

Freedom of Information

how far they should go. This was evidenced yesterday by the Deputy Prime Minister (Mr. MacEachen) who initially was in favour of the motion before someone got him to point out there was no consensus in cabinet.

I hope members of the government will exert pressure to make sure the point of view presented in this motion will be adopted.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, I propose to make a short contribution to this debate and I hope you will not notice the time too intently. I have a committee meeting at eight o'clock so I hope I can carry on for a minute or two past six o'clock.

I listened with rapt attention to the hon. member for Windsor-Walkerville (Mr. MacGuigan) who continues to be given a very special role in the Liberal party. He is one of those people with credibility in the area of civil liberties and in the area of freedom of information. He is becoming the token to be put forward by that party to convince the Canadian people there are still some small "I" liberals left.

If you reject the concept of judicial review, as has been done by the hon. member for Windsor-Walkerville and by the Secretary of State (Mr. Roberts), you continue to reject the view of the Canadian Bar Association which has given this matter intensive study, the views of most constitutional lawyers and the view of the Canadian Labour Congress.

I should like to direct my specific attention to the remarks made by the hon. member for Windsor-Walkerville about the need for an independent review rather than a judicial review. In order to do that I want to refer to the study done by a very learned man, Mr. T. Murray Rankin, of the law school of the University of Victoria and published in his book "Freedom of Information in Canada". His study was adopted by the Canadian Bar Association and it replies to the argument that under our system you cannot have a judicial review of matters that are essentially political in nature.

The government's position has been to shun this idea of using the courts as arbitrators. It rests on the conviction that final responsibility for the release of government documents must remain with cabinet ministers since the matter is fundamentally of political concern, and that permitting a court to exercise supervisory jurisdiction would violate the convention of ministerial responsibility.

That objection is based on a self-serving myth which Mr. Rankin deals with at page 122 of his book, as follows:

—based on a self-serving myth that is sought to be perpetuated in the 1977 green paper: that "there is no way that a judicial officer can be properly made aware of all the political, economic, social and security factors that may have led to the decision in issue." If the American experience has indicated anything, it has indicated the hollowness of this assertion.

What one is talking here is not a substantive political decision such as the location of an airport, a nuclear plant or a pipeline—although even in these cases the executive has frequently called on the judicial arm for assistance and advice. What one is discussing is essentially akin to a procedural decision on whether certain information or documents useful in assessing the location of an airport, a nuclear plant or a pipeline should be produced, based on criteria which can be carefully spelled out by parliament in legislation. The judicial branch is uniquely suited to this task, and discharges similar duties in Canadian courts every day.

[Mr. Hnatyshyn.]

That is the view of the Canadian Bar Association and they are not unaware of the political ramifications of that position. We are not asking a judge to make a political decision but a judge can make a judicial decision based on criteria set down in the legislation and presented to parliament. I am disappointed that my distinguished colleagues at the Bar, such as the hon. member for Windsor-Walkerville, would make this old-fashioned, specious argument.

About two years ago I took the trouble to go to the Environmental Protection Agency in Washington to find out how the freedom of information legislation in that country was operated. I expected to see layers of bureaucracy and expensive duplication. Such was not the case. Instead, I found some civil servants and bureaucrats who understood that the information they had belonged to the people of the United States; it did not belong to them and it did not belong to the government. Through their taxes the people of the United States had paid for this information. They had a right to it but it took freedom of information legislation to turn the bureaucracy around and make them understand they were the servants of the American people, not their masters.

That is why it is so important that the motion should be supported on all sides of the House. The government had a wonderful opportunity in the motion before it but to get picky about the one question of appeal to the courts when we could have made some very real progress in this House I think is disappointing to every member who wants to see this matter go forward, who wants to see a change not merely in terms of gaining information in which we are all interested, but maybe a change in the atmosphere of the bureaucracy and as well in the attitude of politicians who serve the constituencies. It is the people's property; they have paid for it and by God, Mr. Speaker, they have a right to that information. The onus must be turned around.

● (1802)

This government I think has failed to accept or to see that particular principle. The legal back-up on it is overwhelming. There is no question that judicial review is the right answer. There is no question that independent review will still be an in-House review of some kind and far more likely to be a biased decision, biased against the applicant for the information.

As I say, I come late to this debate. I do not think there is another issue more important than this one if we are to talk about protecting democratic principles. We have the example of the American experience. It is working extremely well. It is not costly and it is providing a very useful service.

I simply say in closing that it is a unique situation in Canada where we cannot get information about our own Canadian corporations without going to the United States Security Commission under their freedom of information legislation. Our reporters across Canada cannot get information from this government, but they can cross the border and get that information from the United States government in order