



ANALYSIS

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1951, No. 77

AN ACT to make better provision in respect of official secrets. Title.
[6 December 1951

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Official Secrets Act 1951. Short Title.

2. In this Act, unless the context otherwise requires,— Interpretation.

“ Document ” includes a part of a document:

“ Inspector of Police ” includes any commissioned officer of the Police Force of New Zealand; and also includes any person upon whom the powers of an Inspector of Police are for the purposes of this Act conferred by the Governor-General by Order in Council:

Cf. Official Secrets Act 1911 (1 & 2 Geo. V, ch. 28), ss. 3, 12 (U.K.); Official Secrets Act 1920 (10 & 11 Geo. V, ch. 75), ss. 9 (2), 10 (U.K.)

“ Model ” includes a design, pattern, or specimen:

“ Munitions of war ” means any thing, material, or device, whether actual or proposed, intended or adapted for use in war, or capable of being adapted for use in war; and, for the purposes of this definition (without prejudice to its generality), the expression “ use in war ” includes use in the production of munitions of war, and the expression “ thing, material, or device ” includes the whole or any part of any arms, ammunition, missile, implement, ship, vessel, aircraft, vehicle, tank, mine, engine, machinery, apparatus, or naval, military, or air force stores:

“ Office under His Majesty ” includes any office or employment under the Government of New Zealand; and also includes any office or employment on, in, or under any board, commission, corporation, or body that is an agent of His Majesty or an instrument of the Executive Government of New Zealand:

“ Prohibited place ” means—

(a) Any work of defence belonging to or occupied or used by or on behalf of His Majesty or the Government of any other country, including arsenals, naval, military, or air force establishments or stations, factories, dockyards, camps, ships, vessels, and aircraft; and also including telegraph, telephone, wireless, or signal stations or offices; and also including places used for the purpose of building, repairing, making, or storing any munitions of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war:

(b) Any place where any munitions of war, or any sketches, plans, models, or documents relating thereto are being made, repaired, gotten, or stored under contract with the Government of New Zealand or of any other country or with any person on behalf of any such Government, or otherwise on behalf of any such Government:

(c) Any place which is for the time being declared by the Governor-General by Order in Council to be a prohibited place for the purposes of this Act:

“ Sketch ” includes any mode of representing any place or thing, whether by photography or otherwise, and in particular includes a map: Any reference to His Majesty means His Majesty in right of New Zealand:

Any reference to a place belonging to His Majesty includes a place belonging to any Department of the Government of New Zealand or to any board, commission, corporation, or body that is an agent of His Majesty or an instrument of the Executive Government of New Zealand, whether the place is or is not actually vested in His Majesty:

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only is communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document include copying or causing to be copied the whole or any part thereof (whether by photography or otherwise); and expressions referring to the communication of any sketch, plan, model, article, note, or document include the transfer or transmission thereof.

3. (1) If any person for any purpose prejudicial to the safety or interests of the State—

(a) Approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place; or

(b) Makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(c) Obtains, collects, records, or publishes, or communicates to any other person any secret official code word or password, or any sketch,

Spying.

*Cf. Official
Secrets Act
1911, s. 1 (1)
(U.K.)*

plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy,—

he commits an offence against this Act and shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years, or, in the case of a company or corporation, to a fine not exceeding five thousand pounds.

(2) Any person charged with an offence against this section may, if the circumstances warrant such a finding, be found guilty of any other offence against this Act.

Communications with foreign agents to be evidence of certain offences.
Cf. Official Secrets Act 1920, s. 2 (U.K.)

4. (1) In any proceedings against a person for an offence against section three of this Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or outside New Zealand, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purposes of this section, but without prejudice to the generality of the foregoing provision,—

(a) A person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if—

(i) He has, either within or outside New Zealand, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) Either within or outside New Zealand the name or address of or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person:

(b) The expression “foreign agent” includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign Power, either directly or indirectly, for the purpose of committing an act, either within or outside New Zealand,

prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or outside New Zealand, committed or attempted to commit such an act in the interests of a foreign Power:

- (c) Any address, whether within or outside New Zealand, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address shall be deemed to be communications with a foreign agent.

