

CIDA, and the committee wanted to see what these critics had said. The committee was denied that report.

As a matter of fact, the then chairman of CIDA, Paul Gerin-LaJoie, was ready to produce it, but the then secretary of state for external affairs, who we all know well and respect very much, Mr. Sharp, jumped into the breach and said no, that it was not to be produced. Members of this House sitting on that committee dealing with this serious matter were denied access to that report.

Others have had other experiences. Reports dealing with the environment, which are of great importance to Canadian citizens, have been concealed and not produced. Let us not forget that this atmosphere of concealment or secrecy has the effect of covering up the incompetent and of diminishing efficiency.

If people can put a blanket of secrecy over mistakes they have made, those mistakes are not likely to be corrected. I think the Leader of the Opposition has already put his finger on the key matter, and that is that it is perfectly obvious that there are some documents which should not be produced. There are certain documents which, by their nature, would be against the welfare of the state if they were produced. These could be exemptions from the general provisions of an act which could perfectly properly provide that all other documents should be made available to citizens. However, nobody but the most absolute purist would suggest that that general expression should not be subject to exemptions in proper cases.

One of the ways the effectiveness of a freedom of information act would be denied would be to draft exemption provisions in broad terms and to fail to provide adequate means for decisions as to whether particular cases fit within the general rule of production or whether they should be exemptions and need not be produced. These matters are absolutely essential to the proper working of such an act. When we talk about meaningful legislation, we should be talking about exemptions which are clearly and narrowly defined having regard to the public interest.

The criticism of the green paper produced by this government is that it failed to recognize that. The proposed exemption is so broad in its terms that anybody with, or even without, legal experience could find some excuse for not producing a document when it was demanded.

As the Leader of the Opposition has said, the key to it all is who shall in the ultimate analysis enforce the act. It may be that people at lower levels could investigate and report, but the final decision must be made by some independent judicial authority. It does not necessarily have to be the courts, but it has to be someone outside the machinery of government. Any act—and this was proposed by the green paper—purporting to call itself a freedom of information act, which does not provide for that independent judgment on the ultimate analysis of whether the act is applicable, and any act which tries to arrogate to a minister or a group of ministers or anybody within the sphere of government the right to say no—a final not subject to review—is, and will be, a sham, and will be

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something which should never be dignified by the title "freedom of information".

● (1612)

The argument in the green paper is that somehow or other judges are incompetent to deal with this. Whoever heard of such nonsense as this! It is precisely that sort of thing that the whole judiciary system is set up to deal with, and I want to give a few illustrations of that in my speech. This is what Mr. Justice Rand said in a case in 1954 which was reported in the *Dominion Law Reports* of that year at page 483. He said:

What is secured by attributing to the court this preliminary determination of possible prejudice is the protection against executive encroachment upon the administration of justice; and in the present trend of government, little can be more essential to the maintenance of individual security. In this important matter to relegate the courts to such a subservience as is suggested would be to withdraw them from the confidence of independence and judicial appraisal that so far appear to have served well the organization of which we are the heirs.

The matter was dealt with in England, a country where, I suppose, the rights and privileges of the Crown are defined as widely as in any other country.

In a recent important case reported in the 1968 *Appeal Court Reports*, of *Conway versus Rimmer*, the issue that was to be decided was set out very clearly by one of the judges in the House of Lords, Lord Morris of Borth-y-Gest. He said:

My Lords, stated in its most direct form, the question . . . which is raised in this case is whether the final decision as to the production in litigation of relevant documents is to rest with the courts or with the executive. I have no doubt that the conclusion should be that the decision rests with the courts.

All of the members of this English court so held. They said that they were satisfied there would be no constitutional impropriety in allowing the judges the power to overrule ministers on matters of secrecy.

If the Secretary of State (Mr. Roberts) is going to reply in this debate, I hope he will not pretend—because it is such a false sort of pretence—that there is some judicial impropriety about leaving to judges, rather than to cabinet ministers or to people within the government apparatus, the final right to decide on these matters. As I said, that was the view even in England, which puts on a pretty high level the assertion of the privileges of the Crown to resist the production of documents.

It was described in another way in the book by Dr. Rankin to which I have already referred.

The Acting Speaker (Mr. Turner): Order, please. I regret to interrupt the hon. member but the time allotted to him has expired. He may continue with unanimous consent. Does the hon. member have unanimous consent?

Some hon. Members: Agreed.

Mr. Brewin: Thank you, Mr. Speaker, and I thank hon. members for their generosity in allowing me a little extra time. I will not take very much. Usually I try to take less time than is allowed me, so I appreciate getting credit time in this instance.