

struction of the terms 'would be give to the Ordinance an operation which discriminated against any group or sect whose rights of worship are 'for any of a variety of possible reasons, closed to the general public . . . and reflected an approach that would lie ill with currently accepted standards of religious equality and tolerance in this country'.

*history.* The right of the Society to continue its religious practices has now been upheld for the third time: first by Justice Cripps in the Land and Environment Court, then by a majority of the New South Wales Court of Appeal and lastly by the High Court.

### the peter wright book

Them that asks no questions isn't told a lie.

Watch the wall, my darling, while the Gentlemen go by!

Laces for a lady, letters for a spy,

Watch the wall, my darling, while the Gentlemen go by!

Kipling, *A Smuggler's Song*

The long running battle by former British spy Peter Wright to publish his memoirs continues. On 13 March 1987 Justice Powell in the NSW Supreme Court delivered a 286 page judgment which lifted the injunction preventing the publication of Wright's memoirs. But shortly after this, the British Government announced it would lodge an appeal against the decision of Justice Powell. This appeal will be heard in the NSW Court of Appeal. Ultimately the case may have to be resolved in the High Court so it may be some time yet before the matter is finalised.

As noted in the last edition of *Reform* ([1987] *Reform* 19) the case attracted widespread publicity both in Australia and in the United Kingdom, a factor which no doubt will do the book no harm if it is

ever published. The question that has intrigued many commentators was why the British Government chose this book on which to run a test case given that much of the material found in Wright's book had previously been published in 3 books on the British intelligence services: Chapman Pincher's *Their Trade is Treachery* (1981), Nigel West's *A Matter of Trust: M15 1945-1972* (1982) and Chapman Pincher's *Top Secret Too Long* (1984). Was it the details in the book that they wanted kept secret or was it simply that it had been written by Peter Wright?

Added to this was the difficulty of showing why the book should not be published in Australia.

*justice powell's judgment.* In his long judgment Justice Powell dealt exhaustively with the background to the case setting out details of previous publications on the secret services (including a useful Appendix for readers of spy books) and particularly the work of Peter Wright in M15. He outlined the arguments put to him by the British Government and the defendants (the publisher Heinemann and the author Peter Wright) being at times critical of the tactics employed by the British Government in the presentation of its case.

In the last 50 pages of his judgment Justice Powell discussed the relevant legal principles.

*was there a contract?* Justice Powell after reviewing the authorities concluded that the relationship between the British Government and Peter Wright was not one of contract although he conceded that the position was less clear with respect to non-military personnel than with military personnel. However the fact that there was no contractual relationship did not mean that an obligation of confidentiality did not exist.

*obligation of confidentiality.* In the opinion of Justice Powell, Peter Wright became subject to an obligation of confidentiality to the British Government upon taking up his appointment as an officer of M15.

The obligation in no way depend[ed] upon the provisions of the Official Secrets Act 1911 but derived from the purpose for which this service was established, the functions which it is accustomed to undertake, the nature of information which it may from time to time itself bring into being or acquire – whether as the result of its own actions or as a result of it being passed on by some person or some other security or intelligence service – and the uses to which any such information might, from time to time be put.

As to the nature of the obligation, it was held to extend to:

All information, whether produced by Mr Wright himself, or received by him, whether directly or indirectly from a third person, which would probably be regarded as confidential in quality – without wishing to attempt an exhaustive definition of such information, I would indicate that my view is that any such information, disclosure of which would, or would reasonably be thought to be, detrimental to the national security of the United Kingdom, or the disclosure of which would be, or would reasonably be thought to be, detrimental to the performance by the service of its function. Finally, there can be, I think, be little doubt that that obligation continued, and will continue, to be binding upon Mr Wright during such time as any such information produced or received by him retained its confidential quality, and in respect of such information as, for the time being, retained its confidential quality.

