Information (Exempt Offices) Regulations* 1987 seek to exempt the following offices from the operation of the Act:

The Solicitor-General;
The Director of Public Prosecutions;
The Auditor-General;
The Ombudsman;
The Victorian Government Solicitor;
The Lay Observer;
The Public Advocate;
The Police Complaints Authority.

The *Public Service (Unauthorised Disclosure) Regulations* 1987 dramatically broaden the ability of the Government to refuse access to cabinet documents. They prohibit any person from disclosing or communicating 'cabinet information' without the authority of Cabinet, a Minister or the Chief Administrator.

Cabinet information is defined broadly to include Cabinet submissions, Cabinet agenda lists, Cabinet addenda, draft bills submitted to Cabinet, official records of the Cabinet and documents containing comments on Cabinet submissions.

The regulations not only apply to public servants but also extend to 'an administrative unit or other body constituted under the law of Victoria'.

Finally, on 20 October 1987 the Governor-in-Council made a curious Order-in-Council which provides:

> By virtue of and in accordance with all powers and functions exercisable as Governor-in-Council, the Governor-in-Council orders that: The express approval of Cabinet is required for the disclosure of Cabinet information.

OVERSEAS DEVELOPMENTS

News from Canada

The government's response to the parliamentary committee review of the *Access to Information and Privacy Act,* submitted last March, has been met with decidedly mixed reviews. Privacy advocates have reacted, on the whole, favorably to the proposed recommendations of the government, while access advocates are extremely disappointed. There are suggestions that requesters' costs under the *Access to Information Act* could actually increase, even though the government has agreed to drop the current mandatory $5 application fee.

The response, tabled in Parliament on 15 October by Justice Minister Ray Hnatyshyn, seems to imply that the government believes it is easier to deal with privacy issues, because of the impact of new technologies, than with access to government information. In its response, submitted almost six months after the parliamentary committee tabled in its report in Parliament, the government agrees with the recommendation to extend the *Privacy Act* to Crown corporations, but says a decision on extending the *Access to Information Act* will be made after further study.

The government will conduct extensive educational programs, both within the government and the Canadian public, to apprise civil servants of the importance of privacy and access and to let Canadians know of their rights. There will be no changes to the exemptions in the Act, even though the parliamentary committee and critics thought this was the area which still made government so secretive in Canada. The government freely admits that the Act does not need tampering with and that any changes will be administrative in nature.

One positive feature of the response is the proposal to make information already released available on-line and to improve accessibility to public government data bases. This will make information more widely available and accessible across Canada.

The biggest disappointment in the government's response is that Cabinet documents, currently totally excluded from the Act, will continue to be excluded. Cabinet documents might be available after 15 years, but for the moment no-one will be able to make an access request or lay a complaint with the Information or Privacy Commissioners if a document is labelled as such. The government argues the exception is necessary to maintain the principle of cabinet solidarity and ministerial responsibility. The difficulty with this logic is that in other jurisdictions such documents can be requested and in some instances released.

At present there is a $5 application fee to make a request, with the first five hours of search and document review free. The government accepted the recommendation of the parliamentary committee to scrap the fee, but will charge for search and review time of documents after the first two hours. Although the requester is the apparent winner on the issue of dropping the application fee, the lowering of the threshold for charging search and review time could