

Freedom of Information

open conference at Ottawa in February, that it is coming down on the side of a refusal to accept any form of independent assessment and adjudication on freedom of information.

Some hon. Members: Hear, hear!

Mr. Hnatyshyn: This really distresses me. As a former dean of law, the hon. member for Windsor-Walkerville should have a fuller and better appreciation of the speciousness of the argument against an ultimate judicial review. I listened to his argument about the limitation of exemptions. I understand and commend him for some of those observations. I thought his observations were responsible. On the basis of his presentation in that regard, I do not think we differ substantially.

But I detected great difficulty in his presentation when he attempted to defend the indefensible. I felt he was struggling to bring logic to an illogical proposition. He attempted to justify his argument by indicating that whether a person is entitled to some government document is beyond the ken of any judicial officer. If that proposition was taken to its logical conclusion, the judiciary would have a very limited area in which to pass judgment. I think the hon. member knows this in his heart of hearts.

What is a judge supposed to do when he draws any conclusion on a matter of national security? What is he to do when he reads the definition of "national security" in the Federal Court Act? Is he not drawing conclusions which are very political in nature? Is the hon. member suggesting in the judge's interpretation of section 41(2) of the Federal Court Act that he is not involved in a political decision by deciding what does or does not constitute national security? What about the Official Secrets Act? There are many instances and examples in our laws where in fact judges are required to pass judgment on matters which I consider to be political in nature, or are required to take into account matters which perhaps are sensitive or secret. The argument that judges or independent arbiters of whatever stripe are somehow not qualified, or could not understand the implications of an application, just does not warrant any support.

Also I detected a strain on the part of the Secretary of State during the course of his remarks. He came out clearly against independent judicial assessment of these applications. He was careful not to say that he was against independent assessment, but his argument gave us some indication of what might come forward as a government bill. I hope I am wrong in this respect, but he left the impression that it will be something in the nature of what was presented by the hon. member for Windsor-Walkerville.

• (1742)

I notice the hon. member for Windsor-Walkerville made reference to the information commissioner being of the same nature as the Auditor General. I do not know of a better example to illustrate the pitfalls that might occur with respect to a true freedom of information act and endorsement of that principle than trying to suggest that we have an information commissioner on the same basis as we have an Auditor Gener-

[Mr. Hnatyshyn.]

al. We know that in some instances the recommendations made by that officer of parliament have fallen upon the deaf ears of the government, and I would venture to say that more times than not his recommendations have not been acted upon. We know that the Auditor General has absolutely no powers of endorsement with respect to any recommendations he may have, however sensible they may be. If we are talking about that kind of final assessment of applications, we are not doing the concept of freedom of information any good at all, and it would be counterproductive, as far as I am concerned, in ensuring true freedom of information.

Mr. Baldwin: They didn't like one Auditor General. They tried to fire him.

Mr. Hnatyshyn: This is the problem, as my colleague has pointed out. We need someone quite independent of any pressure exerted by the government. In the final analysis, it is the majority that would appoint this officer. Whether he is an officer of parliament or not, the practical fact is that the majority party will be able to exert certain pressure on that appointment, which will probably be limited to the usual term of seven years.

The reason I ask members on the government side to give support to this motion is that it is not a partisan matter, nor should it be, to support a proposition put forward by my leader. What I am suggesting is that it is as much in the interest of the government as in the interest of the members of the opposition to have truly effective freedom of information legislation in force in Canada.

I would like to remind hon. members who are interested in this particular debate of a statement made by a recently departed cabinet minister, the hon. Mitchell Sharp, who said in a speech he made in Fredericton in March, 1977:

In the political sphere . . . senior civil servants are much more powerful than ministers. "In the main, ministers are amateurs in government while the civil servants are professionals"—

He was talking about civil servants who advise ministers on policy matters.

It is as much in the interest of ministers to ensure there is an adequate and free flow of information as it is in the interest of the members of the opposition. I contend that in the complexity and the labyrinth of the administrative processes we now have in government there be some measure, if I can put it in parochial terms, to keep everybody in the government operation honest.

It was interesting to read a speech made by a public servant of some seniority and distinction in the government, Mr. Gordon Robertson, on November 19, 1977 entitled "Confidentiality in government". Mr. Robertson is secretary to the cabinet for federal-provincial relations. I know the man and have had correspondence with him, and I think it is fair to say that he was not stating the government's point of view in connection with the speech. It was his own point of view. He did not ask to speak at the lecture in Kingston, Ontario, for which the speech was made, but he was asked to speak specifically on this topic.