

It was maintained by the Legal Adviser to the Department of Manpower and Immigration, when reference was made to unpublished directions to immigration officers, that:

They are not exercises of authority granted under a statute to the Minister, they are explications, if you will, of policy for the guidance of immigration officers in the performance of their duties.

As the answer reflects, there are guidebooks, handbooks and manuals used by immigration officers and other employees of the Department in the performance of their duties. It is necessary, of course, from time to time to give an explication of policy and the manner in which these officers are to exercise their duties in the hope that it will be applied uniformly across the country so that there will not be differences in the application of policy. I think the answer reflects this.

There certainly are these handbooks, they certainly do contain memoranda from time to time which are classified for policy reasons and are not published to the public. The question relating to the United States military deserters is directed at a policy directive of this kind which was indeed issued. (*Minutes of Proceedings and Evidence*, page 197).

Here we have an admission that "policy" affecting a person's rights is explained to departmental officers but is classified information and not published.

In reference to Section 32(4) of the *Regulations* made under the *Immigration Act* (R.S.C. 1952, ch. 325, as amended) which enables an immigration officer to refuse the admission of an independent applicant who meets the norms set out in Schedule A "if in his opinion there are good reasons why those norms do not reflect the particular applicant's chances of establishing himself successfully in Canada . . .," another departmental witness said, with respect to the policy directives of the department:

. . . all that was given to our officers in the field was advice, if you wish, or some guidance as to what sorts of things would constitute the good reasons referred to simply in those terms of the legislation, in this case, being the regulations . . . In my judgment, it did not add or subtract from their legal authority or the authority granted in the regulations as to the exercise of their discretion. (*Minutes of Proceedings and Evidence*, pages 198-199).

There would appear to be no argument as to the "authority" of the immigration officer affected by a policy directive. However, it appears clear from all of the evidence that the *manner* in which this authority was exercised, which is the crucial consideration, was directly affected by the directives.

With respect to the classified nature of these directives it was said:

And as I recall, he [the Minister] took the view that traditionally this type of document which is within the Department has always been considered privileged and has not in fact ever been tabled in Parliament itself. (*Minutes of Proceedings and Evidence*, p. 200).

It may well be that after years of experience and to satisfy present-day conditions, some things that we have tended to view as strictly administrative should no longer be viewed that way. They ought to be dealt with in a different fashion, provided we recognize the pitfalls of tying the administrators of administration into such a bind that in the end they wind up not being able to do what they think should be done because the law will not let them. (*Minutes of Proceedings and Evidence*, p. 201).