

which by its very nature would be binding on the government of the day. This is in direct contrast to the position of the government taken in its green paper on freedom of information, despite the fact that the survey was conducted after the green paper had been tabled."

● (1712)

That report, produced by the freedom of information committee of parliament, was signed by members of parliament of every party, including the Liberal party. It is incumbent upon Liberal members of parliament, as well as upon those on this side of the House, to prove that they meant what they said when they said that parliament should have that right, and that built into freedom of information legislation the public should have the ability to have an independent review of decisions to hide information which have been made by ministers.

In the past ten years this government has indicated in many ways that it has slight regard for civil liberties in Canada. We have seen that in the Peter Treu case where a secret trial was conducted. We have seen that in the prosecution, perhaps persecution would be a better word, of the Toronto *Sun*, which is currently charged under the Official Secrets Act and which was raided on the order of this government. We have seen it in the invocation of the War Measures Act. We have seen it in so many other areas that I think parliamentarians should examine the record of this government, and should have the right to question whether this government is truly serious when it claims it believes in freedom of information.

I began my remarks today by saying that access to information about how the public's money is being spent and about how public decisions are being made is essential if democracy is to survive in a healthy form in Canada. I continue to feel that way, and I think that the motion which has been placed by the Leader of the Opposition before parliament today gives members of parliament on all sides of the House the opportunity to prove that they believe that democracy in Canada should be kept vital and that the indispensable right of citizens of Canada to freedom of information should be protected and enhanced.

Mr. Mark MacGuigan (Windsor-Walkerville): Mr. Speaker, the subject of freedom of information in a parliamentary democracy is an immensely complicated one which is not susceptible to simple solutions. Obviously, this House will wish to continue to affirm its support for the principle of freedom of information as a prerequisite to open and responsible government. I thank the Leader of the Opposition (Mr. Clark) for his personal references earlier, and I want to assure him and other hon. members that hon. members on this side will reaffirm that principle of freedom of information as a prerequisite to open and responsible government as fully and as strongly now as we did on February 12, 1976.

This affirmation will have the fundamental but, nevertheless, limited effect of providing a framework for as much openness as is consistent with responsible government. The governmental system should be so oriented as to provide a

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maximum of openness, and in all cases of doubt the presumption should be in favour of public disclosure.

However, because of the complexity of governmental operations and public needs, the general principle of openness cannot by itself resolve the problems of detail.

The absence of valid precedents increases the difficulty of the problem. We have Swedish and American precedents. They are probably the most extensive in today's world, but neither one is very close to our system of government. If they are of value to us, it must be because they commend themselves to us by reason of their application as individual elements rather than as part of a general system. Indeed, one would want to look at the American experience to see to what extent the freedom of information law there has benefited large corporations for their private interests more than any other sector of the population. I think these precedents would obviously have to be looked at with a great deal of care.

The consideration of this issue by the MacKenzie commission was not very satisfactory either. That commission dealt with only part of the problem, that part dealing with official secrets, and the principle which it advocated is, to my way of thinking, rather inadequate. I would like to quote from page 77 of that report. Paragraph 209 says the following:

We have given some thought to the ideal content of an official secrets act. In our opinion, such an act should in the first place protect all classified information from any unauthorized dissemination, whether or not the purpose of such dissemination is prejudicial to the interests of the state and whether or not the information is intended to be directly or indirectly useful to a foreign power;

Just reading that much of the attitude of the MacKenzie commission regarding this part of the problem, we can see that there is an acceptance of an unfettered discretion of the executive to classify documents, backed up by the criminal law power, and the criminal law power would be used to punish espionage and general leakage on an indiscriminate basis. To my way of thinking that type of approach is not at all satisfactory. It is far too general and gives far too much power to the executive of the day.

Much more satisfactory, from my point of view, is the approach of the Franks committee in England. I would like to quote briefly from page 101 of volume one of that report where the committee recommends that:

Section 2 of the Official Secrets Act 1911—

Which is the equivalent of section 4 of our act, I might say parenthetically.

—should be repealed, and replaced by a new statute, called the official information act, which should apply only to official information which—

- a. is classified information relating to defence or internal security, or to foreign relations, or to the currency or to the reserves, the unauthorized disclosure of which would cause serious injury to the interests of the nation; or
- b. is likely to assist criminal activities or to impede law enforcement; or
- c. is a cabinet document; or
- d. has been entrusted to the government by a private individual or concern.

In the view of the Franks committee the use of the criminal law would be limited to those categories of information, and beyond that the secrecy—"confidentiality" perhaps is a better word—of government would be maintained by internal disci-