

**CROWN PRIVILEGE IN THE 1980's
A DECADE OF CHANGE**

Memorandum By The Government Of Lesotho

Some evidence may be excluded on the ground that its reception would be contrary to some aspect of public policy. If military secrets were to be disclosed in civil or criminal cases then the security of the state would be in jeopardy. The detection of crime would be greatly hampered if the names of informers were disclosed in court. It is for this reason that certain evidence whose disclosure would be contrary to state interest is excluded. This is called State or Crown Privilege.

The objection to disclosure on the grounds of public policy is usually raised by a Government Minister if he is aware that such evidence is about to be disclosed in Court. The objection may be raised in both civil and criminal matters. The objection may also be raised by a witness, parties in civil litigation or a judge presiding in the case.

The law of Lesotho governing the exclusion of evidence on the grounds of state interest is the same as the law of England. In the case of *Duncan v. Cammell Laird & Co., Ltd.* [1942] A.C.624 the

House of Lords laid it down in no uncertain terms that the objection by the Minister to disclose of evidence was conclusive and that the court had no power to inspect the documents in to satisfy itself that the Minister's objection was justified.

The decision in *Duncan* was overruled in *Conway v. Rimmer*, [1968] A.C.910 and today the courts have "a residual power to reject an objection in proper form that the disclosure or production of a document would be injurious or prejudicial to the public interest."

Conway v. Rimmer was decided after Lesotho had attained independence and therefore it is not binding on our courts, but merely persuasive. There is no doubt that if a question of State Privilege came before our courts *Conway's* case would be followed.

Another governing principle is whether there is proof that the Crown privilege is being claimed on grounds that are frivolous or vexatious—that is to say, the claim of the privilege should be *bona fide*.