

Statutory Instruments

As the House knows, I have appeared before the committee, and therefore I will endeavour not to repeat here what already lies on the public record. As I have already indicated the government supports the motion before us, and this is in the hope that the committee can pursue its investigation to a full and comprehensive conclusion. The greatest difficulty for the committee will be in finding a suitable balance between the goal of maximizing, if I may use the word, the amount of information made available and protection of the national interest and the security of the state.

The committee must also take into account the relationship between the principle of freedom of information and the functioning of government or, if hon. members prefer, of effective administration.

In 1973 my predecessor in office, the present Secretary of State for External Affairs (Mr. MacEachen), tabled guidelines relating to notices of motions for the production of papers. When I succeeded him I referred these guidelines to the Standing Committee of Regulations and Other Statutory Instruments for study and report, and they form one of the documents before that committee. I shall not, as I have already indicated, read those guidelines into the record again, but I should like to read the general principle upon which they are founded. The purpose of the guidelines was stated in the general principle as follows:

● (2030)

To enable members of parliament to secure factual information about the operations of government to carry out their parliamentary duties and to make public as much factual information as possible consistent with effective administration, the protection of the security of the state, rights to privacy and other such matters, government papers, documents and consultant reports should be produced on notice of motion for the production of papers unless falling within the categories outlined below in which case an exemption is to be claimed from production.

When I appeared before the committee I asked for comments on the various criteria to be applied in determining if government papers or documents should be exempt from production. It is fair to say, I think, that there was no substantial dissent as to the criteria proposed for this purpose by the government. There was some comment, and I invited the members of the committee to give us their frank views as to the adequacy of those criteria. Although the list proposed by the hon. member for Peace River was shorter than the bill he put forward, it covers roughly the same area of privileged information and documents.

The essential problem that concerned the committee while I was before it—and I gather which still concerns the committee—the one upon which there are and can be legitimate differences of opinion is this: how can members be sure that documents, access to which is denied, really fall within the exempt categories?

This is also the essential problem in relation to the demands of the public outside parliament for information about the activities of the government. I hope that the committee in its further studies will provide some advice and guidance on this crucial point.

There is a case for having some outside arbitrator or a court to which appeals could be made against the decision of the government not to disclose a particular document, but one should be careful not to impair the principle of

responsibility of the government for the decisions made by ministers or officials.

In the end it is my view that it should be the government that makes the final decision as to the disclosure of documents, because under our system of responsible government it is the government that must accept responsibility for the consequences of disclosure. I have had some discussions with the hon. member for Peace River and I think we agree that this is one of the crucial points. In his bill he has proposed a system of appeals for the public seeking information. I assume this would also relate to members of parliament seeking information. It is an extremely difficult and vital point because I do not think one can transfer the responsibility to whoever is the appeal court for the consequences of the disclosure of documents that the government does not feel it is in the public interest to disclose.

It may be that even though a court takes into account all the factors of which it is cognizant, it may make a mistake and the burden of the mistake must be accepted by the government itself.

May I go to another point raised by the hon. member for Peace River? He referred earlier today to working papers prepared by civil servants. As I recall it, he said something like this: he agreed that there should be no disclosure of working papers until the government had made a decision, but that those papers of a factual nature should be released after the decision had been made. Madam Speaker, I have had the privilege of being on both sides of this issue. I have been a civil servant and I have also been a minister. I have prepared working papers and I have received them. I think I may suggest that if my hon. friend had had the same experience he probably would not have made the suggestion he did.

Mr. Baldwin: I remained a virgin.

Mr. McCleave: Professional, but still a virgin.

Mr. Sharp: If he is in that position he probably did not give good value for his money.

Some hon. Members: Oh, oh!

Mr. Sharp: I would use as an example a report that I signed in 1957 about the economic outlook for that particular year. I suppose it could be considered a factual report. It contained all kinds of statistics and analysis on the basis of which some forecasts were made about the economic outlook for that year. It was one of the documents which was before the government of that day when budgetary policy for the 1957 budget was under consideration.

That particular document was released in 1958 by the new government which assumed office in 1957. It became known as the "hidden report" and was used extensively in the 1958 campaign. At that time I protested the release of that report because it threatened to interfere with relations between the government and its civil service advisers. That report represented the best advice of those civil servants who prepared it. It was provided on a confidential basis for the use of the government. If the civil servants concerned had known that their report was going to be published either then or later, they would have asked their ministers what they should say for publication so as