permit non-disclosure "where disclosure would be a breach of some ethical or social value and non-disclosure would be unlikely to result in serious injustice in the particular case in which it is claimed". The common law in Britain has always upheld such a discretion in the judge to aid the reluctant journalist.

The case law in England is founded in three cases arising out of the Vassal spy scandal of 1963. In all three cases, the courts held that the journalists could claim no privilege, although in particular cases public policy might allow a court in its discretion to grant a journalist immunity. Therefore, the power lies with the court to consider particular circumstances. But always the weight lies not with the special privilege to be used generally by journalists; the weight lies with the law and the protection of society.

In Australia the leading case in McGuiness *v.* Attorney General of Victoria of 1940. The High Court of Australia unanimously refused to recognize any claim to privilege by a journalist. Dixon J. spoke of, "the necessity for discovering the truth in the interests of justice", and said the rule was inflexible that no mere obligation of honour could hinder the public policy inherent in requiring answers in the witness box. So there is the same treatment for everyone. I should like to argue as I go on that the best free press is the one that falls under the same guidelines and rules as any other individual in our society.

In the United States, 15 states recognize a privilege of non-disclosure in favour of journalists. These are the only exceptions for journalists in the entire common law world, and before using them as precedents one must ask, firstly, whether there is a difference from other jurisdictions in government structure. A wholly distinct executive may require more informal checks on its functioning than does the executive in a parliamentary system.

I do not want to go into the complications of this particular situation. We are all aware of the Watergate affair and of the problems in the executive branch. I am sure we have all had discussions as members of parliament with our own constituents and among ourselves in regard to the great feeling of satisfaction we have that we follow the British parliamentary system rather than the split executive-legislative-judicial system of the United States. Certainly, I can see in the United States some difficulty, which the first amendment was an attempt to cope with, because of the power that is held by the executive branch alone.

That is not a problem that we have here. If there is any supicion here that the person at the helm is not releasing information or is withholding facts, the pressures within the parliamentary sytem are such that this person can be forced into resignation because of rebellion within his own ranks, or he could be forced to give the facts. That same pressure cannot be applied in the same way in the United States.

The second situation in the United States is that where statutes conferring a privilege do not exist—that is to say, in the 35 remaining states in the United States and in the federal courts—the courts in the United States invoke the public interest in the due administration of justice in disallowing claims to journalistic privilege. The courts hold that this interest prevails even over the constitutionally protected freedom of the press, although such disclosure may impair freedom of the press.

Let me now come to the situation in Canada. There are two very important points to bear in mind. The basis of these points is that this question has been given very deep thought. It has been gone over in recent years and the conclusions are that this kind of act would not be in the best interests of the country, the press or our laws.

The report of the Ontario commission on civil rights, 1968, recommends that no changes be made in the common law position on the ground that "injury would be done to the administration of justice". The report notes favourably the operation of judicial discretion in this area.

The Senate committee on the mass media of 1970 has recommended that no change made in the common law.

In case law in Canada, the aforementioned English and Australian cases are mentioned. The two leading cases in Canada are Reid vs. Telegram Publishing Co. Ltd. and McConachy vs. Times Publishers Ltd. These cases illustrate that, although a court may relieve a journalist from his obligations to disclose at a preliminary inquiry or examination for discovery, the courts are obdurate in their refusal to grant an immunity at trial. Newsmen, like everybody else, are answerable to the law of the country.

It has not been reliably demonstrated that the absence of a journalistic privilege hinders freedom of information, but if this can be shown in an individual case, then it should be recalled that there is a discretion in a trial judge to grant immunity. Surely that is the answer right there to this whole issue today.

There has been some question in these days of bureaucracy of the press not having a full opportunity, as dedicated or investigative journalists, to get to their sources. If I may say so on an emotional note, over the years, especially during the last two centuries, particularly in countries under tyrannical rule, it has been the members of the press who, at risk to life and wellbeing, have come through with stories which have put pressure upon these nations. It is the tradition of a good journalist to do his very best, with whatever sources are available to him, at risk to his own wellbeing, to make his case commensurate with his principles. Surely, that is one of the great challenges of being a journalist today, one that should remain.

I would greatly fear that, if this kind of special privilege were granted, that challenge would be in jeopardy. No longer would you be sure of the material presented; if the source did not have to be disclosed there would be a danger of not knowing how reliable it was. This would not only depreciate what was found to be credible in the press; it would also depreciate the drive of the newsman at risk to find out the facts.

I should also like to touch briefly on the fact that there is a special lawyer-client relationship. I find no argument with this. Obviously, in order to work in courts and to protect the proper functioning of the judicial system there must be this special privilege. But I cannot see its application beyond an accused having the right to confidentiality with the person who is defending him before the law.