

*Official Secrets Act*

disclosure of the details of what is known about the operations of foreign intelligence agents in this country, or provision to others of information about the operations of our security service, is to destroy and render useless the work of this service.

Fourthly, in exercising a discretion as to whether or not to consent to a prosecution under the Official Secrets Act, the Attorney General should ensure that the widest possible public interests of Canada are taken into account; that, as a member of this House, he has responsibilities toward the rights, privileges, traditions and immunities so necessary for the proper functioning of parliament; and finally that each competing public interest is weighed and balanced against the others in as responsible a way as possible.

In the present situation, the hon. member for Leeds has made statements in the House which must clearly have been based upon highly classified national security information. In my judgment, the hon. member's use of the secret information he was not entitled to have was contrary to the national interest. However, by law, his statements cannot constitute the foundation for a prosecution under the Official Secrets Act since it is well established that no charge in a court can be based on any statement made by an hon. member in this House.

The hon. member for Leeds did, however, make additional statements. In my view, these statements did not add substantially to what he had already said in the House. There is some doubt as to the extent to which a court would view these statements as being protected by any parliamentary privilege or immunity. The existence of this doubt guides me in my decision whether or not to provide my consent to a prosecution.

The obligation of the Attorney General in deciding whether or not to provide his consent under the Official Secrets Act calls into play the many factors I referred to earlier. In my view, an Attorney General should not provide such a consent unless the case is free from substantial doubt.

Having considered the evidence produced in the investigation to date, and having considered applicable legal and parliamentary principles, I have concluded that I should not consent to a prosecution against the hon. member for Leeds.

I must emphasize that in any case free from these elements of doubt, involving unlawful disclosure of information relating to national security by an hon. member, I would not hesitate to have a court of criminal jurisdiction pass upon the issue.

This House has established a committee to examine the privileges and immunities of members of parliament, including the application of the Official Secrets Act. That examination is necessary and, in my view, urgent. It is essential to protect the position of members of parliament to continue to be able to speak freely and candidly in carrying out the responsibilities that we bear on behalf of our constituents and the country at large without any harassment.

I look forward to the report of the special committee which I hope will outline the principles that should govern a member of this House when dealing with security or other highly

[Mr. Basford.]

sensitive matters and which will, I hope, strike a balance between the imperative public interest that the national security and integrity of the state ought not to be imperilled and the equally imperative public interest that members of this House should enjoy a freedom of speech commensurate with the necessity of fulfilling our obligations. It is historic and preferable that this House, and not the courts, settle these issues.

Mr. Speaker, with the highest of immunities goes the highest of responsibilities. I would urge all hon. members, prior to asking a question, or disclosing sensitive information of any kind, to take reasonable steps to bring the matter to the attention of the responsible minister of the Commissioner of the RCMP so that the member may be fully apprised of the possible seriousness of the matter and so that measures in proper cases might be taken to protect the information from public disclosure with its attendant risk of doing serious damage to our national security. To be fair, I want to add quickly that I am advised that there are members of the House and members of the press gallery and the public who do this.

I would further commend to the attention of hon. members what was said by the 1939 United Kingdom Select Committee on the Official Secrets Act and Privileges of Members, relating to the Duncan Sandys case, and I quote:

Your committee are of opinion that the soliciting or receipt of information is not a proceeding in parliament, and that neither the privilege of freedom of speech nor any of the cognate privileges would afford a defence of a member of parliament charged with soliciting, inciting or endeavouring to persuade a person holding office under the Crown, to disclose information which such person was not authorized to disclose or with receiving information knowing, or having reasonable grounds to believe, that the information was communicated to him in contravention of the Official Secrets Act.

With respect to the publication of the article in the *Toronto Sun*, parliament has not extended to any other person or body, the rights, privileges or immunities that are accorded by law to parliament and its members.

That is not to say that the press is not in a somewhat special position in our society, for without full and free dissemination of information through an independent and responsible press, a free society cannot continue to exist. That freedom is exercised under and pursuant to the rule of law. In that respect, members of the press are in no different a position from anyone else. I am confident that the courts are the proper forum for dealing with and defining the rights and responsibilities of the press.

Because of this special position of the press and lest any step be misconstrued as an attack on the essential freedom of the press, it is important that the process of the criminal law be invoked only after most careful and studied consideration.

It is with such consideration that I have examined the available evidence, including the extent of the information that was published, the present state of the law, the various competing public interests, and all other relevant factors in consenting, as I have done, to a prosecution under the Official Secrets Act in connection with the publication of the article in the *Toronto Sun*.