when we are given this much information, but no more, it is tantalizing, to say the least. We may almost be better off to be in the situation of the Australian parliament where the public is excluded from, not only the hearing itself, but also the sentencing, should the accused be found guilty. But in Canada the public is admitted to sentencing.

While I do not suggest that we revert to the Australian type of rule, nevertheless, if we were to have such a rule we would not have some of the problems which we have here. For one thing, given the reliance which the trial judge placed on the concept of deterrence, one can see certain limitations, given the fact that without knowledge of what the offence was and the kind of documents involved, the deterrent effect is somewhat muted. Of course, one learns that the courts take a serious view, at the very least, of the unauthorized holding of secret information, but perhaps that is not enough for the concept of deterrence to be as operative as it might be.

I would suggest that there ought to be a rule. I can accept the necessity for a secret trial as such, but there ought to be a rule that the judge divulge as much as possible of the proceedings, and especially, as much as possible, the kind of evidence which leads him to take such a serious view of the matter in question. Perhaps it would be possible to give an indication of the kinds of documents involved in a general way so that if it was necessary to impose a sentence for reasons of deterrence, we would at least have some idea of why the sentence was imposed. This would go a long way, not only toward public comprehension, but also toward increasing the deterrent effect which the court itself has in mind as one of the important aspects of a case such as this.

As the hon. member for Halifax pointed out, the Mackenzie Royal Commission on Security itself made a number of criticisms of the Official Secrets Act when it reported in 1969. The general comment at page 65 was as follows:

● (1502)

The Canadian Official Secrets Act is an unwieldy statute, couched in very broad and ambiguous language.

The commissioners found practical problems with that kind of legislation and they went on to say:

—must the Crown prove in all cases that the information concerned is secret and official?

The secrecy of the information or the relevancy of secrecy is thus the question they raise. They also raise the question of unusual evidential and procedural provisions relating to espionage cases.

The hon. member for Halifax (Mr. Stanfield) has dealt with these questions so I shall not take the time to deal with them further except to note that they point out that a prosecution for conspiracy to commit an Official Secrets Act offence is a prosecution under the Criminal Code and does not require the fiat of the attorney general as does a prosecution which is brought squarely under the Official Secrets Act. So there is even a way of getting around that provision for the permission of the attorney general for a prosecution under the legislation.

I would go further than the Mackenzie royal commission. It seems to me that under section 4 of the Official Secrets Act, which is the most relevant section for our discussion, the provision is so sweeping that it is almost difficult to conceive that in strict law any minister or public servant could lawfully communicate any significant information. The definition of "communication" in section 2(3)(a) is as follows:

—expressions referring to communicating or receiving include any communicating or receiving—

This is the broadest possible language imaginable. In section 4 the law allows him to communicate only to a person to whom he is authorized to communicate or a person to whom it is in the interest of the state to communicate.

Such a section can have a very chilling effect on the operations of people in government. It is quite true that the section has rarely been used. In fact, there are only two cases between the series of Gouzenko cases and the present Treu and *Sun* cases. Those are the Featherstone case of 1967 and the Biernacki case in 1962. The fact that there have not been many cases does not indicate the fully chilling effect such law may have by way of deterring people from communicating things they would otherwise communicate.

In particular, it seems to me that the concept of treasonable spying and improper release of classified information ought not to be treated on the same basis. Public release of secret information could conceivably be just as treasonably effective as clandestine delivery. Generally speaking, however, the two differ in character, nature and effect. I believe it is a mistake to jumble all those things together in the act as is the case at the present time. I think we have very serious reasons for looking at the effect of the legislation.

The Franks commission in Great Britain looked at similar British legislation—on which our statute is based and with which it is almost identical—and recommended a new statute called the official information act. This proposal has not yet been adopted by the British parliament but it has in it a lot of eminently good sense. The official information which it would be illegal to reveal includes not only classified information relating to defence or internal security, foreign relations, et cetera, but also matters such as are likely to assist criminal activity or to impede law enforcement—things which are not taken account of in the motion—or a cabinet document, or information that has been entrusted to the government by a private individual. I feel that the law ought to take account of those categories in its use of the criminal law to support the prohibition of release of certain kinds of information.

The "official secrets" question is almost the most serious aspect of the general problem of freedom of information. In the field of freedom of information we try to arrive at principles as to what should be released and how documents should be classified by the government. In the Official Secrets Act we impose penalties for releasing those documents. Official secrets legislation is, therefore, the completion of the doctrine of freedom of information.

In that context I find it all the more surprising that this motion should be placed before us by the hon. member for