

*Access to Information*

information on pain of penalty of law if the individual chooses not to give it.

It was felt necessary by members on this side, who believe that the role of the state should be limited and the state should be the servant of the people and not its master, to turn that onus around. Control over information is not a right of the government. That information is not the property of the state but of the people of Canada.

In those instances where the government feels there is a compelling reason why information should be suppressed, the onus should be upon the government to justify taking that action. In those instances where the government feels it is necessary to compel information from individuals, the onus should be put upon the government to justify compelling release of that information, not put upon the individual to justify his reluctance to give it. This is why we felt it was important to bring in integrated legislation which would deal with both aspects of this matter, freedom of information and privacy.

● (1710)

It has been said in the past that in some ways legislation on privacy and on freedom of information are somehow in contradiction with one another, but that is not so. The two concepts are different sides of the same coin. The real issue here is the control of information. Who owns information, who controls it? Does it belong to the state or does it belong to the people? That is why the first bill of the Clark government, introduced by my colleague, the hon. member for Nepean-Carleton (Mr. Baker), was a bill which would have brought forward the concept of freedom of information.

In conjunction with my colleague, Senator Jacques Flynn, the then minister of justice, I was working on a complimentary bill on the issue of privacy which would be passed separately by this House but which upon passage would interlock and integrate those two principles; it would ensure, for example, that the mechanisms of access to one's own file would be the same as those used for files about how the government was spending your money, or how decisions are made. The exemptions would as much as possible be consistent so we would not run into the situation where public servants were put in the position of having to choose between, on the one hand, penalties for withholding information, and on the other hand penalties for giving out information to which they felt the public should be entitled. We felt it was essential that we should eliminate or at least reduce the possibility of conflict and try to have as coherent a package as possible, recognizing the philosophy that information belongs not to the state but to the people of Canada.

As I have mentioned, my colleagues who have spoken before me have given their evaluations of the government's bill, and particularly of the freedom of information section. They have pointed out at least four areas where Bill C-43 is weaker than the legislation proposed by our government.

First, it is apparent that the government's legislation will make it harder for interested individuals to discover what

documents actually exist. Clause 5(3) implies that if information appears to be exempt from release, it does not have to be even listed on information bulletins.

Second, these exemption categories, particularly in the areas of international affairs and defence, law enforcement and investigations and economic interests of Canada, appear to go much further than the Clark government's bill to protect information from release to the people of Canada.

Third, the powers, status and pay of the information commissioner appear to have been considerably eroded.

Fourth, and perhaps most importantly, it does not appear that the additional power given to the courts will come close to promoting the degree of openness that ought to be expected in this bill. This is largely the result of the fact that when a judge decides on the appropriateness of withholding information or documents in certain categories, he cannot determine whether the department head is entitled to withhold it, but merely if he had "reasonable grounds for doing so". For my purposes I would like to shift the focus of the debate from the freedom of information section of Bill C-43 to the privacy section of the bill.

Hon. members will remember that I introduced a similar private member's bill earlier last year which was the final draft of the bill prepared by Senator Flynn and myself for introduction under the Conservative government. I am pleased, obviously, to see that the substance of that bill has been incorporated in the government's legislation which has come forward, and I am delighted by the fact that, while there has been retreat on some of the important areas of the bill, by and large the substance has been incorporated in this legislation.

In fact, the timing of this debate could not have come at a more appropriate moment. Parliament is currently embroiled in an historic conflict over the type of rights that ought to be entrenched in the Constitution of Canada. The current government has endlessly argued that a complete and fundamental bill of rights ought to be included in any constitutional amendments we send over to Britain. Yet, Mr. Speaker, shockingly, one of the most basic of human rights has been left out of the government's charter of rights, and that is the right to privacy.

That right has an ancient history both in the west and in the history of man throughout the world. On this continent the right to privacy, for example, dates back to the first, third, fourth, fifth and ninth amendments of the constitution of the United States. Judge Thomas Cooley, in his influential treatise on torts, described privacy as the inalienable and natural "right to be let alone". Almost 100 years later the Younger committee redefined the concept as the right of "freedom from intrusion upon oneself, one's home, family and relationships". In the western democracies the right to privacy was born out of the Enlightenment's suspicion of the state. To paraphrase Locke, the democratic state became the sum total of the persons comprising society. In this sense the state was established to serve society, a group of individuals who led their own private lives.