

Official Secrets Act

—judge, magistrate or justice, as the case may be, is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude all or any members of the public from the courtroom—

The judge may do so for all or part of the proceedings. The discretion to use in camera hearings, although used sparingly, already exists in the Criminal Code and may be exercised in those circumstances.

The Acting Speaker (Mr. Ethier): Order, please. I regret to interrupt the hon. member but I must inform him that his allotted time has expired. He may continue if there is unanimous consent. Is there unanimous consent?

Some hon. Members: Agreed.

Mr. Baldwin: Including the answer to the question.

Mr. Young: I will try to answer the hon. member's question, Mr. Speaker. I shall be as brief as I can but I hope I will be allowed a few moments to wind up my remarks.

What I am trying to point out is that the power to have in camera proceedings is found not only in the Official Secrets Act but also in the Criminal Code. Beyond that, at a preliminary hearing a justice of the peace may also order in camera hearings when he is of the opinion that the ends of justice will be best served by such an order as provided in section 465(1)(j).

A number of other provisions in the code, although they do not affect the right of the public to be present in the courtroom, affect the right of the media to publish the proceedings. Section 467 provides that a justice must, on the application of an accused, prohibit the publication of evidence adduced at a preliminary inquiry.

Section 470 prohibits the publication of a confession of an accused adduced at a preliminary inquiry.

Section 457.2 provides that a justice may, and must upon request by an accused, prohibit publication of evidence given at a bail hearing.

Section 442(3) provides that in trials pertaining to certain sexual offences the judge must, if the prosecutor so requests, order that the name of the victim and her evidence shall not be published.

Those are instances, far removed from the Official Secrets Act but found in the laws of this country, in which the public may be excluded from a trial. In essence, that part of the trial may be conducted in camera—such as was done under the Official Secrets Act—or the publication of evidence given in a trial may be barred or banned by a judge. That prevents its being given to those outside the courtroom where the trial was held by a newspaper or radio or television station.

Instances where the public may be excluded from a courtroom in criminal proceedings or where limitations on publication of evidence adduced may be imposed are not unique to the Official Secrets Act. The reasons for such limitations are self-evident and are designed to facilitate the administration of justice and protect the rights of accused as well as the victims of sexual offences.

[Mr. Young.]

In matters where state secrets are involved, some of which relate to sensitive defence secrets, can it not be advanced that it is quite legitimate and proper to grant courts the necessary powers to protect against the undue disclosure of such information? On balance, should it not be common ground that important state secrets, the disclosure of which might affect the security of Canada and its allies, warrant as much protection against unnecessary public disclosure as matters involving public morals? If it is proper to grant to the court the powers referred to in section 442 of the Criminal Code, I suggest it is as proper to give the courts the discretion provided for in section 14(2) of the Official Secrets Act.

● (1632)

Mr. Dick: Part of the trial, not the whole trial.

Mr. Young: Mr. Speaker, I reiterate that in this case the Crown prosecutor, during the course of a public hearing, at the outset of the trial—and I say this for the benefit of the hon. member for Lanark-Renfrew-Carleton—moved the court to order an in-camera hearing for reasons which I think have already been given today by the Minister of Transport or the hon. member for Windsor-Walkerville. The defence attorney made no representation to that question, Mr. Speaker. That was done in public. The court thereafter immediately ordered that the trial proceed in camera. In its remarks the court interpreted the attitude of the defence counsel as meaning that he had no particular objection to that order being made.

Just in closing, Mr. Speaker, I understand that counsel for Mr. Treu spoke openly within the last couple of weeks to a meeting of the bar; I believe it was an annual meeting held in Quebec. I do not know whether there is any transcript of those remarks but I am given to understand that counsel for Mr. Treu did speak openly and did make some references to the trial. I do not wish to take anything out of context, but I am of the understanding that counsel for the defendant accepted the proposition that there are matters relating to national security which cannot be discussed in public and that such matters arose in the Treu case, which led the court to make the decision it did for national security reasons and thus ordered the trial to proceed in camera.

I also understand that the impression gained from some who were in attendance was that defence counsel was quite happy with the handling of the matter by the court. The hon. member for Peace River shakes his head, but it is my understanding that defence counsel was quite happy to accept the fact that judges are given power to make such decisions, that they have the responsibility to make such determinations, and I know of no cause for complaint in respect to the manner in which the learned justice conducted the trial. I know of no complaint arising to date—at least none has come to my attention—that the judge had discharged his responsibilities in anything other than a proper manner.

If the point hon. members opposite are trying to make today is that the Official Secrets Act is so damnable because of its extent and scope, or because it contains within it the power to hold a trial in camera, then I would have expected to have