5. (1) If any person, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of the State,—

- (a) Uses or wears any naval, military, air force, police, or other official uniform, whether of New Zealand or of any other country, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) Orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) Forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character, whether of New Zealand or of any other country (in this section referred to as an official document), or uses or has in his possession any forged, altered, or irregular official document; or

Unlawful use of uniforms, forgery, personation, false documents, &c.

Cf. Official Secrets Act 1920, s. 1 (U.K.)

- (d) Personates or falsely represents himself to be a person holding, or in the employment of a person holding, office under His Majesty or under the Government of any country other than New Zealand, or to be or not to be a person to whom an official document or a secret official code word or password, whether of New Zealand or of any other country, has been duly issued or communicated, or, with intent to obtain an official document or any such secret official code word or password, whether for himself or for any other person, knowingly makes any false statement; or
- (e) Uses, or has in his possession or under his control any official die, seal, or stamp, whether of New Zealand or of any other country, or any die, seal, or stamp so nearly representing any such official die, seal, or stamp as to be calculated to deceive, or counterfeits any such official die, seal, or stamp, or uses or has in his possession or under his control any such counterfeited die, seal, or stamp,—

he commits an offence against this Act.

(2) If any person—

- (a) Retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
- (b) Allows any other person to have possession of any official document issued for his use alone, or communicates any such secret official code word or password as aforesaid so issued, or has in his possession any official document or any such secret official code word or password issued for the use of some person other than himself, or, on obtaining possession of any official document, whether by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a constable; or

- (c) Manufactures or sells, or has in his possession for sale, any such die, seal, or stamp, as aforesaid,—

he commits an offence against this Act.

6. (1) If any person, having in his possession or control any secret official code word or password, whether of New Zealand or of any other country, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in a prohibited place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or under the Government of any other country, or which he has obtained or to which he has had access owing to his position as a person who holds or has held such an office, or as a person who holds or has held a contract made on behalf of His Majesty or on behalf of the Government of any other country, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

Wrongful communication of information.
Cf. Official Secrets Act 1911, s. 2 (U.K.)

- (a) Communicates the code word, password, sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorized to communicate it or a person to whom it is in the interest of the State his duty to communicate it; or
- (b) Uses the information in his possession in any manner, or for any purpose, prejudicial to the safety or interests of the State; or
- (c) Retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
- (d) Fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code word or password, or information,—

he commits an offence against this Act.

(2) If any person, having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, whether of New Zealand or of any other country, communicates it, directly or indirectly, to any person in any manner, or for any purpose, prejudicial to the safety or interests of the State, he commits an offence against this Act.

(3) If any person receives any secret official code word or password, or any sketch, plan, model, article, note, document, or information knowing or having reasonable ground to believe, at the time when he receives it, that the code word, password, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of an offence against this Act, unless he proves that the communication to him of the code word, password, sketch, plan, model, article, note, document, or information was contrary to his desire.

Proof of purpose prejudicial to safety or interests of State.

Cf. Official Secrets Act 1911, s. 1 (2) (U.K.)

7. On a prosecution under this Act, if, from the circumstances of the case, or the conduct of the accused person, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State, it shall be deemed that his purpose was such a purpose unless the contrary is proved, whether or not any particular act tending to show such a purpose is proved against him; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or anything in a prohibited place, or any secret official code word or password is made, obtained, collected, recorded, published, or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published, or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

Interfering with police or persons on guard.

Cf. Official Secrets Act 1920, s. 3 (U.K.)

