when it was enacted in 1892. The official secrets provisions in the Criminal Code were amended in 1911 in conjunction with U.K. amendments introduced the same year. The official secrets provisions remained in the Code until 1939, when Parliament passed a separate statute, which was largely carry-forward of the Criminal Code provisions.

The Official Secrets Act deals with two broad areas of concern. The first is a series of offences related to espionage. These offences are found in section three of the act, with a few exceptions. The second area is authorized disclosure, loosely described as leakage, and a number of related offences which are found in section four. Since 1939 there have been 21 prosecutions for breaches of our Official Secrets Act, or conspiracy to breach the act. Nine of them resulted in convictions. Three prosecutions were based on section four—leakage—alone, and section four was used as an additional count in another. All the other prosecutions were based on section three—espionage. The great majority of prosecutions arose as a result of the 1946 defection of Igor Gouzenko, a Soviet embassy employee in Ottawa. Gouzenko told a tale of intrigue about Soviet spy operations in Canada. Since the Gouzenko incident there have been only four prosecutions, two for espionage and two for leakage. Only one of these prosecutions, for espionage, resulted in a conviction.

I do not intend to discuss in detail today the espionage provisions of the Official Secrets Act. My reasons for not doing so are related to my reasons for opposing this motion. For over three years a commission of inquiry—the McDonald commission—has been examining the policies and practices which now apply to the protection of the security of Canada. Matters of security, of course, involve dangers from abroad, including espionage, as well as internal threats to our democratic institutions. But we have yet to receive a comprehensive report from the commission of inquiry on matters of security policy. Until we have that report it would be unwise for Parliament to prejudge the most appropriate way for us to deal with official secrets legislation. Therefore I suggest we wait until we have the main report in our hands. Then we can decide how best to tackle the crucial issues it will raise.

Before discussing the leakage issue, however, let me touch briefly on one particular aspect of the espionage provisions—their ambiguity. This aspect can be discussed without having the full McDonald commission report on security matters. The troubling issue here is that it is not clear whether the type of information which is covered by espionage provisions must be "secret official" information or whether it need not be "secret" and "official". On this point, Canadian jurisprudence favours a restrictive approach, that is, secret official information must be communicated for there to be an offence.

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The jurisprudence can be traced to a decision in 1949 in a case before the Quebec Court of Appeal. All decisions since then have reflected the restrictive approach. The U.K. jurisprudence supports the unrestrictive approach; that is, all information is covered by the espionage offence and not just secret official information. While research conducted for the McDonald commission tends to support the U.K. jurisprudence, the main point that emerges is that there is confusion relating to the scope of our current espionage law. Whatever else we do, therefore, we shall have to clarify the scope of the legislation that deals with espionage.

Leakage is the second matter dealt with in the Official Secrets Act. In my view, there is little doubt that there are shortcomings in the current statutory provisions. This has been shown quite conclusively in the report of the McKenzie Royal Commission on Security, the report of the 1972 Franks committee in the U.K., and the first report of the McDonald Commission, made available late last year.

Let me state some of the main concerns regarding the leakage provisions. First, it is probably not appropriate that the offence of unauthorized disclosure should be dealt with in the same statute as the far more serious offence of espionage. People tend to think of the Official Secrets Act as the statute under which spies are prosecuted. Therefore, any person charged under the Official Secrets Act may, to some extent, be tainted by the perception that he has, however indirectly, been associated with activities that involve disloyalty to Canada.

Second, the leakage provisions are ambiguous in a variety of respects. There is controversy about whether they cover all government information or only secret official information; that is, the same uncertainty that exists in relation to the scope of the espionage provisions applies also in respect of leakage.

There is also ambiguity concerning the procedures for authorizing disclosure. It is apparent that much government information is disclosed without the express approval of cabinet, and that these disclosures are not viewed as offences. The reason they are not considered offences can be traced to the doctrine of "implied authorization"—a doctrine which rests heavily on the view that public servants are free, indeed required, to communicate information where such communication can be reasonably seen as part of their responsibilities. While there is much common sense in this view, the doctrine is not expressly acknowledged in the current statute. Consequently, we cannot be certain that the Canadian courts would accept it as an unwritten part of the law.

A further area of ambiguity in the current leakage provisions relates to uncertainty about whether *mens rea*—that is, knowledge of guilt—must be present for there to be an offence. This too helps to create doubts regarding the scope of offences found in section 4.

Third, there are grounds to believe that the act may be too far-reaching. Under its provisions, a person can be convicted for unauthorized disclosure, and thus imprisoned, without any requirement that the Crown prove damage to important Canadian interests. I hope that the offence can be redefined and made to focus on acts that involve real injury.

There is one further serious shortcoming in the current provisions of the Official Secrets Act. For reasons that are partly related to the current ambiguities in the act, it is