These two statements, so simply put in the classical English method, reek with the sound of truth and common sense. A balance must be struck by the government and guidelines must be drafted that are utilitarian and understandable.

There is a need for security in certain matters, but there is a greater need for our civil servants to deal effectively with the public, knowing the limits of their authority and without fear of repercussion, such as losing their jobs. We do not need civil servants who say nothing because they have been burnt too many times, nor civil servants who say too much because they do not know any better or out of a sense of pure vindictiveness.

The Prime Minister (Mr. Trudeau) has set certain guidelines. Quite frankly, I understand four of them and I have difficulty with the fifth. In the first four he wants public servants to communicate with the public, members of Parliament and the news media. The guidelines encourage frankness. There is an admonition not to discuss advice or recommendations tendered to ministers or to speculate about policy deliberations or future policy decisions. These are contained in the first four sections. It is the fifth section which ties in with what the hon. member was saying, because the guideline states:

These guidelines cannot and do not authorize the disclosure of information which is specifically prohibited by law.

The problem is that we do not know what is specifically prohibited by law.

As Sir Lionel Heald, former attorney general of England said, in the extreme case, the official act would:

—make it a crime, without any possibility of defence, to report the number of cups of tea consumed per week in a government department.

Sir Lionel was probably overstating the case, but he was not overstating the problem. Most of the disclosures are handled either as disciplinary matters or merely as a learning experience where a subordinate is talked to by his superior. This is a normal administrative procedure designed to deal with unintentional disclosure, or disclosure resulting from lack of experience. This policy will continue.

The problem with which we are dealing today is not the same. The problem today is: when does disclosure become a criminal offence.

The Official Secrets Act can be divided into two sections, the espionage section and the unintentional leakage section. The recent Peter Treu and *Toronto Sun* cases are examples of leakage. The espionage cases are self-evident and I will return to them in a minute.

There is a great deal of thought being given to dividing these two types of offences and putting them in different statutes; to put the espionage section in the Criminal Code and the leakage section in what could be termed a legal statute, and then repealing the act. This is probably what we should do, although I cannot speak for the government.

There is a line of thought—and if you have done Crown attorney work or been a Crown attorney, it is quite cogent—which says keep them together. We should consider this, because in many cases when there is a moral certainty that a person is guilty of espionage, he cannot be convicted, for one reason or another. In many cases, the witnesses refuse to testify and then, even though the process may start at that level, it winds up as a conviction for leakage. Notwithstanding this, I think that on the whole the weight of opinion leans toward dividing up the offences, which is what I think is the intention of the hon. member in his motion.

I think the problem is much broader than this, and that is why I would not recommend endorsing the motion. The Official Secrets Act was passed in 1939, and prior to that time we were governed by the 1911 English legislation applying to our country. Several minor changes were made in 1950, 1967, 1970 and 1973. Half of the Canadian prosecutions under the Official Secrets Act arose as a result of the defection of Igor Gouzenko in 1946 when he was trying to set up a spy network in Canada. Since that time there have been only four prosecutions: Against Biernacki in 1961, Featherston in 1967, Treu in 1978, and recently *The Toronto Sun*, its publisher and editor. Biernacki was a landed immigrant from Poland who was doing some advance work in preparation for setting up a spy ring in Canada. He was discharged at the preliminary hearing because, in the words of the then Judge Shorteno, the information was "insignificant, worthless public information".

To some, this decision might indicate that our civil liberties are well protected. To others, it might leave the impression that we need more internal security, more manpower or more teeth in our legislation.

The Featherston case was clearcut. Featherston was convicted for attempting to pass secret marine charts to the Soviets showing positions of shipwrecks off the east coast. I gather—I am no expert on submarines and my lack of knowledge of maritime law is so significant that it is worthy of respect—that submarines can use these shipwrecks to remain undetected by radar. Featherston was convicted and he received a sentence of two and a half years.

Treu, as you know, Mr. Speaker, was ultimately acquitted and *The Toronto Sun*, which published a "top secret" document outlining suspected Russian activity in Canada, was also acquitted when Judge Carl Waisberg said that "the document was no longer, if ever, secret".

Let me say as an aside that the Treu case was conducted in camera. In that case the lawyer made no objection so I do not know whether he preferred it or whether he just felt he could do nothing about it. But that should be something we should consider: should there be the absolute right, except in certain specific circumstances where the onus lies on the Crown, for the accused to have an open trial?

Under a section of the act—I do not know the exact number of the section but I think it is section 50—the Crown may proceed either by indictment or summarily. The option is the Crown's, the penalties are so diverse and the act gives such great powers to the Crown that we should look seriously at those two sections and, as has been recommended by several leading authorities, we should get rid of one, perhaps the summary section, to go with the indictment and to grade our penalties. The Dollard commission, I think, suggested life in one circumstance and six years in another.