8. Every person commits an offence against this Act who, in the vicinity of any prohibited place, obstructs, knowingly misleads, or otherwise interferes with or impedes—

(a) Any constable; or

(b) Any person engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

9. If any person—

(a) Knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence against this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons; or

(b) Having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to an Inspector of Police any information which it is in his power to give in relation to any such person,—

Harbouring spies.

Cf. Official Secrets Act 1911, s. 7 (U.K.)

he commits an offence against this Act.

10. Every person who attempts to commit an offence against this Act, or solicits or incites or endeavours to persuade another person to commit an offence against this Act, or aids or abets or does any act preparatory to the commission of an offence against this Act, shall be deemed to have committed that offence.

Attempts, incitements, &c.

Cf. Official Secrets Act 1920, s. 7 (U.K.)

11. (1) Where the Commissioner of Police is satisfied that there is reasonable ground for suspecting that an offence against this Act has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to the Attorney-General for permission to exercise the powers conferred by this subsection and, if permission is granted, he may authorize an Inspector of Police to require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the Inspector of Police; and if a person required in pursuance of such an authorization to give information, or to attend as aforesaid, fails to comply with any such requirement or knowingly gives false information, he commits an offence against this Act.

Duty of giving information as to offences.

Cf. Ibid., s. 6 (U.K.); Official Secrets Act 1939 (2 & 3 Geo. VI, ch. 121), s. 1 (U.K.)

(2) Where the Commissioner of Police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the State immediate action

is necessary, he may exercise the powers conferred by the last preceding subsection without applying for or being granted the permission of the Attorney-General, but if he does so he shall forthwith report the circumstances to the Attorney-General.

Power to arrest.
*Cf. Official
Secrets Act
1911, s. 6
(U.K.)*

12. Any person who is found committing an offence against this Act, or who is reasonably suspected of having committed or of having attempted to commit or of being about to commit such an offence, may be arrested without warrant.

Search
warrants.
*Cf. Ibid., s. 9
(U.K.)*

13. (1) If a Justice of the Peace is satisfied on oath that there is reasonable ground for suspecting that an offence against this Act has been or is about to be committed, he may grant a search warrant authorizing any constable named therein to enter at any time any premises or place specified in the warrant, by force if necessary, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature, or anything which is evidence of an offence against this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence against this Act has been or is about to be committed.

(2) Where it appears to an Inspector of Police that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order signed by him give to any constable the like authority as may be given by the warrant of a Justice under this section.

Restriction on
prosecution.
*Cf. Ibid., s. 8
(U.K.)*

14. A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

15. (1) Every person who commits an offence against this Act for which no other punishment is provided shall be liable—

Trial and
punishment
of offences.

*Cf. Official
Secrets Act
1920, s. 8
(U.K.)*

(a) On conviction on indictment to imprisonment for a term not exceeding seven years or to a fine not exceeding five hundred pounds, or to both, or, in the case of a company or corporation, to a fine not exceeding three thousand pounds; or

(b) On summary conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding two hundred pounds, or to both, or, in the case of a company or corporation, to a fine not exceeding one thousand pounds:

Provided that no offence shall be dealt with summarily except with the consent of the Attorney-General.

(2) For the purposes of the trial of any person for an offence against this Act the offence shall be deemed to have been committed either at the place in which it actually was committed or at any place within New Zealand in which the offender may be found.

(3) In addition to and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a Court against any person for an offence against this Act or the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety or interests of the State, that all or any portion of the public should be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(4) Where the person guilty of an offence against this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Extent of Act.

Cf. Official
Secrets Act
1911, s. 10 (1)
(U.K.);

Official
Secrets Act
(1939, ch. 49),
s. 12A (Canada)

16. (1) This Act shall apply to every act or omission constituting an offence against this Act if it is done or made by any person in any part of New Zealand.

