Counsel for the applicants argued that the members are entitled to release the information to the press. They argued that the right to release the information to the press would have no practical value unless the press were covered by a similar privilege. Finally, counsel submitted that the members have the right to release the information to their constituents.

● (1512)

I cannot accede to these latter two arguments. The privilege of the member is finite and cannot be stretched indefinitely to cover any person along a chain of communication initiated by the member. The privilege stops at the press. Once the press have received the information the onus falls on them to decide whether to publish. They cannot claim immunity from prosecution on the basis of the parliamentary privilege which protects the member releasing the informaton. Whether they have a valid defence under the regulations is another matter.

I think the following is the operative language:

Finally, the member does not have the right to release the information to anyone he chooses outside of parliament. The concept of "proceedings in parliament" cannot be extended beyond all logical limits. I am not satisfied that the privilege enables the member to release the information to his constituents.

I quote those words and emphasize them because clearly, in my opinion, they are significant as to whether or not the learned Chief Justice was speaking about proceedings in parliament. Again from page 42 I quote the following:

Following the authorities set out above, I have come to the conclusion that a member of parliament may utilize information proscribed by regulation 76-644 in parliament and may release that information to the media. However, I hold that the privilege of the member cannot be extended to protect the media if they choose to release the information to the public. Nor do I consider that the "real" and "essential" functions of a member include a duty or right to release information to constituents. The cases indicate the privilege is finite and I would not be justified in extending the privilege to cover information released to constituents.

My observations on these remarks by the learned Chief Justice, which are the ones that seem to be causing the trouble, are as follows: First of all, the Chief Justice was asked for a declaratory judgment which by its very terms requires the court to make some kind of pronouncement in advance of the application of the law. Therefore, the Chief Justice was required by the terms of the application to attempt to make an assessment in advance, or in the abstract. Furthermore, when he had concluded that there was no infringement on the rights of members in parliament, it was argued before him that unless there was an unfettered freedom in the media to use this information under any circumstances, members' privileges would be constrained. Therefore, the Chief Justice had to address himself to that argument and had to attempt a declaration, in the abstract, on that theoretical proposition.

The substance of his declaration on this troublesome ground is, I think, significant in several aspects. First of all, in my opinion, a point which I think was missed in most of the argument relating to this difficulty is that the Chief Justice was then talking about proceedings outside parliament and not proceedings inside parliament. He made it perfectly clear there was no restriction on the rights of members to participate in debate in this chamber and, furthermore, obviously no constraint on the right of the press—indeed, it was their duty—to report fairly and accurately the proceedings that take place in this chamber.

The question arises as to whether or not there is an absolute privilege when members go beyond this chamber, take information which comes into their possession and hand it to the media. Is there a risk in the media? In some circumstances I suggest there is. Is the privilege finite? Yes, I suggest in some circumstances it is. When we are relating to proceedings outside the House, I think we have to realize this. For example, in our very recent experience three examples have come to light, two of which were argued in the House and one was not.

The first, which was argued in the House, was the draft report of the committee on immigration. The second was the draft report of the penitentiary subcommittee of the Committee on Justice and Legal Affairs. Both of those in one way or another came before the House on a question of privilege because documents which had come into the possession of members during the course of their work in the areas of these committees had been released. The third situation to which I am referring, which has not come up, is a recent briefing—a regular occurrence—of members of the justice committee on security matters affecting the security branches of our federal police forces.

Again, I cite these examples only to illustrate that there are, in our own very recent experience, circumstances in which not only does a member suffer restriction in the right to communicate to constituents and to the press, but in fact it would in some cases, and has in recent memory, become an application under our privilege practices for a member or a journalist to communicate or publish documents in those circumstances.

The conclusion I have come to, therefore, is this: In the abstract, there are many situations in which at the one extreme it would constitute a matter of privilege to interfere in the slightest way with the full and complete communication by a member either to his constituents or to the press or, in turn, to interfere in the slightest way with the press's publication to the public. At the other extreme there are circumstances, again in the abstract, in which it would constitute privilege for a member to release information to his constituents and might constitute privilege, indeed, for a newspaper to publish it. In fact, there have been cases, and there are precedents in which newspapers have been brought before the bar of this House and the House of the United Kingdom on the ground that they have, in fact, breached privileges by publishing documents which were premature and which were confidential in nature.

I am only saying that the circomstances can vary from one extreme to the other, and that as long as we are dealing in the abstract, and as long as we are dealing with activities outside parliament, I do not find as much concern with the reasoning of the Chief Justice who felt that he had to deal in general pronouncements on abstract situations. I understand the reasoning of the Chief Justice in having to do so, and in the generalized way with which he dealt with matters outside parliament. In my opinion, he created no addition to the law which in any way lessens the privileges of members of this House.

Finally, even if he had done so, his pronouncement is *obiter dicta*, clearly, by any understanding of any lawyer who examines his reasoning, and is entirely theoretical in a nature. If and when such a question is transformed into reality, it will, I