

Freedom of Information

I was going to quote the following from Dr. Rankin:

It has also increasingly become clear that such objections are based on a self-serving myth that is sought to be perpetuated in the 1977 green paper: that "there is no way that a judicial officer can properly be made aware of all the political, economic, social and security factors that may have led to the decision in issue. If the American experience has indicated anything, it has indicated the hollowness of this assertion.

From the same author, we read the following at page 126:

The fact of the matter is that the courts are the natural repository for decisions on the exercise of constitutional or civil rights and what is contemplated in freedom of information legislation is nothing less than the creation of a new citizens right—a right to access to government documents.

He goes on to point out that the assertion by ministers that they shall do this is without foundation.

I want to say that changes are required in the legislation we have at the present time if we are to effect the principle contained in the motion. First, a freedom of information act must be passed, and for that we have admirable precedents. Our committee visited Washington and discussed the U.S. freedom of information act which was, first of all, found to be unsatisfactory and substantially amended in 1974, and in which they insisted that essential to that type of legislation was a judicial determination, in the ultimate analysis, of whether or not a document was admissible. We have to change that and bring in a new act.

In addition, we must repeal section 41 of the Federal Court Act which, by subsection (2) gives the minister the right to deny access to any document by merely producing an affidavit that in his opinion it would be contrary to the public interest. This flies right in the teeth of what we are arguing for. As a matter of fact, I have filed a private member's bill, which is somewhere down the order paper and not likely to be reached while I am a member of this House, which proposes precisely that amendment.

Another document which we must change is the Official Secrets Act, which was antiquated 50 years ago and is even worse now. It gives up to 20 years, in the vaguest terms, for so-called breaches of official secrets. That act was intended to be confined to cases of spying, cases of clear treason and treachery. Certainly, as applied to that, it may have a useful purpose, but as it is now drafted it can be misapplied in many different ways, and it has not been used very often, I suppose for very good reasons. So those things have to be changed also. We have ample precedents in the U.S. and in Sweden, which, I think, since 1902 has had legislation of this sort.

I want to conclude by once again reading from the book to which I referred, as follows:

● (1622)

After an exhaustive analysis of the Canadian administration, Professor Malloy concludes:

Government in a modern democracy is largely in the hands of a bureaucracy, using the term in a neutral sense as meaning a body of professionally competent, hierarchically organized administrators. The major problem in modern constitutional government is to retain an effective control, by public opinion and by legal restraints, of the apparatus of the state which constantly expands with the increased public demand for more social welfare services and with the growing burden of national defence in a world of increasing peril.

[Mr. Brewin.]

Liberty in such a world can be nourished only by the full and effective functioning of the political and legal restraints on abuse of power.

Then it continues as follows:

As noted throughout this study, there can no longer be any justification for the aura of secrecy which surrounds the business of government. Access to government information is essential to participatory democracy. And access must be a meaningful legislative right rather than a sham. There is no compelling reason why the courts in Canada should not be entrusted with the responsibility to review all information requests which the government has denied.

In another way this states the basic purpose and principle of the motion before us. I commend it to all hon. members of the House, especially those who have any pride in calling themselves Liberals.

Some hon. Members: Hear, hear!

Mr. Jones: Mr. Speaker, I rise on a point of order. I ask that a roll call be taken. There is no quorum.

Hon. John Roberts (Secretary of State): Mr. Speaker, I rise on a point of order. I thought there was some agreement on the part of various members that I would be the next person recognized by the Chair. There had been consultations with the hon. House leader of the New Democratic Party on this point. Indeed, I understood that I had the right to rise and exercise my responsibility to speak, after the initial speech by the hon. Leader of the Opposition (Mr. Clark). At that time I did not rise to speak because of my desire to hear the comments of the various official representatives of opposition parties, before responding to some rather constructive remarks. Therefore I was a bit surprised when Your Honour recognized the hon. member for Moncton (Mr. Jones). I thought there was a disposition on the part of the House to hear me at this stage.

Mr. Knowles (Winnipeg North Centre): There are only 19. You had better keep talking.

Mr. Roberts: I did not hear the interruption by the hon. member for Winnipeg North Centre (Mr. Knowles).

Mr. Knowles (Winnipeg North Centre): There are only 19 members here now.

Mr. Beatty: I think we should count. Perhaps the hon. member is wrong.

The Acting Speaker (Mr. Turner): The Chair has just counted, and there are 20 members in the House. The hon. Secretary of State (Mr. Roberts).

Mr. Roberts: Mr. Speaker, thank you for recognizing me.

Mr. Jones: Mr. Speaker, I rise on another point of order. When I requested a roll call, there were less than 19 members in the House. There were four Liberals, nine Conservatives, two NDP, and one Independent. I think the roll call should have been conducted when I asked for it.

Mr. Kempling: That is not a point of order.