

Sword of Damocles

The Federal Immigration Act has been sharply criticized in recent weeks by two highly placed observers, one a Supreme Court Judge and the other an Ontario Cabinet member.

In trying a deportation appeal last month, Mr. Justice Stewart of the Ontario Supreme Court expressed himself shocked by the latitude allowed to the special inquiry officers of the Immigration Department, who inquire into doubtful cases and decide whether intending immigrants shall be refused admission and whether "landed immigrants" already living in Canada shall be deported. Counsel for the Department claimed that this officer was entitled to act on his own opinion and to be as arbitrary as he liked. Mr. Justice Stewart declared that such arbitrary discretion was "perfectly shocking and disgraceful . . . against every conceivable thing since the Magna Carta and should be stamped out as vigorously as possible".

A similar observation was made last week by Provincial Secretary Phillips. He described the Immigration Act as "probably one of the most controversial and complex acts in existence". He went on:

In the broadest of terms, it permits entry to Canada as landed immigrants only to those who, in the opinion of officials of the Department of Citizenship and Immigration, are likely to be successfully integrated into our social and economic structure. Decision in this matter is largely a matter for the individual immigration official concerned.

Mr. Phillips noted that the fear of deportation was "a bogeyman" with many immigrants. They were so afraid of coming under the Department's notice that even when they were in extreme want they were afraid to apply for welfare assistance. He also noted that unscrupulous persons were exploiting this fear of deportation for their own purposes.

These fears are all too understandable. The Immigration Act is indeed a complex document, arranged in a most baffling manner and drafted in purest officialese. It is hard going even for Canadians familiar with Ottawa gobbledegook, and it must be perfectly unintelligible to any immigrant. The statute might be better called the Deportation Act since the great bulk of it deals not with the reception of immigrants but with the exclusion of those seeking entry, and the deportation of those already here.

The intention of those who framed it was to keep these proceedings completely under the control of the Department. A wide variety of causes for exclusion or deportation are set out, and special inquiry officers are authorized, virtually at their own discretion, to remove individuals from Canada for any of them. The only appeal permitted is to a board appointed by the Minister, and appeals to the courts against a deportation order are forbidden. (The legal profession, however, seems to have found ways around this prohibition, in some cases at least.)

As a final touch, the Government is permitted to make additional regulations by Order-in-Council on some of the most vital subjects, including the exclusion of immigrants on racial grounds; the rules in this regard do not appear in the Act at all. The average immigrant must feel that the statute is a sword of Damocles suspended over his head, ready to fall at any time at the whim of some arbitrary authority in Ottawa.

The present Government has introduced some improvements in this legislation and its enforcement. The jurisdiction of the appeal boards, originally limited to residents of Canada against whom a deportation order was sought, has been extended to immigrants refused admission. These latter are now being told, for the first time, the reasons for their exclusion; this used to be kept a deep, dark secret. Far more comprehensive reforms are needed, however. The enforcement of the Act, like that of other statutes should be placed in the hands of the courts, not the Department of Immigration. An individual accused of an ordinary offense, and threatened with fine or imprisonment, is entitled to a proper trial; why not an immigrant threatened with the more severe penalty of deportation?