

*Department of Public Works*

from lobby groups become even stronger and perhaps work to the detriment of our democratic system.

The principal rationale for claiming protection for cabinet papers is that these documents reveal the process whereby the government, as a whole, establishes collective responsibility for actions that will be taken by individual members or by the Crown. Therefore, I think it is well accepted that the principal role of cabinet is political rather than administrative and that its political function merits special protection. This protection is founded on the convention that cabinet solidarity is essential to the maintenance of confidence in the ministry. Disclosing papers reflecting the process whereby ministers establish collective responsibility would jeopardize the unity and hence the viability of the ministry.

The confidentiality attached to cabinet documents is not merely a time-honoured tradition, but an important constitutional convention applicable in all parliamentary democracies based on the British system. It is recognized in the United Kingdom, in Australia and New Zealand, as well as in this country.

The authoritative statement of this convention is to be found in the judgment rendered by Lord Reid in his landmark decision, I believe in 1968, in the case of *Conway versus Rimmer*. That decision concerned the question of Crown privilege, but in it Lord Reid gives the views as to why the workings of cabinet ought not to be made public. In part, that decision read:

I do not doubt that there are certain classes of documents which ought not to be disclosed whatever their content may be. Virtually everyone agrees that cabinet minutes and the like ought not to be disclosed until such time as they are only of historical interest. But I do not think that many people would give as the reason that premature disclosure would prevent candour in the cabinet. To my mind the most important reasons is that such disclosure would create or fan ill-informed or captious public or political criticism. The business of government is difficult enough as it is, and no government could contemplate with equanimity the inner workings of the government machine being exposed to the gaze of those ready to criticize without adequate knowledge of background and perhaps with some axe to grind.

In Canada the principle has been reflected in various official pronouncements over the years. I want to refer briefly to the 1973 guidelines applicable to notices of motion for the production of papers. Specifically, these guidelines provide for an exemption for "cabinet documents and those documents which include a Privy Council confidence". In June, 1977, the same approach is reflected in a green paper issued by the then secretary of state concerning public access to government documents. The green paper specifically endorsed the idea that there should be an exemption for cabinet documents in any future access to information legislation.

It is interesting to note—and too often some of us forget—that the official opposition, when it formed the government for a brief period in 1979, also felt that cabinet documents ought not to be made public. I refer to their proposed freedom of information legislation contained in Bill C-15 which put forth a quite articulate and most detailed exemption covering all types of cabinet records. That particular exemption would have authorized the withholding of any proposals or recommendations prepared or submitted to cabinet, as well as other

related documents such as agenda of cabinet and documents reporting the deliberations or decisions of cabinet.

The exemption of the previous government also encompassed records used for or reflecting consultations among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policies. As well included in the Conservative freedom of information bill was an exemption from the right of access to records containing briefings to ministers of the Crown in relation to matters that were before, or proposed to be brought before, cabinet. Finally, the exemption also covered draft legislation as well as cabinet discussion papers which were defined as being records containing background explanations, analysis of problems, or policy options submitted or prepared for submission to cabinet.

I should point out that I was quite surprised, I believe last Thursday night, by statements of the Right Hon. Leader of the Official Opposition (Mr. Clark) when he intervened in second reading debate of the access of information legislation put forth by the hon. Secretary of State and Minister of Communications (Mr. Fox) in Bill C-43. The Leader of the Opposition claimed that this government's exemption for cabinet documents had been extensively broadened to include discussion papers with "background explanations, analysis of problems or policy options". As well, the Right Hon. Leader of the Opposition expressed shock at finding in this government's exemption "records used for briefing ministers in relation to matters that are before or proposed to be brought before cabinet".

I would suggest that if the Right Hon. Leader of the Opposition had been curious enough to read his own legislation on freedom of information before participating in the debate last week, he would have seen that, save for a very minor technical change, the cabinet document exemption in Conservative Bill C-15 in the Thirty-first Parliament is identical to the exemption in Bill C-43. I point this out not so much to correct the statements of the Leader of the Official Opposition—which should be done anyway—but to show to this House how two major parties can be in agreement with the nature and scope of confidentiality to be accorded to cabinet documents.

● (1740)

As well, by the very practice they followed during the short period of time the Conservatives were running the country, the previous government endorsed the principle of cabinet confidentiality. To my knowledge, the outgoing administration also abided by the guidelines which came into force in 1973 respecting the motions for the production of papers.

There is broader agreement between the two main parties, to which I would like to refer at this particular point in time. When the Standing Committee on Regulations and Other Statutory Instruments came up with its own proposals for freedom of information legislation in 1978, its report contained a recommendation to the effect that documents prepared expressly for or in connection with the deliberations or deci-