

*Freedom of Information*

arguments which have been made in this House this afternoon both by the hon. member for Greenwood and the Leader of the Opposition, a description of why it is essential that there be freer access to public documents, and of the principles which should guide us.

I noted with interest the comments of the Leader of the Opposition during his speech, and I jotted down what I thought he described as the essential points.

[*Translation*]

I hope I am not distorting the meaning of his remarks.

[*English*]

I think I have jotted them down correctly; I tried to do so. He thought it was, first of all, necessary to establish that there is a public right to access to these documents. I agree. Secondly, he said that the exceptions to this general right should be presented in a limited form. I agree entirely with that. Third, he suggested that these exceptions to the general principle should be put in extremely clear language, and I agree with that. He said—I hope I am quoting him correctly, but I may be paraphrasing a little bit—there should be a procedure for resolving disputes as to whether a document should or should not be released, and that this procedure should involve persons or a body—he did not at that time say the courts—but persons or a body which is independent. There, too, I am in accord with the four essential principles which, if I understood him correctly, the Leader of the Opposition presented for the consideration of the House in what I thought was very useful way.

Why then is there some reluctance on my part—and a reluctance that I will urge on my colleagues on this side of the House—not to accept this motion? It stems essentially from the fact that this motion contains a representation that the method for independent review should be that of a judicial review. If time permits, perhaps I will be able to say a few words about that in a moment or two.

The Leader of the Opposition poses two specific challenges or points on which he asked me to comment, and I will therefore do so. He ascribed to the government an argument that there was a necessity for confidentiality of documents in order to protect the—I am not sure whether he said anonymity or neutrality of civil servants—perhaps neutrality of civil servants—and implied that one could deal with this problem by the simple process of blacking out the name of the civil servant involved. My comment on that would be that it is not simply a question of neutrality, or perhaps even anonymity, of civil servants; it is a question of whether there is to be surrounding the decisions of cabinet the kind of confidentiality which leads to frankness in advice and frankness in questioning. I would suggest it is desirable to have this confidentiality and that it is in the public interest when the executive government takes its decisions.

While this is certainly a debatable point and one on which I hope the joint committee will give us some precise recommendations. It is not irresponsible to be concerned about the context in which advice is given to the cabinet so that it may

make its decisions as quickly as possible in as free an atmosphere as possible.

I hope that I am not contaminating him with any sort of guilt by association, for instance, in saying that when the hon. member for Peace River presented his proposal for legislation on this subject in 1974—and I think it was a very useful step which he did take—he put forward as desirable in the legislation an exemption on page 3, section 4, sub-section (g), “where the information on record is of a confidential nature exchanged by public officials within the government or between public officials of the government and any other government, and is expressed to be confidential.” That describes a rather sweeping exemption. Myself, I would want a rather narrower one. I do not cite that particular paragraph to criticize the hon. member, far from it, but simply to say that there is an area of decision making in government where it is extremely important to have, not only the names of civil servants protected, but where the essential advice given or the range of advice given may be desirably held back from public view in the interests of a more efficacious, speedier and more wide-ranging process of decision making.

The second point the hon. member asked me to comment upon is that of the question of ministerial responsibility. His remarks were later joined by the points of view presented by the hon. member for Greenwood. It revolves around the question of how the process is to be designed which will review those decisions which are taken within the exemptions, which I think all members of the House will admit are necessary. No matter how fundamental the principle that the public should have access, there must be some exceptions. I think all members will admit that, with the possible exception of my friend from Saskatoon-Biggar speaking in committee—I am not sure whether it was simply for the purposes of argument or description or whether he sincerely believed it. I think almost all members in the House believe that there are some areas where exemptions are necessary. The question then is how do you judge whether the exemptions or the exceptions have been properly applied.

As I said earlier, there must be some process which is independent of ministerial decision in order to make the process credible. Both the hon. member for Greenwood and, I think, the Leader of the Opposition—although he may have perhaps had a bit more latitude on the question than I am now ascribing to him—suggested that the courts were an essential element in such a process of review and, indeed, that it was the proper function of a court to apply such a review to this application of the exemptions. It is that thought as expressed in the motion before the House which causes us on the government side some difficulty.

Why are we cautious on this side of the House that judicial review is the appropriate way to supervise the application of the exceptions? I think the phrase of the Leader of the Opposition was that it was natural that the courts should make an adjudication of the rights of the citizens. I would suggest that the proper question is not simply a question of adjudication of rights, but an assessment of the public interest. It is