

*Freedom of Information*

as every person of reason in the country does, that there are exceptional circumstances where the right of access has to be limited. Genuine matters of national security would be one of those. Information concerning certain legal investigations and proceedings would be another. The private records of individual Canadians would be another. Those are three exceptions on which there appears to be widespread agreement. The law should set forth those exceptions clearly and specifically in limited language that will not be subject or capable of being interpreted in a way that will hide that which should be public.

Third, and fundamentally, particularly to this debate because there has been fairly general agreement in principle on the first two points, any useful bill has to provide a procedure for resolving disputes over whether an exception applies in any particular case. That procedure has to be accessible to all Canadians, and it has to be a procedure in which the final decision rests with a body or a person completely independent of the government that would want to hide the information.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** On this side of the House we are now ready to give our support to a bill which contains those essential elements. We are equally ready to declare our readiness—I make this very clear to the minister—to fight any pretense at a freedom of information act which lacks those essential elements. We have discussed in this House, in committee, and with the public at large, the principles involved in freedom of information at some length. I refer again to the private bill introduced by my colleague, the hon. member for Peace River, back in 1969. In 1974 he was successful in having the subject matter of that issue referred to a standing committee. There was a debate, a discussion, and a report brought forward that was concurred in unanimously by all members of this House in February, 1976. We have had the government's own green paper which has been the subject of discussion in parliament and by the country at large.

I do not propose today to go over all that ground again. Instead I want to refer to the two principal arguments that the government seems to raise against any kind of meaningful freedom of information law. The first argument is that a law of that kind, a law making public documents public, would somehow compromise the neutrality of federal public servants by identifying those public servants with specific policy proposals. That objection is very easily met. All one has to do is delete the pertinent names of the public servants involved in the documents which are revealed, and that would clearly protect the anonymity of any public servant who might be compromised by the publication of his name in association with the document.

A second argument that is put forward, and it is an argument to which I hope the minister will address his attention today, is the argument that judicial review, and I imagine that extends to any kind of review independent of the ministry, would, to quote the government "usurp the constitutional role that parliament plays in making a minister answerable to it for his actions." The fact is that that constitutional role is usurped

already. It is usurped by ignorance, because we cannot hold a government accountable unless we have information as to what that government is doing. When I say "we", I do not speak simply of the opposition, I speak of the whole Parliament of Canada. What is at issue here is not a responsibility exclusively of the opposition, it is a responsibility of each member of the House of Commons elected here to carry out our fundamental responsibility to keep control of and supervise the government of the day. We cannot do that without information. Without information there is no working, practical principle of ministerial responsibility.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** It is important to make the point, and I hope it is a point to which the minister will respond, that the notion of ministerial responsibility, as we practise it in this country, now does not at this point in time preclude subjecting ministers to checks and balances that are enforceable by the courts of the land. The courts have traditionally played an important role in reviewing executive actions, a role that does not at all conflict with the relationships of ministers of the Crown to parliament.

In examining whether or not the court is the appropriate forum to decide on freedom of information matters, we have to keep in mind as a parliament that such legislation, such as is being proposed here, would create a new universal right in Canada. It is the natural function of the courts to adjudicate upon disagreements over civil rights. To assert that ministerial responsibility demands that the minister's voice be the final voice means, in effect, that the minister would be the judge in his own case. The court apparatus can deal with sensitive material, if it needs to, on an in camera basis. It is therefore a viable, impartial social institution to check possible abuses of executive power.

When we indicated yesterday the nature of the motion today, the government House leader on the other side rose and raised some concerns about whether confidence would be involved. He indicated that the sections of our motion which bothered him most were those sections which proposed an ultimate appeal to the courts. I think that reveals the nub of the problem that we have here, not only in this debate but in getting this government to bring forth meaningful freedom of information legislation.

The fact is that the government wants to avoid the jurisdiction of anybody it cannot control. The government wants to appear to introduce freedom of information legislation, while in fact it retains the capacity to hide anything the publication of which would be inconvenient to this government. There is strategy in this matter as I see it. I say this with some regret, but its strategy appears to be twofold. First, it attempts to define exemptions so broadly that in effect nothing will change. Second, in the event a minister's discretion is questioned, it wants to ensure that somebody or some agency whom the government can control will decide, and will decide in the minister's favour. That, sir, cannot be allowed to occur. We require an independent body, an independent judge, in case of conflict. We require a law whose exemptions are specific and