

Official Secrets Act

munication of official information, including documents, by a Crown servant. Actually this matter is not involved in either of the two cases we are talking about today, but this is the main offence created by section 2 of the British act. The Franks committee also indicated that the leading characteristic of this offence was its catch-all quality. It catches all official documents and information, everything and anything at all. It makes no distinction as to kind or degree. The committee indicated that all information which a Crown servant learns in the course of his duty is official for the purposes of section 2, whatever its nature, whatever its importance, whatever its original origin.

As the hon. member for Peace River pointed out, when this legislation was adopted in Canada there was virtually no debate. It was presented to parliament on the basis of legislation dealing with espionage and the protection of national security in a very basic way. I have the impression that the same thing occurred in Britain when the act was passed in the 1880s. It was not discussed on the basis of preserving the confidentiality of ordinary government documents. It was presented to the House in terms of espionage. The same thing took place in 1911 at Westminster. The situation was similar to what occurred in Ottawa. There was practically no debate or no discussion at all.

As I understand the situation, the catch-all provision has been loved by governments and high functionaries in the public service through the years because it serves as a deterrent. There are some known cases where it has been used, not necessarily in Canada but certainly in Britain, to persuade journalists and authors not to include certain documents or information in some of their writings.

In 1972 the British Franks committee came to the conclusion that their legislation was too broad. Also it found section 2 to be a mess, which is the equivalent of Section 4 in our legislation.

The Canadian Royal Commission on Security found that the legislation was much too broad. Having judged that the Official Secrets Act was unsatisfactory, the royal commission was in favour of a complete revision of the legislation. It discussed some of the things the revised legislation should and should not do.

This morning the Minister of Transport quoted the Minister of Justice (Mr. Basford) when he said that the law should apply to all equally. I say with no hesitation that this broad catch-all provision has not been applied equally. I doubt if it is possible to apply it equally. For that reason alone, it is bad legislation. Possibly it has been used as a threat or a deterrent, but no one would pretend either section 2 in Britain or Section 4 in Canada would apply to the need at hand, and therefore it is poor legislation.

In addition to preserving confidentiality and protecting the disclosure of matters, also there is the question as to what degree criminal law should be used for this purpose, and the group of cases where we should consider it appropriate to use criminal law. The Franks committee gave a good deal of

[Mr. Stanfield.]

attention to this question. It came to the conclusion that there was no justification or no acceptable reason for using the criminal law, as we now do, to protect all documents and information which we catch up and protect in Section 4 of our legislation. The Franks committee made a short list containing four categories of information where criminal law should be used. Under our Official Secrets Act, as it is now drafted and in effect, the sanction of the criminal law is applicable to any violation of the broad, wide-ranging Section 4 of our legislation. I suggest that is an intolerable situation. I hope the Minister of Transport will not regard that as intemperate language. It is an intolerable situation that we are using the sanction of criminal law to protect all the information covered in Section 4.

A third consideration or concern is evidential and procedural arrangements. These were of concern to our Royal Commission on Security. As the law now stands, in certain circumstances the burden of proof is put on the accused when certain facts have been established. It provides for certain evidentiary presumptions. The royal commission mentioned a couple of instances in which there should be some evidentiary presumption. Also the commission indicated, apart from the two provisions it had mentioned relating to classifications and cases involving classified information and ones involving unclassified material, that it saw no reason for major unusual evidential or procedural arrangements. Yet, the Official Secrets Act has very far-reaching evidential arrangements which are prejudicial to the usual position of a defendant charged with an offence.

This morning the minister said that such prosecutions are rare in Canada. I do not question that. But I do not know what that has to do with the situation, Mr. Speaker.

● (1442)

The minister said prosecutions are rare and, therefore, clearly the Act is designed to deal with certain important matters, but it is not really as sweeping as the hon. member for Peace River implies. I think I have said enough to indicate not only my opinion but the opinion of commissions which have been established to examine the legislation. Their view is that the legislation is enormously sweeping and catches up virtually everything that anyone could think of.

I say, without any hesitation, that I do not believe the government, ministers in a government, or high officials in a government are necessarily the best ones to decide what should or what needs to be kept secret. I am not being offensive about this, and this is not directed toward any individual, but there is a very real danger that members of the government or officials serving the government confuse the interests of the nation with their own political interests. There is very real danger of that.

Some hon. Members: Hear, hear!

Mr. Stanfield: I think some better mechanism or better method of deciding what needs to be protected should be considered by the committee.

We have secrecy in the case of the Treu trial. I do not hesitate to agree that there might very well be documents that