tions which are going on in the House at the present time.

Mr. Brewin: Thank you, Mr. Speaker. I was saying that the purpose of section 41 is to deal with the provision of public documents in the federal court. It states that a minister of the crown may make an affidavit that on the grounds of public interest a document should be withheld from production and discovery, or be subject to such restriction as is deemed appropriate. Then, if the minister makes the affidavit under the general provisions of subsection (1), the court is given the authority to examine the document and to make an order for its discovery and production to the parties as well as to the court if it thinks it appropriate so to do.

• (3:10 p.m.)

I was involved in some controversy with the Minister of Justice over the legal background to this matter. My view is that this clause is a very appropriate one because it reflects what is the most up-to-date view of the law at the present time, namely that the court has the authority, when an objection is made that the document is one of public interest and should not be produced, to look at the document and to determine for itself, without relying merely on the minister's affidavit, whether or not it should be produced. So far so good; I think subsection (1) is useful and worth while.

Coming to subsection (2), it provides as follows:

> When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court.

The effect of this provision is that when a minister of the crown, who in this sort of case acts, I imagine, 99 times out of 100 on the advice of his officials, says that a document should not be produced, the court is then deprived of the opportunity of looking at it in order to determine whether the claim is or is not well founded. It is my submission that while this may be perfectly justifiable with regard to documents that the minister thinks are injurious to international relations, national defence or security, of that would disclose a confidence of the Queen's Privy Council for Canada, it is little short of ridiculous to say that a document ought not to be produced, and not only that but that even the court must not look at the document to see whether it ought to be produced in the interests of the litigants involved, merely because it would be injurious to federal-provincial relations.

Surely, there is nothing secret about relations between the federal government and the provinces or between departments of the federal government and departments of the provincial governments. Surely we, the public of Canada, have the right to say not necessarily that a document should be produced, but at least that it be produced to the extent that the court, which surely can be trusted in these matters, should have the right to look at it and decide whether or not it should be produced. This absolute prohibition that lies at the discretion of the minister, unexaminable by the courts, I do not think should exist. The purpose of my amendment is to strike out the words "Federal-Provincial Relations".

The habit of claiming secrecy with regard to official documents has reached proportions that are far too broad in this country. It is often claimed as a matter of course without reference to the facts at all. It is some protection of the public interest and the private interests of litigants whose future and fortunes may depend upon the production of a certain document if the court is able under subsection (1) to look at the document and to declare: "In our view the document ought to be produced; the affidavit does not satisfy us that there is any reason for not producing a document that perhaps is important to the litigation in question".

It is my submission, as I said in opening, that we should lift the iron curtain of secrecy surrounding these documents, at least to the extent I have stated, rather than rely upon the mere formal affidavit by a minister of the crown that the document concerns federal-provincial relations as the reason for restricting the administration of justice. It is a problem of balance between the administration of justice and the rights of litigants on the one hand, and the public interest on the other hand.

In my submission this particular clause goes far beyond any reasonable balance by giving the minister absolute discretion to say that federal-provincial relations are affected by a given document. After all, practically every subject of concern to government affects federal-provincial relations in some way. This provision gives the minister carte blanche to refuse production without the court even being permitted to inquire whether there is justification for that refusal. I submit that it is part and parcel of the over-secretive philosophy which is only too popular among bureaucracies. I invite the minister to look once more at this clause and to accept this very reasonable amendment.

Hon. John N. Turner (Minister of Justice): Mr. Speaker, in order to address myself properly to the amendment moved by the hon. member for Greenwood (Mr. Brewin), I think I should outline briefly to the House the purpose of clause 41. I did this in the committee, but now we are before the full House at the report stage it might help to state the position of the government with regard to this clause.

Clause 41 is an attempt to codify the principles relating to the production and discovery of documents in a court. I might say that clause 41 is not limited to the federal court but applies as against the crown in right of Canada in any court, including the provincial courts. Its purpose is to codify those principles where it appears that the production or discovery of documents may adversely affect some important public interest.

The state of the law in Canada at the moment is not clear. The hon. member for Greenwood and I have differed on other occasions as to what the law is. It is clear