

3 GEORGE VI.

CHAP. 49.

An Act respecting Official Secrets.

[Assented to 3rd June, 1939.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Official Secrets Act*. Short title.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,
- (a) Any reference to His Majesty means His Majesty in right of Canada or of any province; Interpretation.
Reference to His Majesty.
 - (b) 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 be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document; Communicating or receiving.
 - (c) The expression "Attorney General" means the Attorney General of Canada; "Attorney General".
 - (d) The expression "document" includes part of a document; "document".
 - (e) The expression "model" includes design, pattern and specimen; "model".
 - (f) The expression "munitions of war" means arms, ammunition, implements or munitions of war, military, naval or air stores, or any articles deemed capable of being converted thereinto, or made useful in the production thereof; "munitions of war".

"offence under this Act".

(g) The expression "offence under this Act" includes any act, omission, or other thing which is punishable hereunder;

"office under His Majesty".

(h) The expression "office under His Majesty" means any office or employment in or under any department of the Government of Canada or of any province;

"prohibited place".

(i) The expression "prohibited place" means

(i) any work of defence belonging to or occupied or used by or on behalf of His Majesty including arsenals, naval, military or air force establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and 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;

(ii) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty; and

(iii) any place which is for the time being declared by order of the Governor in Council to be a prohibited place on the ground that information with respect thereto or damage thereto would be useful to a foreign power.

"sketch".

(j) The expression "sketch" includes any mode of representing any place or thing;

"senior police officer".

(k) The expression "senior police officer" means any officer of the Royal Canadian Mounted Police not below the rank of Inspector; any officer of any provincial police force of a like or superior rank: the Chief constable of any city or town with a population of not less than ten thousand; or any person upon whom the powers of a senior police officer are for the purposes of this Act conferred by the Governor in Council.

Spying.

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 a foreign power; or

(c) obtains, collects, records, or publishes, or communicates to any other person any secret official code word, or pass word, or any sketch, 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 a foreign power; he shall be guilty of an offence under this Act.

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or anything in such a place, or any secret official code word or pass word 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.

Accused person may be convicted if purpose prejudicial to the safety of the State.

(3) In any proceedings against a person for an offence under this section, the fact that he has been in communication with, or attempted to communicate with, an agent of a foreign power, whether within or without Canada, 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 a foreign power.

Communication with agent of foreign power, etc. sufficient evidence.

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

When person deemed to have been in communication with agent of a foreign power.

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

(i) he has, either within or without Canada, visited the address of an agent of a foreign power or consorted or associated with such agent; or

(ii) either within or without Canada, the name or address of, or any other information regarding such an 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 "an agent of a foreign power" 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 without Canada, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without Canada, committed, or attempted to commit, such an act in the interests of a foreign power;

"an agent of a foreign power" defined

When address deemed that of an agent of a foreign power.

(c) any address, whether within or without Canada, reasonably suspected of being an address used for the receipt of communications intended for an agent of a foreign power, or any address at which such an 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 an agent of a foreign power, and communications addressed to such an address to be communications with such an agent.

Wrongful communication, etc. of information.

4. (1) If any person having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or anything in such a 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 which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, 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,—

- (a) communicates the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate with, 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 for the benefit of any foreign power or in any other manner 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 all 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 pass word or information;

that person shall be guilty of an offence under 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, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the

Communication of sketch, plan, model etc.

State, that person shall be guilty of an offence under this Act.

(3) If any person receives any secret official code word, or pass word, or 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, pass word, sketch, plan, model, article, note, document or information is communicated to him in contravention of this Act, he shall be guilty of an offence under this Act, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire.

Receiving
code word,
sketch, etc.

(4) 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 any Government department or any person authorized by such department with regard to the return or disposal thereof; or

Retaining
official
document,
etc.

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document 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 police constable;

Allowing
other
to have
possession.

he shall be guilty of an offence under this Act.

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,—

Unauthorized
use of
uniforms;
falsification
of reports,
forgery,
personation
and false
documents.

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform 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, (hereinafter in this section referred to as an

official document), or uses or has in his possession any such forged, altered, or irregular official document; or
 (d) personates, or falsely represents himself to be a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the Government department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made, or provided by any Government department, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp, so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this Act.

Unlawful dealing with dies, seals, etc.

(2) If any person without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid, he shall be guilty of an offence under this Act.

Interfering with officers of the police or members of His Majesty's forces.

6. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or invade any constable or police officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of an offence under this Act.

Power to require the production of telegrams.

7. (1) Where it appears to the Minister of Justice that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of Canada, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent to or received from any place out of Canada by means of any such cable, wire, or apparatus and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall for each offence, be liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding two hundred dollars, or to both such imprisonment and fine.

Refusing or neglecting to produce original, etc.

Penalty.

8. If any person 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 under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person 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 a senior police officer any information which it is in his power to give in relation to any such person, he shall be guilty of an offence under this Act.

Harbouring spies.

9. Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under this Act, shall be guilty of an offence under this Act and shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

Attempts, incitements, etc.

10. Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be arrested without a warrant and detained by any constable or police officer.

Power to arrest without warrant.

11. (1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under 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 named in the warrant, if necessary by force, 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 which is evidence of an offence under 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 under this Act has been or is about to be committed.

Search warrants.

In case of
great
emergency.

(2) Where it appears to an officer of the Royal Canadian Mounted Police not below the rank of Superintendent 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 under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

Prosecution
only with
consent of
Attorney
General.

12. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney General: Provided that a person charged with such an 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.

Where
offence
deemed to
have been
committed.

13. (1) For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in Canada in which the offender may be found.

Public
may be
excluded
from trial.

(2) In addition 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 under 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 interest of the State, that all or any portion of the public shall 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.

If guilty
person a
company or
corporation.

(3) Where the person guilty of an offence under 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.

Penalties.
General.
Indictable
offence.

14. Where no specific penalty is provided in this Act, any person who is guilty of an offence under this Act shall be deemed to be guilty of an indictable offence, and shall on conviction be punishable by fine not exceeding two thousand dollars, or by imprisonment for a term not exceeding seven years, with or without hard labour, or by both fine and imprisonment; but such person may, at the election of the Attorney General, be prosecuted summarily

Summary
conviction.

in the manner provided by Part XV of the *Criminal Code*, R.S., c. 24, and if so prosecuted, shall be punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding twelve months, with or without hard labour, or by both fine and imprisonment.

15. (1) The Act of the Parliament of the United Kingdom, chapter twenty-eight of the statutes of 1911 (1 and 2 Geo. V.) the short title of which is "Official Secrets Act, 1911" is repealed in so far as it is part of the law of Canada. Repeal.

(2) Sections eighty-five and eighty-six of the *Criminal Code*, chapter thirty-six of the Revised Statutes of Canada, 1927, are repealed. Sections 85 and 86 of Criminal Code repealed.

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