

*Archives of Canada*

Well, as far as the first few words go we agree with him that "the Bill prohibits the destruction of government and ministerial records", but we are concerned about the last four words: "except in certain cases".

It just so happens that we are wondering in what "certain cases" government and ministerial records might be destroyed.

[English]

In English, we sometimes refer to a clause like this as a Mack truck clause. It is the kind of a clause which has an exception that is so wide one that could drive a Mack truck through it. You, Mr. Speaker, probably more than I, know how big a Mack truck is.

**Mr. Lewis:** I wouldn't touch that one.

[Translation]

**Mr. Berger:** Mr. Speaker, in fact we find that priority is given to any federal statute containing an exception which might clash with the general principle set forth in Clause 5 of the Bill. Frankly I think it should be the other way around, that this Bill on the Archives of Canada should have precedence over any federal law, excluding of course the Access to Information Act and the Privacy Act.

It seems to me it would be quite normal to insist that this legislation, the Archives of Canada Act, should have precedence, and that all other federal statutes be subject to this Bill or the Archives of Canada Act, not the other way around.

However, it is obvious in section 5, where it says "except as otherwise provided under an Act of Parliament", that the opposite is true. Any Act of Parliament—

**Mr. Boudria:** Except as provided anywhere else.

**Mr. Berger:** Exactly. "Except as provided anywhere else", as pointed out by the Hon. Member for Glengarry—Prescott—Russell (Mr. Boudria, just about anything else can prevail over the Archives of Canada Bill.

It seems to me that the Government should perhaps reverse its priorities in considering this Bill, or give us an explanation for the way this Bill is written.

A bit further on in section 5, we find reference to the records of "a Government institution" and to "ministerial records" which come under the jurisdiction of the Act.

To find what this means, Mr. Speaker, we have to refer to the definition section, which is clause 2 of this Bill. There, we find that a "Government institution" means a Government institution listed in schedule I to the *Access to Information Act* or the schedule to the *Privacy Act*. We therefore have to refer to these Acts to find out if an institution is in fact a Government institution.

[English]

As I understand it, and as I think has been mentioned in debate this afternoon, records of royal commissions are not included in the schedules of the access to information and privacy legislation. Let us think about some of the royal

commissions we have known in the past year or so. The Macdonald Commission would seem to be an exception to this law. The Archives would not have the authority to get the records of the Macdonald Commission.

**Mrs. Finestone:** What about the Caplan-Sauvageau Commission?

**Mr. Berger:** My colleague, the Liberal critic for communications, has said that the Caplan-Sauvageau records would not be made available to the National Archives. All of the work and records of the Deschênes Commission, which is dealing with the very important matter of war criminals and is causing so much concern these days, may not be made available to the Archives of Canada because royal commissions are not listed in either of these schedules which define government institutions.

It was mentioned earlier today that Crown corporations like Air Canada, Canadian National and the Canadian Broadcasting Corporation would not fall under the definition of Government institutions either. As well, Mr. Speaker, I would refer you to the definition of a ministerial record. We know that there has been some contention over what constitutes a ministerial record or a cabinet document. The Auditor General has been carrying on a running battle with two successive Governments and with three Prime Ministers over the question of what constitutes a cabinet document and whether or not the Auditor General should be entitled to have access to such cabinet documents. In spite of the ringing declarations made by the present Prime Minister (Mr. Mulroney) during the last election campaign who said that the Auditor General should have the right to see every single cabinet document and that he was going to open up the records of Government to the Auditor General, we have seen that those words have been harder to put into practice than they were to say on the campaign trail.

According to the Bill, a ministerial record is a record of a cabinet Minister that pertains to that office, but it refers to an exception which may prove to be much broader than the rule. It says that a ministerial record is a record of a cabinet Minister other than a record that is of a personal or political nature.

**Mr. Boudria:** Like Flora's letter.

**Mr. Berger:** That is right, Flora's letter that we have been talking about in the House over the past couple of days, the memo from her Deputy Minister, would be considered a record of a political nature and may not therefore be considered a ministerial record.

These concerns and others have been brought to us by representatives of the Social Science Federation of Canada who, I understand, would like to appear before the legislative committee that deals with this Bill.