*breach of fiduciary obligation.* On the question whether the publication of Peter Wright's memoirs would constitute a

breach of a fiduciary obligation Justice Powell said the British Government would need to establish:

First, that the proposed publication would be an unauthorised publication, or use, of information which not only once was, but still is, confidential in quality; and, second, that that publication or use of that information would cause detriment to the British Government.

In his view, the British Government's case foundered on both grounds. In relation to the first issue Justice Powell commented:

Two things of importance seem to me to flow from these observations, they being, first, that – and it is not really disputed by the British Government – at least in general terms, if not in its ultimate detail, much of the information contained in Mr Wright's manuscript has already been made available to the public, not only in the United Kingdom, but elsewhere, in the books and other materials which have been published over the years; and, second, that it is difficult for me to see in what respects it can reasonably be said that the publication, now, of information – even if previously not made available to the public – relating to technological matters which are at least 20 years old, and which have, long since, been made obsolete by the developments in modern technology relating to operations – many of them failed – which occurred at least 20 years ago . . . will detrimentally affect the national security of the United Kingdom.

The argument that the material in the manuscript should be regarded as confidential unless authorised by the British Government or that such of the material as had not been published in official reports should be regarded as confidential was rejected.

On the question of detriment, it was

not enough merely to show that as a result of publication the confidentiality of the information would be lost, some real disadvantage beyond this needed to be shown.

While I am prepared to accept that the publication of some of the information contained in Mr Wright's manuscript may provide a source of some embarrassment to the British Government, when one observes all the information – much of it derived from, and some of it directly attributed to, insiders – which, because of the British Government's acquiescence or inaction, has already been made available in such books as *Their Trade is Treachery, A Matter of Trust – MI5 1945–1972, Too Secret Too Long* and *Conspiracy of Silence* and through the medium of television programs . . . the British government's claim, now, that the publication of such information, at the hands of an 'insider' will cause detriment to it seems decidedly hollow; nor does that claim seem to me to gain much strength when it is noted that much of the information contained in Mr Wright's manuscript . . . relates to . . . operations . . . all of which occurred over 20 years ago, or related to technology which has, long since, ceased to be of relevance, or used, in this modern day world.

As to the effect on the intelligence services of allowing publication of memoirs, such as those of Peter Wright, Justice Powell said:

There might still . . . [be] much to be said for the view that there would be grave consequences for the working of the service if a former senior officer such as Mr Wright were to be permitted to publicise what he learnt while in the service . . . for it might be thought that officers and former officers of the service were free to disclose confidential information received by them while in the service without fear of the consequences, and, further that, since the service would . . . not to be

leakproof, public confidence, and more importantly, the confidence of friendly security and intelligence services, in the service would be gravely affected.

The facts, as revealed by the evidence in these proceedings even if they do not totally deprive that view of any strength, gravely weakened whatever might otherwise have been its strength, for it would seem, that over the last five years, at least, former officers . . . have felt free to disclose confidential information received by them while in the service, and have done so without any action being taken against them, and, further, far from appearing to be, even if not being leakproof, it must have been apparent to anyone who had cause to consider the matter, that as a result of the acquiescence, or inaction, of the British government, the service has, for years, leaked like a sieve.

Nor, so it seems to me, does the evidence provide much support for the view that, if the publication of Mr Wright's memoirs is not prohibited, friendly security and intelligence services will be less likely than hitherto to supply information to the service.

So, this round in the contest went to Peter Wright and his publisher. But it is clear that the battle is far from over.

*footnote.* It has been reported that Chapman Pincher, the author of a number of spy books referred to in the case, has commenced defamation proceedings against Malcolm Turnbull, Peter Wright's solicitor, over comments Turnbull allegedly made on British television about a royalty agreement between Pincher and Wright. Wright had apparently provided a lot of background information to Pincher which assisted him in writing his books.

alcohol, drugs and crime in victoria

*debate.* The criminal responsibility of grossly intoxicated offenders has long been