(2) This Act shall apply to every act or omission constituting an offence against this Act if it is done or made outside New Zealand in any of the following cases:—

(a) Where the offender at the time of the act or omission was a New Zealand citizen or a New Zealand protected person within the meaning of the British Nationality and New Zealand Citizenship Act 1948, or a person holding office under His Majesty or owing allegiance to His Majesty:

(b) Where any code word, password, sketch, plan, model, article, note, document, information, or other thing whatsoever in respect of which the offender is charged was obtained by him, or depends upon information obtained by him, while he was in New Zealand, or while he was a New Zealand citizen, or a New Zealand protected person, or a person holding office under His Majesty or owing allegiance to His Majesty.

1948, No. 15

Application
of Act to
island
territories
and Western
Samoa.

1947, No. 48

17. (1) This Act shall be in force in the Cook Islands, the Tokelau Islands, and Western Samoa.

(2) This Act is hereby declared to be a reserved enactment for the purposes of section nine of the Samoa Amendment Act 1947.

(3) In this Act, except in this section, both in New Zealand and in the Cook Islands, the Tokelau Islands, and Western Samoa, the term "New Zealand" shall be construed as including the Cook Islands, the Tokelau Islands, and Western Samoa, and every reference to the Government of New Zealand shall be construed as including the Government of the Cook Islands, the Government of the Tokelau Islands, and the Government of Western Samoa.

(4) All criminal jurisdiction conferred by this Act may be exercised by the High Court of the Cook Islands in the ordinary course of its criminal jurisdiction, or by the High Court of Western Samoa in the ordinary course of its criminal jurisdiction. For the purposes of this subsection, paragraph (a) of subsection one

of section fifteen of this Act shall apply as if the words "on indictment" were omitted, and paragraph (b) of that subsection and the proviso to that subsection shall not apply.

(5) In the application of this Act to the Cook Islands, other than Niue,—

(a) Every reference to the Governor-General or to the Attorney-General shall be construed as including the Resident Commissioner of Rarotonga:

(b) Every reference to an Order in Council shall be construed as including an order made by the Resident Commissioner of Rarotonga and publicly notified:

(c) Every reference to a Justice of the Peace shall be construed as including a Magistrate within the meaning of Part VI of the Cook Islands Act 1915:

(d) Every reference to the Commissioner of Police shall be construed as including the Chief Officer of Police at Rarotonga:

(e) Every reference to an Inspector of Police shall be construed as including any officer of police.

(6) In the application of this Act to the Island of Niue—

(a) Every reference to the Governor-General or to the Attorney-General shall be construed as including the Resident Commissioner of Niue:

(b) Every reference to an Order in Council shall be construed as including an order made by the Resident Commissioner of Niue and publicly notified:

(c) Every reference to a Justice of the Peace shall be construed as including a Magistrate within the meaning of Part VI of the Cook Islands Act 1915:

(d) Every reference to the Commissioner of Police shall be construed as including the Chief Officer of Police at Niue:

(e) Every reference to an Inspector of Police shall be construed as including any officer of police.

See Reprint
of Statutes,
Vol. II, p. 711

(7) In the application of this Act to the Tokelau Islands—

- (a) Every reference to the Governor-General or to the Attorney-General shall be construed as including the Administrator of the Tokelau Islands:
- (b) Every reference to an Order in Council shall be construed as including an order made by the Administrator of the Tokelau Islands.

(8) In the application of this Act to Western Samoa—

- (a) Every reference to the Governor-General or to the Attorney-General shall be construed as including the High Commissioner of Western Samoa:
- (b) Every reference to an Order in Council shall be construed as including an order made by the High Commissioner of Western Samoa and published in the *Western Samoa Gazette*:
- (c) Every reference to a Justice of the Peace shall be construed as including a Judge or Commissioner of the High Court of Western Samoa:
- (d) Every reference to the Commissioner of Police shall be construed as including the Superintendent of Police or other principal officer of police in Western Samoa.

Repeal.
1 & 2 Geo. V,
ch. 28

18. The Official Secrets Act 1911 of the Parliament of the United Kingdom shall on the passing of this Act cease to have effect in New Zealand.
